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Information on the translation:

- Übersetzung des Strafgesetzbuches durch Prof. Dr. Michael Bohlander
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Section 92a

Ancillary measures

In addition to a sentence of imprisonment of at least six months for an offence under this chapter, the court may order the offender's professional disqualification and the loss of the ability to hold public office, to vote and be elected in public elections (section 45(2) and (5)).

Section 92b

Deprivation

If an offence under this chapter has been committed

1. objects generated by the offence or used or intended for use in its commission or preparation; and
2. objects mentioned in the offences under sections 80a, 86, 86a and 89a to 91

may be subject to a deprivation order. Section 74a shall apply.

Section 93

Definition of state secret

(1) State secrets are facts, objects or knowledge which are only accessible to a limited category of persons and must be kept secret from foreign powers in order to avert a danger of serious prejudice to the external security of the Federal Republic of Germany.

(2) Facts which constitute violations of the independent, democratic constitutional order or of international arms control agreements, kept secret from the treaty partners of the Federal Republic of Germany, are not state secrets.

Section 94 Treason

(1) Whosoever

1. communicates a state secret to a foreign power or one of its intermediaries; or
2. otherwise allows a state secret to come to the attention of an unauthorised person or to become known to the public in order to prejudice the Federal Republic of Germany or benefit a foreign power

and thereby creates a danger of serious prejudice to the external security of the Federal Republic of Germany, shall be liable to imprisonment of not less than one year.

(2) In especially serious cases the penalty shall be imprisonment for life or of not less than five years. An especially serious case will typically occur if the offender

1. abuses a position of responsibility which especially obliges him to safeguard state secrets; or
2. through the offence creates the danger of an especially serious prejudice to the external security of the Federal Republic of Germany.

Section 95 Disclosure of state secrets with intent to cause damage

(1) Whosoever allows a state secret which has been kept secret by an official authority or at its behest to come to the attention of an unauthorised person or become known to the public, and thereby creates the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be liable to imprisonment from six months to five years unless the offence is punishable under section 94.

(2) The attempt shall be punishable.

(3) In especially serious cases the penalty shall be imprisonment from one to ten years. Section 94(2) shall apply.

Section 96 Treasonous espionage; spying on state secrets

(1) Whosoever obtains a state secret in order to disclose it (section 94) shall be liable to imprisonment from one to ten years.

(2) Whosoever obtains a state secret which has been kept secret by an official agency or at its behest in order to disclose it (section 95) shall be liable to imprisonment from six months to five years. The attempt shall be punishable.

Section 97
Disclosure of state secrets and negligently causing danger

(1) Whosoever allows a state secret which has been kept secret by an official agency or at its behest to come to the attention of an unauthorised person or become known to the public, and thereby negligently causes the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be liable to imprisonment not exceeding five years or a fine.

(2) Whosoever by gross negligence allows a state secret which has been kept secret by an official agency or at its behest and which was accessible to him by reason of his public office, government position or assignment given by an official authority, to come to the attention of an unauthorised person, and thereby negligently causes the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be liable to imprisonment not exceeding three years or a fine.

(3) The offence may only be prosecuted upon the authorisation of the Federal Government.

Section 97a
Disclosure of illegal secrets

Whosoever communicates a secret, which is not a state secret because of one of the violations indicated in section 93(2), to a foreign power or one of its intermediaries and thereby creates the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be punished as if he had committed treason (section 94). Section 96(1), in conjunction with section 94(1) No 1 shall apply mutatis mutandis to secrets of the kind indicated in the 1st sentence above.

Section 97b
Disclosure based on mistaken assumption that secret is illegal

(1) If the offender in cases under sections 94 to 97 mistakenly assumes that a state secret is a secret of the kind indicated in section 97a he shall be punished pursuant to the those provisions if

1. he could have avoided the mistake;
2. he did not act with the intention of preventing the alleged violation; or
3. the act is, under the circumstances, not an appropriate means to accomplish that purpose. The act is typically not an appropriate means if the offender did not previously seek a remedy from a member of the Federal Parliament.

(2) If the state secret was confided or made accessible to the offender in his capacity as a public official or soldier in the Armed Forces he shall also incur liability if he did not previously seek a remedy from a superior in government service, or in the case of a soldier from a superior disciplinary officer. This shall apply mutatis mutandis to persons entrusted with special public service functions and to persons under a duty within the meaning of section 353b(2).

