GERMAN AND ENGLISH PUBLIC BENEFIT

Anne Sanders[1]

Both in England and Germany the law of charities has a long history, going back to the Middle Ages. German charity law has been regulated by statutes for a long time, while English charity law developed with case law. However, English and German charity law show surprising parallels. Moreover, the English as well as the German charity law have been the subject of recent reforms; in England the Charities Act 2006, in Germany the *Gesetz zur weiteren Stärkung des bürgerschaftlichen Engagements 2007*. After the *Stauffer* decision of the European Court of Justice (ECJ),[2] comparative work on charity law seems to be a rewarding enterprise. Now a charity set up in one member state but acting in another member state can claim the same privileges under the national charity law as charities set up there. This article tries to give the reader an introductory insight into the German law of charitable status (I.), charitable purposes (II.), and the definition of the public in German and English charity law (III.). In the Annex at the end of this paper, the new text of §§ 51-55 Tax Act (*Abgabenordnung*, AO), the German provisions on charitable purposes, is reproduced together with the author's English translation.

1 Dr. Anne Sanders, M.Jur. (Oxon), Institute Professor Dr. Dauner-Lieb, Faculty of Law, University of Cologne, Albertus Magnus Platz, 50937 Koln, Germany. E-mail: sanders@dauner-lieb.de.

2 *Centro di Musicologia Walter Stauffer v Finanzamt München Für Körperschaften*, Case C-386/04, Judgment 14 September 2006. The case was brought to the ECJ by the German Federal Tax Court in a petition for a preliminary ruling of 14 July 2004, IStR 2004, 752; see R Hüttemann and E Hélios ‚*Die gemeinnützige Zweckverfolgung im Ausland nach der "Stauffer"-Entscheidung des EuGH*' [2006] DB 2481; D von Hippel, '*Zukunft des deutschen Gemeinnützigkeitsrechts nach der „Stauffer"-Entscheidung des EuGH*' [2006] EuZW 614; M v. Proff, '*Gemeinnützigkeitsrecht nach den "Stauffer"-Urteilen des EuGH und BFH*' [2007] IStR 269.

I. The Significance of Charitable Status

The advantages connected with charitable status play a major role in the discussion about how to define a charity's benefit to the public.[3] Both English[4] and German[5] charities of different legal form enjoy tax benefits.[6]

Under English law, the traditional legal form of a charity is a charitable trust. However, English purpose trusts are generally void unless the purpose pursued is charitable.[7] Thus the issue of charitable character is of decisive importance for a trust's validity. In 1956, Cross QC (as he then was) suggested that the validity of a trust should be a separate issue from its fiscal status.[8] So far this proposal has not been followed. If a trust loses its charitable status, the trust's property falls back to the settlor under a resulting trust if the *cy-près* doctrine cannot be applied. The effect of the Charities Act 2006 may be to re-emphasise this fact, since s. 3 abolishes the 'presumption of public benefit' which could end the charitable status of established charitable trusts.[9]

The most popular legal form used for German charities are the incorporated association (*eingentragener Verein*), which has members, and the incorporated foundation (*rechtsfähige Stiftung*). The German incorporated foundation is a property incorporated on application by a public institution, the *Stiftungsbehörde* (see §§ 80 ff German Civil Code, BGB). German law treats the validity of a legal entity and tax benefits as separate issues, which are even litigated in different courts

3 M Chesterman, 'Foundations of Charity Law in the New Welfare State' [1999] MLR 333.

4 Benefits related to charitable status: D Hayton and C Mitchell, 'The Law of Trusts and Equitable Remedies' (Sweet & Maxwell London 2005) 424; C Mitchell, 'Redefining Charity in English Law' [1999] TLI 13, 21; T Spring and F Quint, 'Religion, Charity Law and Human Rights' [1999] CL&PR 154.

5 R Wallenhorst in M Troll and others (eds), *Die Besteuerung gemeinnütziger Vereine, Stiftungen und der juristischen Personen des öffentlichen Rechts* (5th edn Vahlen, München 2004) A 50.

6 After the reform of 2007 the tax privileges relating to the incorporated foundation *(rechtsfähige Stiftung)* have increased as donors can now deduct donations up to € 1,000,000 (distributed over ten years) from their taxable income.

7 *Morice v Bishop of Durham* (1804) 9 Ves Jr 399, 32 ER 656; *Re Astor´s* [1952] Ch 534 (Ch); *Re Endacott* [1960] Ch 232 (CA); the principle is questioned by P Baxendale-Walker, *Purpose Trusts* (London 1999).

8 G Cross, 'Some Recent Developments in the Law of Charity' [1956] 72 LQR 187, 204; see *Dingle v Turner* (1972] AC 601 (HL).

9 Mr Winfield proposed that former charitable trusts should keep the trust property even after the loss of charitable status. This is questionable, since it would require the validity of non-charitable purpose trusts. J Winfield, 'The New Public Benefit Test – An Unexploded Bomb?' [2005] 8/2 CL&PR 51.

(tax courts, administrative courts and civil courts). In Germany, charitable purposes are regulated by tax law. The competent fiscal authority, the *Finanzamt*, determines charitable status. It will only grant tax benefits if it considers the criteria for charitable status satisfied. Before the reform of 2007, fiscal authorities referred to the AO when deciding if a legal entity had to pay corporate income tax, while fiscal benefits for donations were granted according to another catalogue of charitable purposes in the *Einkommenssteuergesetz* (EStG Income Tax Act). In the reform of 2007 the two catalogues were merged in § 52 (2) AO and tax benefits are now granted only according to the AO. This will make it easier for laymen to understand German charity law.[10] The reform also increased tax benefits for charitable engagement. The EStG allows donors to deduct donations to charities from taxable income – after the reform of 2007 the maximum deduction has risen to 20% of taxable income plus another € 1,000,000 if donations are given to an incorporated foundation.[11] But charitable status granted by fiscal authorities is regarded as generally prestigious and helpful when applying for public funding. In this paper, 'German charity' means a legal entity whose charitable status (*Gemeinnützigkeit*) was accepted by the competent fiscal authority according to §§ 51-68 AO. [12]

While fiscal authorities inquire into its charitable character at a later stage, the founding of an incorporated association or foundation requires that its purposes will not contradict public policy (§ 80 BGB).[13] However, the difficulties of ascertaining purposes contradicting public policy should not be underestimated, as a decision of the Federal Administrative Court (*Bundesverwaltungsgericht*) in 1998 shows.[14] To understand the decision, it must be noted that every important German political party has set up an incorporated association or foundation offering political education and scholarships, which are considered charitable as long as they refrain from taking positions in day to day politics. The extreme right wing party 'Republikaner' wanted to set up such a foundation. The public body responsible refused incorporation, which certainly impeded the party's work compared with other parties, a measure not to be taken easily in a democratic society. Courts up to the Federal Administrative Court upheld the denial. The courts relied on racist extracts from unofficial speeches of the party's members and argued the foundation

10 S Schauhoff and C Kirchhain, '*Das Gesetz zur weiteren Stärkung des bürgerschaftlichen Engagenments'* [2007] DStR, 1985, 1989, 1991; R Hüttemann, '*Das Gesetz zur weiteren Stärkung des bürgerschaftlichen Engagenments*' [2007] DB 127ff; K Tiedtke and P Möllmann, '*Spenden und Stiften sollen attraktiver werden*' [2007] DStR 509.

