

APPROVAL OF BUILDING MEASURES

A COMPARATIVE ANALYSIS OF

THE PROTESTANT CHURCHES IN GERMANY

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Abstract

With regard to the future challenges of the Protestant Churches in Germany, this article will focus on approvals which are required according to clerical law when construction work is undertaken. The main question will be whether the administrative burden concerning approvals can be reduced. In order to answer this question the legal systems of nine Protestant Churches in Germany will be examined regarding approvals in the context of building measures. It will be argued based on this examination that the Protestant Churches in Germany could reduce the administrative burden regarding approvals and therefore take one step towards adequately dealing with its future challenges.

Keywords: supervision, approval, building measure, administration, Protestant Church

1. Introduction

According to the Freiburger Studie, membership of the Protestant Churches in Germany will halve by the year 2060 [1]. Since the Churches are mainly financed by Church taxes which have to be paid by their members, financial challenges are foreseeable [2]. The Protestant Churches in Germany accordingly have to find ways of dealing with this challenge. One option is to reduce administrative tasks and therefore reduce administrative expenses [3].

It is against this background that this article will analyse the legal systems of a number of Protestant Churches in Germany with regard to the requirement of approvals in the context of building measures. Therefore, the German Protestant Churches in general as well as the supervision including the concept of approvals will be discussed. Afterwards, the legal systems of nine Protestant Churches in Germany regarding approvals in the context of building measures will be examined. Based on the findings of this examination, conclusions and further considerations with regard to the reduction of administrative tasks and the future challenges of the Protestant Churches in Germany will be made.

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2. Protestant Churches in Germany

Martin Luther was convinced that there must be a separation of the profane and clerical regiments [4]. The Reformation therefore required the protection of sovereigns who supported the theories of Luther [5]. It is against this background that a number of Protestant Churches were established in Germany and that still exist [6].

Protestant Churches in Germany have a rather similar structure [7]. The main decisions are made by a synod. This consists of representatives of the community of baptised people and can be described as an element of conciliation within the Church and Protestant Constitutional Law [8]. Other decision-making bodies are the clerical leader ('Bischof/in') and the administrative body which consists of lawyers and theologians ('Landeskirchenamt') [7].

The Protestant Churches in Germany are associated in different organisations [6, p. 860]. Probably the best-known organisation is the Evangelische Kirche Deutschlands (EKD) [9]. It consists of 20 independent German Protestant Churches.

3. Supervision in the Protestant Churches in Germany

There are two types of supervision in the Protestant Churches in Germany: 'Visitation' and 'Aufsicht' [10].

In order to create unity with regard to the reformatory doctrine, there was the need to establish supervision over the protestant priests ('Visitation'). As a consequence, regulations for theological supervision were established by the Protestant Churches in Germany in the 16th century ('Visitationsordnungen') [11]. According to the 'Visitationsordnungen' the superintendent or dean pays the parishes a visit every six to eight years and interviews the priest and the community of the parish [12].

'Aufsicht' is supervision that is exercised by administrative bodies; it comprises particularly legal and financial supervision [10, p. 1038]. It is exercised vis-à-vis parishes and other clerical bodies in a hierarchical way [13]. Generally speaking, 'Aufsicht' consists of three elements: finding facts, evaluating the findings, and penalties [14].

Probably the most important instrument in the context of 'Aufsicht' is the requirement of approvals: according to German Constitutional Law, Protestant Churches can enact their own laws with regard to the order and the administration of their affairs [15]. The legal systems of all Protestant Churches in Germany contain requirements for approval in the context of certain acts (e.g. sale of clerical buildings or building measures as regards clerical buildings) [16]. As a consequence, parishes and other clerical bodies need approval before carrying out these acts. Actions that are taken without required approval are invalid according to clerical and profane law [17]. The reason underlying the

system of approvals is to protect the clerical regime, as well as to protect and to support parishes and clerical bodies [18].