Section 133
Destruction of materials under official safekeeping

(1) Whosoever destroys, damages or removes from official access documents or other chattels in official safekeeping or which have been officially placed in his or another's safekeeping, shall be liable to imprisonment not exceeding two years or a fine.

(2) The same shall apply to documents or other chattels in the official safekeeping of a church or another religious association under public law or which have been officially placed by them in the safekeeping of the offender.

(3) Whosoever commits the offence in relation to an object which has been entrusted to or made accessible to him as a public official or a person entrusted with special public service functions shall be liable to imprisonment not exceeding five years or a fine.

Section 201
Violation of the privacy of the spoken word

(1) Whosoever unlawfully

1. makes an audio recording of the privately spoken words of another; or
2. uses, or makes a recording thus produced accessible to a third party,

shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever unlawfully

1. overhears with an eavesdropping device the privately spoken words of another not intended for his attention; or
2. publicly communicates, verbatim or the essential content of, the privately spoken words of another recorded pursuant to subsection (1) No 1 above or overheard pursuant to subsection (2) No 1 above. shall incur the same penalty. The offence under the 1st sentence No 2 above, shall only entail liability if the public communication may interfere with the legitimate interests of another. It is not unlawful if the public communication was made for the purpose of safeguarding overriding public interests.

(3) Whosoever, as a public official or a person entrusted with special public service functions violates the privacy of the spoken word (subsections (1) and (2) above) shall be liable to imprisonment not exceeding five years or a fine.

(4) The attempt shall be punishable.

(5) The audio recording media and eavesdropping devices which the principal or secondary participant used may be subject to a deprivation order. Section 74a shall apply.

Section 203
Violation of private secrets

(1) Whosoever unlawfully discloses a secret of another, in particular, a secret which belongs to the sphere of personal privacy or a business or trade secret, which was confided to or otherwise made known to him in his capacity as a

1. physician, dentist, veterinarian, pharmacist or member of another healthcare profession which requires state-regulated education for engaging in the profession or to use the professional title;
2. professional psychologist with a final scientific examination recognised by the State;
3. attorney, patent attorney, notary, defence counsel in statutorily regulated proceedings, certified public accountant, sworn auditor, tax consultant, tax agent, or organ or member of an organ of a law, patent law, accounting, auditing or tax consulting firm in the form of a company;
4. marriage, family, education or youth counsellor as well as addiction counsellor at a counselling agency which is recognised by a public authority or body, institution or foundation under public law;
- 4a. member or agent of a counselling agency recognised under section 3 and section 8 of the Act on Pregnancies in Conflict Situations;
5. a state-recognised social worker or state-recognised social education worker; or
6. member of a private health, accident or life insurance company or a private medical, tax consultant or attorney invoicing service,

shall be liable to imprisonment not exceeding one year or a fine.

(2) Whosoever unlawfully discloses a secret of another, in particular, a secret which belongs to the sphere of personal privacy or a business or trade secret, which was confided to or otherwise made known to him in his capacity as a

1. public official;
2. person entrusted with special public service functions;
3. person who exercises duties or powers under the law on staff employment representation;
4. member of an investigative committee working for a legislative body of the Federation or a state, another committee or council which is not itself part of the legislative body, or as an assistant for such a committee or council;
5. publicly appointed expert who is formally obliged by law to conscientiously fulfil his duties, or
6. person who is formally obliged by law to conscientiously fulfil his duty of confidentiality in the course of scientific research projects,

shall incur the same penalty. Particular statements about personal or material relationships of another which have been collected for public administration purposes shall be deemed to be equivalent to a secret within the meaning of the 1st sentence above; the 1st sentence above shall not apply to the extent that such particular statements are made known to other public authorities or other agencies for public administration purposes unless the law forbids it.

(2a) Subsections (1) and (2) above shall apply mutatis mutandis when a data protection officer without authorisation discloses the secret of another within the meaning of these provisions, which was entrusted to or otherwise revealed to one of the persons named in subsections (1) or (2) above in their professional capacity and of which he has gained knowledge in the course of the fulfilment of his duties as data protection officer.