11 K Tiedtke and P Möllmann, '*Reform des Spenden- und Gemeinnützigkeitsrecht*' [2007] NJW 3321, 3323 remarked that the different fiscal treatment of charities in different legal forms is problematic.

12 P Lex, '*Steuerliche Änderungen für Stiftungen und Spender*' [2000] DStR 1939.

13 R Hüttemann, '*Das Gesetz zur Modernisierung des Stiftungsrechts*' [2003] 167 ZHR 35.

14 BVerwG NJW 1998, 2545 ff.

would contradict values expressed in the German constitution and thus violate public policy. The party argued the court apparently evaluated the party and not the foundation. But to evaluate a political party and impede its work, the Republikaner argued, would ignore the constitutional rule that only the Federal Constitutional Court (*Bundesverfassungsgericht*) is competent to ban political parties. The Federal Administrative Court rejected that argument. Since party and foundation were treated as separate legal entities, the refusal would have no effect on the party itself. This decision is problematic.[15] If foundation and party were really to be regarded as entirely disconnected, the speeches of the party's members could not have been used for evaluating the future foundation. But the court connected them to diagnose a violation of public policy and disconnected foundation and party to deny a conflict with the obligation of staying politically neutral. It seems most likely that the politically laudable but legally questionably enforced intention to make life harder for right wing parties with racist ideologies enabled the court to have its cake and eat it.

II. Public Benefit

1. What is Beneficial to the Public?

Both legal systems require that a charity should work for the benefit of the public. To define the 'public benefit' is similarly difficult both in England and Germany.

In Germany, § 52 (1) 1 AO requires a charity 'to support the public in a material, intellectual or moral way'. Taking different factors into consideration, the Federal Supreme Tax Court (*Bundesfinanzhof*) defined the term 'public benefit' as

> *shaped by the constitution of the Federal Republic of Germany given by the Grundgesetz [Constitution Act], by taught and lived social-ethical and religious principles, by the present intellectual and cultural order, by research, science and technique and their actual achievements, by the given economic structure, the economic and social situation and finally by the values and opinions of the people*.[16]

This definition more resembles a commingling of different aspects than an applicable rule but it illustrates the importance of the constitution. Human rights laid down in the constitution are considered to form a system of common values (*Werteordnung*) according to which all German law has to be interpreted. This approach can also be found in the *Republikaner* decision discussed above. Consequently, the system of common values shaped by the case law of the Federal

15 See K Muscheler, '*Stiftung und Gemeinwohlgefährdung*,' [2003] NJW 3161, 3163; D Reuter, in: K Hopt and D Reuter (edn.) *Stiftungsrecht in Europa*, 2001, 139, 144.

16 I R 39/78. BStBl. II 1979, 482, 485.

Constitutional Court (*Bundesverfassungsgericht*) is of decisive importance for the interpretation of the term 'public benefit'. For example, research for the cure of a rare disease is considered beneficial because health is protected under Art. 2 (2) of the constitution.[17]

Consequently, a purpose contradicting the values of the Constitution is held not to be beneficial.[18] In its decision of May 15th 2005 the Federal Tax Court[19] upheld a decision of the Tax Court of Hamburg denying the charitable status of an association describing itself as a 'religious community of species'. The 'belief of species' saw its purpose in the propagation of the 'iron law of nature' which required acceptance of the natural inequality of different races and a constant struggle for the survival of the species. The Federal Tax Court held that a club founded to pursue purposes contradicting the equality of all people, but which saw them in a constant struggle for survival against each other could not claim to be beneficial to the public. This approach might be compared to English cases which denied public benefit for detrimental legal entities.[20]

The Federal Tax Court's allusion to the 'people's opinion' in the quotation given above, should be noted, since the Charity Commission in its draft Guidance on the Principles of Public Benefit asserted that it wanted also to take public opinion into consideration when defining public benefit.[21] The definition used by the Federal Tax Court is a relict of the judicature of the Imperial Supreme Tax Court (*Reichsfinanzhof*). In 1929, the Imperial Supreme Tax Court[22] held, a court itself could not decide whether a purpose was charitable, but only give voice to the opinion of the people. A purpose could not be held to be charitable if the majority of the public disliked it. After 1933, the courts added ideological thrust to the approach. In 1934, the Imperial Supreme Tax Court rejected the charitable character of a club promoting complete abstinence from alcohol. Even in 'this Reich', the court held, the majority was still of opinion that moderate consumption of alcohol would not affect 'the health of the race'.[23] Although expressions like 'health of the race' were not used after the foundation of the Federal Tax Court in 1950 any more, the Federal

17 BFH BStBl II 1985, 106; BStBl II 1984, 844; J Lang, '*Gemeinnützigkeitsabhängige Steuervergünstigungen*' [1987] StuW 221, 233.

18 Tipke § 52 n 4 in K Tipke, W Kruse (eds) *Abgabenordnung Kommentar* (Otto Schmidt, Köln, 2005); J Lang, '*Gemeinnützigkeitsabhängige Steuervergünstigungen*' [1987] StuW 221, 241.

19 I R 105/04 unpublished upheld FG Hamburg DStRE 2005 543.

20 *Archbishop Torkom Manoogian v Yolande Sonsino* [2002] EWHC 1304; *Funnel v Stewart* [1996] 1 WLR 288, 296 (Ch); *National Antivivisection Society v IRC* [1948] AC 31, 42, 65; *Re Hummeltenberg* [1923] 1 Ch 237.