4. Approvals in Protestant Churches in Germany

As already pointed out above, Protestant Churches in Germany have the power to enact their own law in order to deal with their affairs. As a consequence, the Protestant Churches can enact law with regard to building measures and in particular determine the requirement of approvals in this context [5, p. 228]. Generally speaking, the issue of approvals causes quite an amount of administrative work, in particular with regard to building measures. Against this background and as regards the future challenges of the Protestant Churches in Germany it is necessary to find ways of reducing administrative tasks in the context of approvals.

In order to find ways of reducing administrative tasks, the legal systems of nine Protestant Churches in Germany were examined: Protestant-Lutheran Church of Saxony, Protestant Church of Baden, Protestant-Lutheran Church of Hannover, Protestant Church of Central Germany, Protestant Church Berlin-Brandenburg-schlesische Oberlausitz, Protestant-Lutheran Church of Bavaria, Protestant Church of Anhalt, Protestant-Lutheran Church of North Germany and Protestant Church of Hessen-Nassau. These Protestant Churches were chosen because they have their own building codes which regulate the issue of approvals and it is therefore possible to identify possibilities of reducing administrative tasks. The other Protestant Churches have regulated the issue of approvals in a general way. Accordingly, it is difficult to find options of reducing administrative tasks and a further examination of their legal systems is not necessary for the purposes of this article.

4.1. Protestant-Lutheran Church of Saxony

In the Protestant-Lutheran Church of Saxony the concept of approval is regulated by the Kirchliche Bauordnung ('KBO-Sachsen' in the following) [19]. The KBO-Sachsen applies to the planning and the execution of measures concerning buildings that are owned by clerical bodies [19].

According to § 3 KBO-Sachsen, approvals are enacted by the 'Landeskirchenamt' or the 'Regionalkirchenamt'. The 'Landeskirchenamt' is based in Dresden and consists of a president and several theological and non-theological members [20]. Its main tasks are the administration of all matters of the Protestant-Lutheran Church of Saxony as well as the supervision of all clerical bodies [20]. The Regionalkirchenämter are based in Chemnitz, Dresden and Leipzig [21]. They are inter alia responsible for matters concerning building measures and the supervision of certain clerical bodies [21]. However, the Landeskirchenamt outranks the Regionalkirchenämter.

Generally speaking, all building measures need approval [19]. The same is true with regard to modifications of already approved building measures [19]. However, if the building costs are less than 10,000 euros and there is no

extraordinary financial allocation by the Protestant-Lutheran Church of Saxony, approval is not required for this specific building measure.

Approvals must be applied for at the Regionalkirchenamt. Part of this application must be a finance plan, which includes an overview of incomes and expenses [19]. Approvals will be issued if the following conditions are fulfilled: the applied building measure must not infringe the law of the Federal Republic of Germany (building code, heritage protection law, etc.); the building must be of a high quality, accessible and sustainable; the principles of economic efficiency and thriftiness must be considered; there must not be an infringement of clerical law; and the financing of the building measure must be secured.

4.2. Protestant Church of Baden

Approvals in the Protestant Church in Baden are determined by the KBG-Baden [22]. It applies to all building measures of parishes and other clerical bodies [22].

Approvals are enacted by the 'Evangelischer Oberkirchenrat' [22]. The Evangelischer Oberkirchenrat is a council which is part of the management of the Protestant Church in Baden [23]. It is in particular responsible for the administration of the Protestant Church in Baden and the supervision of the clerical bodies [23].

According to §§ 2, 7 KBG-Baden, approval is required for building measures and in particular for the construction of, reconstruction of, extension of and changes to clerical buildings and properties. Furthermore, approval is necessary with regard to demolitions, reconditioning and modernisations of clerical buildings. In accordance with § 16 KBG-Baden, approvals must also be applied for in the context of building measures concerning heritage-listed buildings. Approval is not required if the building costs are less than 5,000 euros [24].

With certain building measures, approval is deemed to have been given ('Genehmigungsfiktion'). In other words, approvals are still required, but are presumed to have been given. Approvals are therefore deemed to have been given for nursing homes, welfare centres and administration offices. The same is true as regards kindergartens under the condition that there is a planning competition of architects as well as that the local authorities are in charge of the project management [24].