(3) Other members of a bar association shall be deemed to be equivalent to an attorney named in subsection (1) No 3 above. The persons named in subsection (1) and the 1st sentence above shall be equivalent to their professionally active assistants and those persons who work with them in training for the exercise of their profession. After the death of the person obliged to keep the secret, whosoever acquired the secret from the deceased or from his estate shall be equivalent to the persons named in subsection (1) and in the 1st and 2nd sentences above.

(4) Subsections (1) to (3) above shall also apply if the offender unlawfully discloses the secret of another person after the death of that person.

(5) If the offender acts for material gain or with the intent of enriching himself or another or of harming another the penalty shall be imprisonment not exceeding two years or a fine.

Section 204 **Exploitation of the secrets of another**

(1) Whosoever unlawfully exploits the secret of another, in particular a business or trade secret, which he is obliged to keep secret pursuant to section 203, shall be liable to imprisonment not exceeding two years or a fine.

(2) Section 203(4) shall apply mutatis mutandis.

Section 331 **Taking bribes**

(1) A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.

(3) The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.

Section 332

Taking bribes meant as an incentive to violating one's official duties

(1) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform a judicial act and thereby violated or will violate his judicial duties shall be liable to imprisonment from one to ten years. In less serious cases the penalty shall be imprisonment from six months to five years.

(3) If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Section 353b

Breach of official secrets and special duties of confidentiality

(1) Whosoever unlawfully discloses a secret which has been confided or become known to him in his capacity as

1. a public official;
2. a person entrusted with special public service functions; or
3. a person who exercises duties or powers under the laws on staff representation

and thereby causes a danger to important public interests, shall be liable to imprisonment not exceeding five years or a fine. If by the offence the offender has negligently caused a danger to important public interests he shall be liable to imprisonment not exceeding one year or a fine.

(2) Whosoever other than in cases under subsection (1) above unlawfully allows an object or information to come to the attention of another or makes it publicly known

1. which he is obliged to keep secret on the basis of a resolution of a legislative body of the Federation or a state or one of their committees; or
2. which he has been formally put under an obligation to keep secret by another official agency under notice of criminal liability for a violation of the duty of secrecy,

and thereby causes a danger to important public interests shall be liable to imprisonment not exceeding three years or a fine.

(3) The attempt shall be punishable.

(3a) Acts of aiding by a person listed under section 53(1) 1st sentence No 5 of the Code of Criminal Procedure shall not be deemed unlawful if they are restricted to the receipt, processing or publication of the secret or of the object or the message in respect of which a special duty of secrecy exists.

(4) The offence may only be prosecuted upon authorisation. The authorisation shall be granted

1. by the president of the legislative body

(a) in cases under subsection (1) above if the secret became known to the offender during his service in or for a legislative body of the Federation or a state;

(b) in cases under subsection (2) No 1 above;

2. by the highest Federal public authority:

(a) in cases under subsection (1) above if the secret became known to the offender during his service in or for a public authority or in another official agency of the Federation or for such an agency;

(b) in cases under subsection (2) No 2 above if the offender was under put under obligation by an official agency of the Federation;

3. by the highest state public authority in all other cases under subsections (1) and (2) No 2 above.

Section 355 **Violation of the tax secret**

(1) Whosoever unlawfully discloses or uses

1. circumstances of another which became known to him as a public official

(a) in an administrative proceeding or a judicial proceeding in tax matters;

(b) in a criminal proceeding because of a tax offence or in a proceeding to impose a summary fine because of a summary tax offence;

(c) on another occasion through a communication by a revenue authority or through the statutorily prescribed submission of a tax-assessment notice or a certificate concerning the findings made at the time of taxation; or

2. the business or trade secret of another that became known to him as a public official in one of the proceedings listed under No 1 above

shall be liable to imprisonment not exceeding two years or a fine.

(2) The following shall be equivalent to a public official within the meaning of subsection (1) above:

1. persons entrusted with special public service functions;
2. officially consulted experts; and
3. those who hold offices in churches and other religious associations under public law.

(3) The offence may only be prosecuted upon request of the official superior or the victim. In the case of offences by officially consulted experts the head of the public authority whose proceeding has been affected shall be entitled to file a request apart from the victim.

Section 358 **Ancillary measures**

In addition to a sentence of imprisonment of at least six months for an offence under section 332, section 335, section 339, section 340, section 343, section 344, section 345(1) and (3), section 348, sections 352 to 353b(1), section 355 and section 357 the court may deprive the person of the capacity to hold public office (section 45(2)).