21 http://www.charitycommission.gov.uk/enhancingcharities/pbconsult.asp#D3

22 RStBl. 1930, 62.

23 RStBl. 1937, 485.

Tax Court adhered in some cases until 1970 to the view that public opinion should decide whether a purpose was considered beneficial to the public, for example when the public benefit of nudism was in question.[24]

While any reasoning favoured in Germany between 1933 and 1945 should be viewed with scepticism, reliance on the opinion of the public seems at first glance to be sensible. If the majority in Parliament, representing the majority of the people, can enact statutes, why should not the majority's opinion be decisive to define public benefit? However, if judges or public institutions search for the view of the majority, their findings can be overshadowed by subjective and even ideological views. But even if pollsters could inquire as to the public's opinions, charities are supposed to improve the intellectual and moral abilities of the public. Inevitably this includes the introduction of new ideas which the public may at first find strange or even offensive. Thus it is argued that neither German Courts nor the English Charity Commission should define public benefit by reference to the opinion of the public.

2. Charitable Purposes

(a) General

Both in England and Germany, when charitable character is in question, it is necessary to establish whether the legal entity in question pursues a purpose included in a list of charitable purposes.

English charitable purposes were developed by the courts mainly relying on the Preamble of the Charitable Uses Act of 1601, which contained a catalogue of purposes considered charitable at that time. Ever since purposes within the "spirit and intendment"[25] of the preamble were considered charitable. In 1891, Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v. Pemsel*[26] established the four famous "heads" of charitable purposes relief of poverty, advancement of education and religion and other purposes beneficial to the community. Since the beginning of the new millennium reform of the law of charities and especially of charitable purposes has been under discussion. This is not only the case in England but also in Ireland,[27] Australia[28] and Germany. The Charities Act 2006 contains under s. 2 (2) a new list of charitable purposes. Most of them have been accepted as charitable under the 'fourth head' of other purposes

24 BStBl. II 1970, 133.

25 *Morice v. Bishop of Durham* (1805) 9 Ves. 399, 405.

26 [1891] AC 531, 583.

27 See K O'Halloran, 'Charity Law Reform in Ireland' [2007] 10/1 CL&PR 1.

28 H Picarda, 'Redefining "Charity" in England and Wales, Eire and Australia' [2002] 8/1 CL&PR 1.

beneficial to the community, others are now considered charitable for the first time, for example the promotion of amateur sports.

In Germany, until the 1920s, tax benefits for the support of charitable purposes could be found in a number of different statutes. In 1934 a statute (*Steueranpassungsgesetz*) and in 1941 an ordinance (*Gemeinnützigkeitsverordnung*) consolidated the different definitions of charitable purposes. In 1953 the ordinance was reformed and in 1977 replaced by the *Abgabenordnung 1977* (AO, Tax Act),[29] although not much of its content was changed. In the reform of 2007 the catalogue of charitable purposes in the AO and EStG were merged and a few new purposes introduced, for example Nr. 25.

The former § 52 AO allowed the courts to accept charitable purposes outside the list. This could be compared with the reasoning of English courts in relation to purposes under the 'fourth head', and s. 2 (2) (m) Charity Act 2006. The first draft of the German 2007 reform abandoned this possibility considering the number of charitable purposes in the new merged catalogue. Because the draft was criticised with regard to the possibility that established charities could lose their status, a problematic compromise was introduced in § 52 (2) 2 AO. Certain fiscal authorities in the federal states (*Länder*) can now recognise new purposes outside the catalogue. Thereby the statute enables fiscal authorities of the *Länder* to amend federal law, a right which should be reserved for the federal legislator and authorities. Moreover, since the fiscal authorities of different *Länder* may recognise different charitable purposes, a charity from Hamburg could theoretically be rejected in Bavaria.[30] Hopefully the latter problem will be prevented by sufficient communication between the different authorities involved.

The courts have lost flexibility with regard to the acceptance of new charitable purposes, but will probably solve this problem by interpretation of the terms in the catalogue.

Even a comparison between English and German charity law before the reforms of 2006 and 2007 revealed many similarities. All of Lord Macnaghten´s "four heads" could be found in § 52-54 AO. After the reform, most charitable purposes can be found both in German and English law, for example the promotion of religion, culture, arts, science, heritage, animal welfare, education, the saving of lives, environmental protection, the promotion of the efficiency of police, fire and rescue services. Some of the charitable purposes which the English reform of 2006 introduced, have been accepted in the German AO for a long time, for example

29 The text of sections 51-55AO and an English translation by the author can be found at the end of this paper.

30 K Tiedtke and P Möllmann, '*Reform des Spenden- und Gemeinnützigkeitsrecht*' [2007] NJW 3321, 3322; S Schauhoff and C Kirchhain, '*Das Gesetz zur weiteren Stärkung des bürgerschaftlichen Engagements*' [2007] DStR, 1985, 1990.

'public health' and 'amateur sports'. The purpose of human rights, conflict resolution or reconciliation or the promotion of racial harmony would be charitable in Germany under § 52 (2) 1 Nr 13 AO, 'the promotion of an international attitude, tolerance in relation to all aspects of culture and the promotion of understanding between the peoples of the world'. The wording of the German purpose comes close to *Re Astor's ST*[31] The charitable purposes of 'poverty' (a) and 'need' (j) would be charitable under § 53 AO.

More interesting are those purposes which have no equivalent in the other country. The promotion of the 'efficiency of the armed forces' cannot be found in the extensive German catalogue, but only the 'care for soldiers' in § 52 (2) 1 Nr 23 AO and the 'care for the victims of war' in § 52 (2) 1 Nr 10 AO, which was moved unchanged from the EStG into the AO.

> '*Nr. 10 The promotion of aid for victims of political persecution, racist and religious discrimination, displaced persons, resettled persons, victims and survivors of war as well as prisoners of war, disabled persons and crime victims; promotion of the remembrance of the victims of persecution, victims of war and disasters; promotion of services for tracing missing people.*'

While aid for disabled people and victims of crime could be interpreted as help for people with special needs - a charitable purpose in the English catalogue - the rest of the provision reflects the German history of the 20th century. The 'aid for victims of political, racist and religious persecution' show the wish to make good some of the crimes of the 'Third Reich', while 'displaced persons', 'prisoners of war', 'victims of persecution' and 'services for tracing missing people' were introduced as reactions to the situation of many Germans after the war who had lost their homes and families, had been prisoners of war or had fled from eastern Germany or Poland.

In the reform of 2007, the new charitable purpose of the 'promotion of civic volunteering for the benefit of purposes of public utility, benevolent and ecclesiastical purposes' was introduced in Germany. It comes close to the new English charitable purpose of 'citizenship and community development'. Like in England, where the notion of 'citizenship' is under discussion, the term 'civic volunteering' is unclear yet in Germany. It will be interesting to compare the interpretation of both purposes by English and German courts and institutions.