4.3. Protestant-Lutheran Church of Hannover

RechtsVOBau-Hannover determines approvals in the Protestant-Lutheran Church of Hannover [25]. It is applicable *inter alia* to building measures concerning buildings and rooms that are owned or used by clerical bodies [25].

The 'Landeskirchenamt' and the 'Kirchenkreisvorstand' issue approvals [25]. The Landeskirchenamt is responsible for the daily operations of the Protestant-Lutheran Church of Hannover as well as for the further development

of its law [26]. The Kirchenkreis is a community of parishes and managed inter alia by the Kirchenkreisvorstand [26]. It is responsible for the daily operations of the Kirchenkreis [26].

According to § 9 RechtsVOBau-Hannover in combination with § 66 KGO-Hannover [27], approval is needed if buildings are newly constructed or pulled down. Furthermore, approval is required with regard to refurbishments, changes and demolitions of buildings that are listed. Approval must also be given if refurbishment costs come to more than 100,000 euros. No approval is needed for cosmetic repairs or building measures whose costs are below 100,000 euros, or for building measures which are financed by (private) fees.

Approval is presumed to be issued ('Genehmigungsfiktion') if the authority which is responsible for buildings and landmarks does not object to the construction which approval is applied for. Furthermore, the financing of the applied building measure must be secured.

Another Genehmigungsfiktion is laid down in § 66 KGO-Hannover [27]. Accordingly, approval is also presumed to be issued if there is an application for approval and the responsible authority has not issued or declined the applied approval within three months of the date of application.

4.4. Protestant Church of Central Germany

Approvals are subject to the KBauG-Mitteldeutschland [28]. This law is applicable to building measures in the field of clerical architecture [28].

Responsible for the issue of approvals is the "Superintendent" and the 'Kreiskirchenamt' [28]. The 'Kirchenkreis' is the community of parishes and is managed inter alia by the 'Superintendent' [29]. Strictly speaking, the Superintendent is the spiritual manager of the Kirchenkreis and responsible for its daily operations [29]. The Kreiskirchenamt is responsible for the administration and the supervision of the Kirchenkreis [29].

If clerical buildings are newly constructed or existing clerical buildings are pulled down, approval is required. The same is true with regard to modifications to and the maintenance of clerical buildings [29]. No approval is needed for clerical buildings that are not listed. Furthermore, building measures whose costs are below 10,000 euros do not require approval [29].

There is also the 'Genehmigungsfiktion' in the Protestant Church of Central Germany. In accordance with § 9 para. 3 S. 2 KBauG-Mitteldeutschland, approval is presumed to be issued if the competent authority has not issued or denied the applied-for approval within six weeks of the application.

4.5. Protestant Church Berlin-Brandenburg-schlesische Oberlausitz

In the Protestant Church Berlin-Brandenburg-schlesische Oberlausitz, approvals are determined by the KBauG-Berlin [30]. The KBauG-Berlin applies to all building measures concerning buildings that are owned by clerical bodies which are part of the Protestant Church Berlin-Brandenburg-schlesische Oberlausitz [30].

The responsibility for the issue of approvals lies in general with the ‘Konsistorium’ [30]. It is responsible for the daily operations of the Protestant Church Berlin-Brandenburg-schlesische Oberlausitz and must supervise the clerical bodies [31]. According to § 28 para. 4 KBauG-Berlin, the responsibility for the issue of approval can be delegated to the ‘Kirchenkreise’ [30]. The Kirchenkreis is a community of parishes and other clerical bodies. It is the duty of the Kirchenkreis to support the parishes in the implementation of their tasks [31]. However, a delegation of the issue of approval is only possible if there are qualified staff in the Kirchenkreis, e.g. engineers and architects. Also, the Kirchenkreis must apply for this delegation of responsibilities [30].

In principle, every building measure needs approval [30]. Exemptions from the need for approval can be defined in an additional regulation. However, such additional regulation has not yet been enacted.

The criteria for the issue of approvals are laid down in § 29 KBauG-Berlin [30]. On this basis a building measure must be in line with the principles of asset management. An approval must not be issued if the construction measure is not compatible with aspects of convenience, adequacy, economy, thriftiness, needs and capability. Furthermore, approvals must be compatible with clerical interests.