Striking, however, is the number of purposes the German AO accepts as charitable, including the prevention of dangers of every kind and the promotion of gender equality, marriage, family, care both for the victims of crimes and prisoners, heritage and consumer protection. Especially § 52 (2), Nr. 23 AO resembles a strange conglomeration of purposes including:

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31 [1952] Ch 534.

> '*the promotion of livestock and plant breeding, allotment gardens, traditional customs including Karneval, Fastnacht and Fasching*[32]*, care for soldiers and reservists, amateur radio operation, model aircrafts and 'dog sport''*.[33]

The fact that the AO mentions three names for carnival used in different parts of Germany may be considered as a reasonable outcome of German particularism and diversity, while the 'care for soldiers and reservists' can be compared to the new s. 2 (2) (l) Charities Act 2006. The reason, however, why the promotion of amateur radio operation, model aircrafts and 'dog sport' should be considered charitable may be difficult to understand for an English lawyer. In *Re Hummeltenberg*, Russell J.'s refused to refer to the intention of the donor when deciding on a charitable purpose, stating that otherwise

> '*trusts might be established for the promotion of all kinds of fantastic (though not unlawful) objects of which the training of poodles to dance might be a mild example*.'[34]

Though historic and cultural reasons might explain some charitable purposes,[35] the idea suggests itself that § 52 (2) Nr. 23 AO was influenced by the intention of parliamentarians to secure votes from the members of associations, for example local allotment garden associations. The German Professor Tipke provokingly put the question why should not cat sport and model trains be considered charitable as well. Despite this critic, the provision was not changed in 2007.

(b) Religion

The charitable purpose of religion in England has been characterised by increasing tolerance. While at first only the worship of the established church's god[36] was considered charitable, the courts moved on to accept as religion the worship of every

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32 The Act names Karneval, Fastnacht and Fasching, which all mean carnival in different areas of Germany (Karneval: Rheinland especially Cologne and Düsseldorf, Fastnacht: Rheinhessen, especially Mainz and Frankfurt; Fasching: everywhere else in Germany).

33 This has nothing to do with dog racing. This charitable purpose mainly embraces the drilling of dogs (mostly Alsatian) in obedience classes and has its origin in the education of police dogs.

34 [1923] 1 Ch 237, 242.

35 Amateur radio operation might in the 1920s and 1930s have been understood as the promotion of a new and in military promising technique.

36 A good example is *Da Costa v. De Paz* (1754) 1 Dick 258; 21 ER 268 where the court, using the *cy près* doctrine, applied a gift to a Jesuba (Jewish seminary) to an Anglican hospital.

Christian god,[37] every monotheistic god,[38] many gods,[39] no-god at all[40] and obscure beliefs of all kinds.[41] A new definition of religion found its way into s 2 (3)(a) Charities Act. However, the worship[42] of some divine entity is still considered necessary, while the teaching of moral guidelines has not been considered sufficient.[43]

German law distinguishes between the support of religion under § 52 (2) Nr. 2 AO and the support of ecclesiastical purposes under § 54 AO. The latter provision was needed since the Imperial Tax Court *(Reichsfinanzhof)* had held in 1922 that promotion of churches as such was not for the public benefit.[44] § 54 AO declares the support of certain religious communities which have been granted the status of a public corporation (*Körperschaft des öffentlichen Rechts*) to be charitable.[45] The status of a public corporation is granted by public authority and does not only entail tax benefits but gives the privilege to receive a percentage of the believers' income as 'church taxes' (*Kirchensteuer*) collected and enforced by the fiscal authorities. Because of these privileges the status of a public corporation is highly desirable. Its denial leads to conflicts between public authorities and religious communities which have been the subject of litigation.[46]

In Germany, the legal understanding of 'religion' is heavily influenced by the case law of the Federal Constitutional Court (*Bundesverfassungsgericht*) on Art. 4 of the constitution.

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37 See F.H. Newmark, 'Public Benefit and Religious Trusts' [1946] LQR 62, 234.

38 *Bowman v. Secular Society Ltd* [1917] AC 406, 449f.

39 See *Varsani v. Jesani* [1999] Ch 219, where the CA after a schism declined to decide which opinion was right.

40 Buddhism: *R v. Registrar General ex parte Segerdal* [1970] 2 Q.B. 697, 707.

41 *Thornton v. Howe* (1862) Beav. 14; *Re Watson* [1973] 1 WLR 1472; *Funnel v. Stewart* [1996] 1 WLR 288 (faith healing).

42 *R v. Registrar General ex parte Segerdal* [1970] 2 Q.B. 697, 709.

43 *Berry v Marylebone Borough Council* [1958] Ch 406; *United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council* [1957] 1 WLR 1080, 1090; *Re South Place Ethical Society* [1980] 1 WLR 1565.

44 RFH I A 221/20, RStBl. 1922, 156.

45 U Koenig, § 54 Nr. 1, in: A Pahlke and U Koenig (ed.) *Abgabenordnung*, C.H. Beck, München, 2004.

46 For example in a decision of 29 December 2000 where the Federal Constitutional Court had to decide whether the refusal of Jehovah's Witnesses to attend public elections could justify a refusal of the status of public corporation, BVerfG NJW 2001, 429.

> '*Under religion and Weltanschauung the judicature understands a certainty about certain statements in relation to the world and to the origin and aims of the human life. Religion bases on a ("transcendental") reality which exceeds and encompasses human existence, whereas a Weltanschauung is restricted to ("immanent") references to the inner world.*'[47]

This definition is of almost philosophical abstraction and rather difficult to apply. In comparison with various attempts undertaken by English courts, this definition has the advantage, however, of not requiring distinctions between monotheism, polytheisim and beliefs not requiring a superior being at all since Art. 4 of the constitution includes both religion and '*Weltanschaung*'. '*Weltanschauung*' means a coherent conception of the world including philosophical and ethical ideas. However, neither the AO and nor the Income Tax Act (EStG) state "*Weltanschauung*" alongside religion as a charitable purpose. Nevertheless, following the case law of the Constitutional Court demanding that all German law has to be interpreted according to the constitution and the values expressed in it, in 1999 the Federal Tax Court decided that the AO and the EStG had to be interpreted as including '*Weltanschauung*':

> '*Religion includes the question of god, of the analysis of the world, of life´s purpose and value, of rules of moral behaviour. Considering the Constitution, however, the term "religion" has to be understood in a wider sense. Art. 4 of the Constitution protects equally the freedom of religion and the freedom of Weltanschauung. Differentiations are not allowed, the state has to stay neutral. Both religion and Weltanschauung are based on an overall view of the world. The term Weltanschauung has a complementary function to include all creeds non-discriminatorily, which aim to endow life with meaning in an all-embracing way. Taking into consideration persuasion, avowal and shaping of life, Weltanschauung resembles religion.*'[48]

Consequently, the German charitable purpose of 'religion' embraces ethical societies discussed in cases like *Berry v Marylebone Borough Council* and *Re South Place Ethical Society*.[49] Thus the German reasoning is closer to the American approach which focuses on the place that a belief takes in the believer's life rather than

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47 BVerfGE 32, 98, 107 = NJW 1972, 327; BVerfGE 90, 112, 115 = NJW 1992, 2496.

48 BFH NVwZ 2000, 967, 968, (translation by the author).

49 *Berry v Marylebone Borough Council* [1958] Ch 406; *Re South Place Ethical Society* [1980] 1 WLR 1565.

whether a divine being is involved.[50]

It is still a matter of debate if Scientology qualifies as a religion or *Weltanschauung*.[51] So far German courts have denied the charitable status of Scientology. The Tax Court of Hamburg[52] held that Scientology was not charitable but a business enterprise in religious disguise.

(c) Politics

Traditionally English charity law has not regarded political purposes as charitable. Lord Parker has explained the traditional approach in *Bowman v. Secular Society Ltd*[53] as follows:

> '*(…) a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift*.'

It might be remarked that it is doubtful whether the decision that a non-political purpose is or is not beneficial to the public involves less questionable judgment. In any case, many purposes now included in the Charities Act 2006 have considerable political impact. The Act declares certain purposes to be charitable that were and still are the subject of lively public discussion: s 2 (2) (h) the advancement of human rights, conflict resolution and racial harmony, (i) environmental protection, (k) animal welfare, and (l) efficiency of armed forces. In these and many other areas charities could not only offer support but might also play an active role in society's debates. Thus it could be preferable to take a more relaxed approach to the political

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50 *US v. Seeger* (1965) 380 US 163, 192-193 = 13 L.Ed.2d 733,752, see also *Welsh v. US* 398 US 33, 26 L.Ed.2d 308 (1970); *Malnak v. Yogi* 592 F.2d 197, 199 (3d. Cir. 1979); The Supreme Court of India already in 1954 adopted a non-theistic approach, which saw the basis of religion in the provision of a systems of belief or doctrines which are regarded by its followers as conducive to their spiritual well-being in *Commissioners of HRE v. Sirur Mutt* (1954) SCR 335; Canadian courts seem to follow the English approach: see: K Bromley, 'The Definition of Religion in Charity Law' [2000] 7/1 CL&PR 39.

51 See OVG Hamburg, NVwZ 1995, 498; R Abel '*Die Entwicklung der Rechtsprechung zu neueren Glaubens- und Weltsanschauungsgemeinschaften in den Jahren 2003 und 2004'* [2005] NJW 114; Scientology was and is observed in Germany by the federal security service (*Bundesamt für Verfassungsschutz*, the German equivalent of the MI5) and by the security services in some *Länder*, a practice which has been subject of litigation.

52 FG Hamburg NVwZ 1998, 107, 109

53 [1917] AC 406, 442.

activities of charities in general, as was already proposed by the Irish Law Society.[54]

Since the Second World War, political campaigning has not been forbidden to German charities. The charitable purposes of 'the general promotion of the democratic political system', included in § 52 (2) Nr 24 AO, expresses the importance of active commitment for sustaining democracy. Moreover, donations up to € 1,650 a year to political parties can be deducted from the taxable income under § 13b (2) EStG. As mentioned above, every large political party has set up an association or foundation usually bearing the name of a historically important party member, which organises political education, discussion groups and scholarship programs.[55] Such associations and foundations are accepted as charities as long as they do not get involved too much in current political affairs. This alliance of charities and politics might go too far for an English lawyer and is also the subject of debate in Germany.

III. Who represents the public?

In both England and Germany, it is not enough for a charity to pursue a purpose considered to serve a beneficial purpose. The public must also have access to the benefit offered. Both legal systems face the problem, however, that a donor is hardly able or wishes to benefit everybody. Moreover, some benefits will only be useful for certain people, for example a cure for a genetic illness.[56] This gives rise to what might be considered to be a political question, what requirements must a group of people fulfil in order to be accepted as representing the public.

The German § 52(1) 2 AO addresses this problem:

> 'A purpose is not considered as benefiting the public if the people who benefit from it are singled out, for example as members of a family or employees of a certain enterprise, or the number of people can only be small since a certain profession is required or because only people in a certain area may benefit.'[57]

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54 H Picarda, 'Redefining "Charity" in England and Wales, Eire and Australia' [2002] 8/1 CL&PR 1,3.

55 For example the 'Friedrich Ebert Stiftung' is closely connected to the Social Democrats (SPD), the 'Konrad Adenauer Stiftung' to the Christian Democrats (CDU), the 'Friedrich Naumann Stiftung' to the Liberal Party (FDP) and the 'Heinrich Böll Stiftung' to the Green Party (*Die Grünen*).

56 J Lang, '*Gemeinnützigkeitsabhängige Steuervergünstigungen*' [1987] StuW, 221, 233.

57 German text and author's translation provided in the Annex at the end of the article.

§ 52 (1) 2 AO does not define 'public', but excludes groups which are distinct from others by their belonging to a certain family or enterprise or because the group is small. § 52 (1) 2 AO contains principles discussed in a number of English cases. Decisions such as *Oppenheim v Tobacco Securities Trust Co. Ltd*[58] and *IRC v Baddeley*[59] reflect an approach that precludes a group distinguished by certain personal attributes from other potential 'beneficiaries' from being a section of the public. Although reaching a different result as discussed below, *Dingle v. Turner*[60] tackled the same problem.

1. The number of beneficiaries

A possible approach to understand the public is to require a 'large' group of people. Both English and German charity law have applied this approach in certain cases. According to § 52 (1) 2 AO a group of beneficiaries must not be small. In Germany, courts and commentators reasoned that a small group would rather help itself than altruistically help others,[61] though it could be argued that there is a crucial difference between someone helping a small group of people in need, perhaps suffering from a rare disease, and a group of people helping themselves. In English charity law the aspect of 'self help' can be found among the factors which exclude the charitable character of groups under the 'fourth head'.[62]

The difficulty of drawing a line between a sufficient and an insufficient number of people is expressed in Lord Simonds' critique of Lord MacDermott's dissenting opinion in *Oppenheim*. The German Imperial Supreme Tax Court, (*Reichsfinanzhof*) considered a group of 50 to be too small.[63] The Federal Supreme Tax Court applied this reasoning in its decision of 14 July 2004.[64] At issue was the charitable status of an Italian foundation that promoted the studies of young Swiss from the city of Bern. The court held that the restriction to young people of a certain city could not affect the foundation's charitable status. Since Bern had approximately 125,000 inhabitants, the number of potential 'beneficiaries' was not small.