4.6. Protestant-Lutheran Church of Bavaria

In the Protestant-Lutheran Church of Bavaria, approvals are regulated by the KGBauV-Bayern [32]. According to Art. 5 KGBauV-Bayern it applies to the planning, approvals and financing of building measures of clerical bodies in Bavaria.

Responsible for the issue of approvals is the competent supervisory body [32]. This is the ‘Landeskirchenamt’ or the ‘Landeskirchenstelle’ [33]. The Landeskirchenamt supports the management of the Protestant-Lutheran Church of Bavaria and is responsible for its administration [34]. The Landeskirchenstelle is an administrative body which is subordinated to the Landeskirchenamt [32]. However, by the year 2026 the ‘Dienstleistungszentren Bau in den Verwaltungsverbänden’ will become responsible for approvals in the context of vicarages [32]. These are regional administrative bodies which are subordinated to the Landeskirchenamt and the Landeskirchenstelle [32].

Approval is necessary if there is a significant modification of buildings that are owned by clerical bodies. In particular, approval is required for churches, vicarages and buildings which are listed. The same is true for the construction and demolition of buildings [32]. No approval is required for building measures which cost less than 100,000 euros. Nevertheless, the financing of such building measures must be secured, the building must not be listed and no third person must have agreed to be responsible for the maintenance of the building [32].

§ 38 para. 2 and 3 KGBauV-Bayern define formal criteria for the issue of approvals: the superintendent must provide a statement for the building measure including information about the parish and the history of the building [32]. Furthermore, a concept for the building within buildings in the region must be presented (e.g. which buildings are superfluous and can be sold). The superintendent must also make a statement with regard to the financing of the building measure and must in particular state whether the parish is able to finance the measure.

4.7. Protestant Church of Anhalt

Approvals in the Protestant Church of Anhalt are determined in the BauO-Anhalt [35]. It is applicable inter alia to clerical buildings, former vicarages and residential buildings, parish halls, nurseries and schools [35].

Responsible for the issue of approvals is the ‘Landeskirchenrat’ [35]. The Landeskirchenrat consists of three to five theological and non-theological members and is responsible for the daily operations and the other administrative matters of the Protestant Church of Anhalt [36].

According to § 5 BauO-Anhalt, in principle approvals are necessary for all building measures concerning the above-mentioned buildings. However, no approval is needed if the building costs are below 10,000 euros unless the building is listed, the appearance of the building is to be changed or there are major interventions with the construction or technical installations. Furthermore, approval is required if a building measure must be approved by the state, even if the building costs are below 10,000 euros [35].

From a formal point of view, there must be an application for approval. The expected building costs, three offers for each part of the measure, drafts and a description of the building measure must be submitted to the Landeskirchenrat [35].

4.8. Protestant-Lutheran Church of North Germany

In the Protestant-Lutheran Church of North Germany, the KBauG-Norddeutschland [37] contains regulations with regard to approvals. According to § 2 KBauG-Norddeutschland, it applies to building measures regarding buildings that are owned by clerical bodies.

Approvals are issued by the ‘Landeskirchenamt’ or the ‘Kirchenkreis’. The competence to issue approvals can be delegated from the Landeskirchenamt to the Kirchenkreis [37]. The Landeskirchenamt is based in Kiel and can be described as the supreme administrative body in the Protestant-Lutheran Church of North Germany [38]. It is in particular responsible for the supervision of the clerical bodies in North Germany [38]. The Kirchenkreis is a community of parishes and supports them in the fulfilment of their tasks [38].

Approval is necessary for all types of building measures concerning churches and other buildings which are used for church services [37]. According to § 7 para. 1 KBauG-Norddeutschland, building measures in the context of

other buildings (e.g. residential buildings or parish halls) require approval as well.

In particular, building measures must be compatible with the law, the clerical interests and the correct use of tax money and other money [37]. Against this background, the Landeskirchenamt or the Kirchenkreis issue approvals if building measures comply with the law of the Protestant-Lutheran Church in North Germany. Approval can be denied if the building measure infringes the law of the Federal Republic of Germany. In accordance with § 11 KBauG-Norddeutschland, it is also possible that the Landeskirchenamt disclaims the requirement of approval. Such disclaim is possible if the building measure is only cosmetic repairs or it is a clerical building which is maintained through charges or private fees.