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58 [1951] AC 297 (HL).

59 [1955] AC 572, 592.

60 [1972] AC 601.

61 BFH BStBl II 1979, 482; J Uterharz § 52 n 10, in B Schwarz (ed) *Kommentar zur Abgabenordnung* (Haufe, Freiburg 2004).

62 *Re Clark* (1875) Ch D 497*; Cunnack v Edwards* [1896] 2 Ch 679; *Re Hobourn Aero Components Ltd* [1946] Ch 86.

63 RFH RStBl. 1937, 166.

64 BFH IStR 2004, 752, 753..

This decision is of considerable importance, because it highlights the fact that German charities do not necessary pursue their charitable purposes and distribute benefits inside Germany.[65] Many German charitable purposes (for example 'development cooperation') are based on this principle. However, being uncertain if it had to grant tax benefits to the Italian charity, the Federal Tax Court made a reference for a preliminary ruling to the ECJ which was given in the *Stauffer* decision. After the *Stauffer* case, it was argued that the 2007 reform should abandon this principle to ensure that tax benefits would be granted to German charities exclusively. However, this proposal was not adopted. [66]

2. Section of the Community

In some cases both German and English courts felt inclined to grant charitable status to legal entities supporting small groups of people. Contrary to the wording of § 52 (1) AO, German courts accepted that a smaller group could represent the public if this group contains a representative section of the community ('*Ausschnitt aus der Allgemeinheit*') and not a designated, homogenous group.[67] In 1930 the Prussian Administrative Court[68] stated that promotion of the public within a defined circle was possible if the inner circle was a section of the whole public, so that within the defined circle the benefit of the public was supported. This reasoning is close to the 'class within a class' of Viscount Simonds in *IRC v Baddeley*.[69] Even closer comes J Uterharz' interpretation of § 52 (1) 2 AO. He stated, in summary, that a public benefit could be accepted if the people were chosen by objective criteria (for example special needs) out of the public (and not out of an isolated group of people), so that theoretically everybody fulfilling these criteria could benefit.[70] This shows again how very close the reasoning of German and English courts often is.

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65 An exception is § 52 (2) Nr. 24 AO, the 'promotion of the democratic politcal system within the geographical scope of this statute'. But a charity which promotes democracy outside Germany could probably be accepted as promoting international understanding and development cooperation.

66 M. v. Proff, '*Gemeinnützigkeitsrecht nach den "Stauffer"-Urteilen des EuGH und BFH*' [2007] IStR 269, 273; K Tiedke and P Möllmann, '*Reform des Spenden- und Gemeinnützigkeitsrechts'* [2007] NJW 3321, 3323.

67 BFH BStBl. II 1979, 482, 484; BFH BStBl. II 1997, 794, 796; RFHE 5, 13; 5, 156; see G Felix, '*Förderung der Allgemeinheit als Voraussetzung der Gemeinnützigkeit*' [1961] FR 236.

68 VI. D. 168/28 POwGE 85, 10.

69 [1955] AC 572, 592.

70 J Uterharz § 52 n 10, in B Schwarz (ed) *Kommentar zur Abgabenordnung* (Haufe, Freiburg 2004).§ 52 n 2.

3. Free Access

If benefits are restricted to a certain group of people, for example members of a club or association, access to that group is of crucial importance in England and Germany to evaluate its public benefit.[71] Most German charities are organised as incorporated associations with members. Such associations are considered to be beneficial to the public if they are in theory open for everybody to join.[72] The Tax Court of Schleswig-Holstein refused charitable status of an association because its article of association allowed the members to deny applicants the membership without a substantial reason. It was held that not only did substantial reasons have to be given; such reasons were also to be recorded in the association's minutes so that they could be checked later by the fiscal authority.[73]

Another case where restricted access to a group precluded charitable status was decided by the Federal Tax Court. Like the English Court of Appeal, the Federal Tax Court denied the charitable status of the Grand Lodge of Freemasons. The English Court of Appeal reasoned that the Freemasons did not advance religion in a missionary way.[74] The Federal Tax Court held, however, that the Freemasons did not benefit the community. Even if theoretically every male over 21 could join them, and the Grand Lodge held public lectures, members were not allowed to talk about the Freemasons´ practices. A group which shut out the community in this way and moreover did not allow women to join was not beneficial for the public, however admirable its work may have been.[75]

4. Fees and Public Benefit

Charities charging fees raise two problems both in England and Germany: The first is whether fees will generally preclude charitable status. In Germany, the charging of fees does not exclude charitable status if the money is used for benefits and administration and the charity does not aim at making profit.[76] The analogous

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71 J Lang, '*Gemeinnützigkeitsabhängige Steuervergünstigungen*' [1987] StuW 221, 234.

72 BFHE 127, 342 = BStBl II 1979, 488; BFHE 183, 371 = BStBl II 1997, 794; BFH NVwZ 2004, 450 at 45.

73 Unreported, see Brigitte Gast-de Haan, '*Die Förderung der "Allgemeinheit" als Voraussetzung für die steuerliche Anerkennung der Gemeinnützigkeit von Vereinen*' [1996] DStR 405.

74 *United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council* [1957] 1 WLR 1080, 1090.

75 BFH 26.01.1973 III R 40/72, BeckRS 1973 22001983.

76 O Sauer, '§ 53 n 3' in D Gosch, A Beermann (eds) *Abgabenordnung Kommentar* (Stollfuß, Berlin 2006).

English leading case is *Re Resch.*[77] Here the Privy Council held in relation to a private hospital that the charging of fees would not exclude charitable status as long as no profit was sought.

The second question is whether fees affect the public benefit because they exclude in fact those who cannot afford them. The English discussion concentrates on independent schools and private hospitals. To retain charitable status, such schools, as the Charity Commission has stated, would have to 'make significant provision for those who cannot pay full fees'.[78] But even if independent schools make provisions to increase their public benefit, it is difficult to ascertain when a fee is too high.[79] This is a problem also faced by German courts.