Approval can also be deemed to be issued ('Genehmigungsfiktion'). If two months after the application for approval the Landeskirchenamt has not issued approval, this approval is deemed to be issued [37].

4.9. Protestant Church of Hessen-Nassau

Approval in the Protestant Church of Hessen-Nassau is regulated by the KBauG-Hessen-Nassau [39]. This law applies to all types of building measures in the context of buildings which are owned by clerical bodies and their features [39].

Responsible for the issue of approvals is the 'Kirchenverwaltung' [39]. The Kirchenverwaltung is the centre of administration in the Protestant Church of Hessen-Nassau and is particularly responsible for the daily business [40]. Furthermore the regional departments of the Kirchenverwaltung can be responsible for the issue of approvals [39].

According to § 4 para. 1 KBauG-Hessen-Nassau, approvals are necessary for resolutions concerning building measures, as well as the change and the cancellation of such resolutions.

The only requirement which needs to be fulfilled in order to receive approval in the KBauG-Hessen-Nassau are heritage interests [39].

5. Conclusions and further considerations

The Protestant Churches in Germany have to face the challenge of a decreasing number of members. According to the Freiburger Studie, membership of German Protestant Churches will halve by 2060 [1]. Since the consequence of the decrease in membership is also a decrease in tax income, the Protestant Churches need to start a process of reorganisation, including a reduction of administrative tasks [3]. The starting point of this process could be the system of approvals in the context of building measures.

In most of the Protestant Churches in Germany there are exemptions with regard to the requirement of approvals. The exemptions are linked to the costs of building measures. As a consequence, building measures whose costs are less

than between 5,000 and 100,000 euros may not need approval. Against this background, it could be argued that exemptions from the requirement of approvals in the context of building measures should be introduced in all Protestant Churches in Germany and particularly in the Protestant Church Hessen-Nassau, the Protestant-Lutheran Church of North Germany and the Protestant Church Berlin-Brandenburg-schlesische Oberlausitz, which do not have such exemptions so far. In contrast, in the Protestant-Lutheran Church of Bavaria and the Protestant-Lutheran Church of Hannover, approval is not required if the building costs are below 100,000 euros. The above-described introduction and modification of exemptions for approvals would reduce the administrative burden and could be one element of the reorganisation process.

Another interesting aspect in some of the Protestant Churches in Germany is that approvals for building measures can be deemed to be issued. This 'Genehmigungsfiktion' exists in the Protestant Church of Baden, the Protestant-Lutheran Church of Hannover, the Protestant Church of Central Germany and the Protestant-Lutheran Church of North Germany. Within the scope of application of Genehmigungsfiktion, administrative tasks can be reduced as well, since approvals under these circumstances must no longer be issued. It could therefore be argued that the concept of Genehmigungsfiktion should be introduced in all of the Protestant Churches in Germany.

Furthermore, the Protestant-Lutheran Church of Saxony, the Protestant Church Berlin-Brandenburg-schlesische Oberlausitz and the Protestant-Lutheran Church of North Germany defined conditions which need to be fulfilled in order to receive approval for building measures. On the one hand, such conditions create transparency for the applicants of approvals. It also offers the opportunity to delegate the issue of approvals to regional clerical and administrative bodies. Except for the Protestant Church of Baden and the Protestant Church of Anhalt the competence to issue approvals in the context of building measures was at least partly delegated to regional clerical and administrative bodies. Delegating the competence to issue approvals and defining criteria for approvals could offer the necessary protection in particular of parishes and help in reducing administration. The delegation of the competence to issue approvals according to predefined criteria should therefore be introduced in all Protestant Churches in Germany.

As already pointed out above, the Protestant Churches in Germany need to think about reorganisation and a reduction of administrative tasks in order to meet the challenges of the future. This analysis and comparison of the legal systems on approvals in the context of building measures showed that there is potential for reducing the administrative burden and therefore better meeting the future challenges.

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