In Germany, the discussion focuses on exclusive sports clubs such as golf and sailing clubs.[80] Independent schools are not common in Germany and their fees are considerably lower than in England.[81] Sports clubs are organised as incorporated associations with members. Openness to the public is rejected by the courts if a club charges very high, that is, 'prohibitive' membership fees.[82] The Federal Tax Court accepted membership fees up to €2,400 (c. £1,670) per year.[83] The Tax Court of Brandenburg declined the charitable status of a golf club which demanded fees up to €15,000 (c. £10,000).[84] The fiscal authorities accept annual membership fees of up to €1023 (c. £630), plus admission fees of up to €1,534 (c. £945) and additional claims for investments in the club's facilities. Professor Tipke has argued that the

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77 [1969] 1 AC 514 (PC) see also *Brighton College v Marriot* [1926] AC 192 (HL); *The Abbey Malvern Wells v Ministry of Local Government and Planning* [1951] Ch 728 (Ch).

78 Cabinet Office Number 10 Strategy Unit Report, *Private Action, Public benefit A review of Charities and the Wider Not for Profit Sector* 4.26, http://www.strategy.gov.uk/work_areas/voluntary_sector/index.asp.

79 This is not to say that the author agrees with the position of the Charity Commission in this respect.

80 R Wallenhorst, *'Mitgliederbeiträge der Sportvereine und die Förderung der Allgemeinheit nach §52 AO'* [1997] DStR 479.

81 This is due to the fact that most teachers teaching classes that are also held in states schools are paid by the state. For example, Rudolf Steiner Schools, representing a very big percentage of independent schools in Germany, can reclaim costs for teachers for mathematics, German, English and French, but not for special art and dance classes.

82 BFH BStBl. II 1998, 711; BFH NVwZ 2004, 450, 451; J Uterharz; '§ 52 n14' in B Schwarz (ed) *Kommentar zur Abgabenordnung* (Haufe, Freiburg 2004) It should be noted that membership fees can even be deducted from the taxable income under § 10b (1) 2 EStG like donations. This is not allowed, however, in case of clubs which mainly aim at the amusement of their members, e.g. fees for sports clubs.

83 BFH NVwZ 2004, 450, 451.

84 EFG 2002, 1355.

case law lacks a sense of realism. No person with an average income could afford to join such a club, and it would be no loss if the club's members had to sustain their expensive hobbies without the support of tax benefits.[85]

But even if one accepts this point, it is difficult to categorise the level of fees which would be generally affordable. What a person can afford depends on priorities and income. Moreover, what is affordable for someone with an average income might still exclude the poor.

Another problem discussed in Germany concerns donations. It has been argued that if members are expected to make high donations to prove their loyalty and their financial means, such gifts could function as indirect fees. German courts accept such donations as not excluding public benefit, however, as long as members who do not donate will not lose membership.[86] Subtle social pressure is not taken into account. This is convincing since otherwise even designer sunglasses or other 'must-haves' could be interpreted as fees.

This not only shows that fee charging charities are discussed both in England and Germany but also that there are parallels between the decisions of the courts. An English charity which is prohibited from distributing profits and which charges fees that are still affordable for someone with an average income should be acceptable to the German courts in a case where the charitable character of an English charity in German law is questioned in the light of the ECJ decision in the *Stauffer* case .

5. Relation Charities?

In England, from the 18th century onwards a line of cases established the charitable character of trusts for the relief of poor relatives,[87] employees[88] and members of an association.[89] This special public benefit test was referred to either as "a long-established anomaly",[90] or justified with the argument that relief of poverty was "in

85 K Tipke, '§ 52 n 10' in K Tipke, W Kruse (eds) *Abgabenordnung Kommentar* (Otto Schmidt, Köln, 2005).

86 BFH BstBl. 1998, 1424; J Uterharz, '§ 52 n14' in B Schwarz (ed) *Kommentar zur Abgabenordnung* (Haufe, Freiburg 2004).

87 *Isaac v. Defriez* (1754) Amb 595.

88 *Re Gosling* (1900) 16 TLR 152; *Gibson v. South American Stores* [1950] Ch 177; *Re Coulthourst* [1951] Ch 661; *Dingle v. Turner* [1972] AC 601.

89 *Spiller v. Maude* (1886) 32 ChD 158n.

90 Per Lord Simonds, *Oppenheim v. Tobacco Securities Trust Co. Ltd* [1951] AC 297, 305; Hanbury, Martin, *Modern Equity*, Sweet and Maxwell, London 2005, at 435; see also H Picarda, 'Redefining "Charity" in England and Wales, Eire and Australia' [2002] 8/1 CL&PR 1, 3.

itself so beneficial to the community that even the fact that the gift was confined to a certain family could be disregarded."[91] Lord Cross of Chelsea in *Dingle v Turner*, seizing upon Lord MacDermott's critique in *Oppenheim*, reasoned:

> '*The question whether or not the potential beneficiaries of a trust can fairly be said to constitute a section of the public is a question of degree and cannot be by itself decisive of the question whether a trust is a charity. Much must depend on the purpose of the trust.*' [92]

The future of this line of cases after the entry into force of the Charities Act 2006 is unclear.

In Germany, a comparable line of reasoning has gained significant influence as well. In the decision of the Prussian Administrative Court[93] of 18 February 1930, later confirmed by the Federal Tax Court,[94] it was held that if a legal entity tackled problems concerning the public, the public was benefited indirectly. Some scholars argued likewise that the focus should rather lie on the beneficial purpose itself than on the number of people who benefit.[95] This reasoning is doubtful from a principled point of view, because there are no criteria by which a judge can decide that one purpose is more important than another.

German fiscal authorities deny relation charities charitable status.[96] The question, what stance a German court would take on an English poor relation charity is surprisingly difficult to answer. The German § 53 AO includes benevolent purposes, which would be beneficial in English charity law as seeking the relief of poverty. Under § 53 AO 'benevolent purposes are pursued if an entity's activities aim to support people altruistically'. § 53 AO does not repeat the requirements of § 52 (1) 2 AO. This seems to mean that the relief of poverty is a purpose which deserves tax benefits, even if only an ascertainable class of people and not 'the public' benefits. That could mean that not only in England but also in Germany 'poor relation charities' were permissible.

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91 *In re Compton* [1945] Ch 123, 129, 139.

92 *Dingle v Turner* [1972] AC 601, 889; see also J Martin, Hanbury & Martin, *Modern Equity* (17th edn Sweet and Maxwell London 2005) 435, 442.

93 VI. D. 168/28 POwGE 85, 10.

94 I R 39/78. BStBl. II 1979, 482.

95 J. Kraft, '*Die steuerrechtliche Gemeinnützigkeit*' [1932] VJSchrStFR 315, 399ff; G. Felix, ‚*Förderung der Allgemeinheit als Voraussetzung der Gemeinnützigkeit*' [1961] FR 236.

96 BStBl. I 2002, 867.

This construction of the statute is controversial, however.[97] Koenig denies a difference between § 53 and § 52 AO. The core criteria would be whether the benevolent support was given selflessly; this would be refuted if only members of the donor's family were supported.[98] The fiscal authorities held that the support of poor relations would aim at strengthening the relationship between relatives and would not be selfless.[99] The approach of Koenig and the fiscal authorities is not entirely convincing, however. Selflessness is defined in § 55 AO as not predominantly supporting the donor's or organisation's own economic aims.[100] 'Selfless' is everything a person does for another without receiving consideration and without an obligation. The support of one's own relatives – unless they have claims of maintenance against the donor[101] – can never support the donor's economic interest. Thus it is not unreasonable to interpret § 53 AO as providing a public benefit test different from § 52 AO.[102] This is not to say that such an exception for poor relation charities would be favourable from a principled point of view, or that a court would accept this reasoning once the point was to be argued before it. An English poor relation charity claiming fiscal benefits in Germany would thus run a high risk of having its claim rejected.

IV. Conclusion

This article has not sought to provide a comprehensive account of German charity law, rather to highlight some parallel points of discussion. Though the two legal systems show undeniable differences, there are a number of striking similarities in England and Germany among the topics discussed, and the practical decisions the courts reach. In most cases, it should not be too difficult for an English charity earning taxable income in Germany to claim fiscal benefits under German law pursuant to the ECJ *Stauffer* decision, since English and German charity law are not so different after all.

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97 See below at p 27.

98 U Koenig, 's 53 n 6' in A Pahlke and U Koenig (eds) *Abgabenordnung*, (CH Beck, München 2004).

99 BStBl. I 2002, 867; AEAO n 13, § 53 AO.

100 BFH DStR 1992, 392, 393; O Sauer, § 53 n 3 in D Gosch, A Beermann (eds) *Abgabenordnung Kommentar* (Stollfuß, Berlin 2006).

101 R Hüttemann, '*Der neue Anwendungserlass zum Gemeinnützigkeitsrecht (§§ 51-68 AO)*' [2002] FR 1337, 1338.

102 RFH RStBl. 1940, 190; P Fischer, '§ 53 n 14' in W Hübschmann, E Hepp and A Spitaler (eds), *Abgabenordnung Kommentar* (Otto Schmidt Köln, 2004); R Hüttemann, '*Der neue Anwendungserlass zum Gemeinnützigkeitsrecht (§§ 51-68 AO)*' [2002] FR 1337, 1338.

Annex

§§ 51-54 Abgabenordnung (AO): translation by the author

§ 51 AO Allgemeines Gewährt das Gesetz eine Steuervergünstigung, weil eine Körperschaft ausschließlich und unmittelbar gemeinnützige, mildtätige oder kirchliche Zwecke (steuerbegünstigte Zwecke) verfolgt, so gelten die folgenden Vorschriften. Unter Körperschaften sind die Körperschaften, Personenvereinigungen und Vermögensmassen im Sinne des Körperschaftssteuergesetzes zu verstehen. Funktionale Untergliederungen (Abteilungen) von Körperschaften gelten nicht als selbständige Steuerobjekte.	§ 51 General Provisions If a statute grants tax benefits to a legal entity because it pursues exclusively and directly purposes beneficial to the public, benevolent purposes or ecclesiastical purposes (tax privileged purposes) the following provisions are to be applied. For the purpose of the following provisions a legal entity is to be understood as a legal entity, association or legal estate as defined in the *Körperschaftssteuergesetz* [Corporate Tax Act]. Functional parts (departments) of legal entities shall not be considered as independent objects of taxation.
§ 52 Gemeinnützige Zwecke (1) Eine Körperschaft verfolgt gemeinnützige Zwecke, wenn ihre Tätigkeit darauf gerichtet ist, die Allgemeinheit auf materiellem, geistigem oder sittlichem Gebiet selbstlos zu fördern. Eine Förderung der Allgemeinheit ist nicht gegeben, wenn der Kreis der Personen, dem die Förderung zugute kommt, fest abgeschlossen ist, zum Beispiel Zugehörigkeit zu einer Familie oder zur Belegschaft eines Unternehmens, oder infolge einer Abgrenzung, insbesondere nach räumlichen oder beruflichen Merkmalen, dauernd nur klein sein kann. Eine Förderung der Allgemeinheit liegt nicht allein deswegen vor, weil eine Körperschaft ihre Mittel einer Körperschaft des öffentlichen Rechts zuführt.	§ 52 Purposes of Public Utility (1) A legal entity pursues purposes beneficial to the public, if its actions selflessly aim to support the public in a material, intellectual or moral way. A purpose is not considered as benefiting the public if the people who benefit from it are singled out, for example as members of a family or employees of a certain enterprise, or the number of people can only be small since a certain profession is required or because only people in a certain area may benefit. The support of a statutory public corporation does not suffice as beneficial to the public.

(2) Unter den Voraussetzungen des Absatzes 1 sind als Förderung der Allgemeinheit anzuerkennen:	(2) Under the requirements set out in (1) the following purposes shall be acknowledged as beneficial to the public:
1. Die Förderung von Wissenschaft und Forschung;	1. The promotion of science and research;
2. der Religion;	2. religion;
3. die Förderung des öffentlichen Gesundheitswesens und der öffentlichen Gesundheitspflege, insbesondere die Verhütung und Bekämpfung von übertragbaren Krankheiten, auch durch Krankenhäuser im Sinne des § 67, und von Tierseuchen;	3. the promotion of the public health system, especially the prevention and combat of epidemic diseases, also in hospitals as defined in § 67, as well as epizootics;
4. die Förderung der Jugendhilfe, der Altenhilfe;	4. the promotion of welfare services and welfare systems for young and elderly people;
5. die Förderung von Kunst und Kultur;	5. the promotion of art and culture;
6. die Förderung des Denkmalschutzes und der Denkmalpflege;	6. the promotion of the protection and conservation of ancient and historic monuments;
7. die Förderung der Erziehung, Volks- und Berufsbildung einschließlich der Studentenhilfe;	7. the promotion of education, education of the public and occupational education including aid for students;
8. die Förderung des Naturschutzes und der Landschaftspflege im Sinne des Bundesnaturschutzgesetzes und der Naturschutzgesetze der Länder, des Umweltschutzes, des Küstenschutzes und des Hochwasserschutzes;	8. the promotion of nature conservation and protection of the countryside as set out in the *Bundesnaturschutzgesetz* [Federal Nature Conservation Act], environmental protection, coastal protection and flood control;
9. die Förderung des Wohlfahrtswesens, insbesondere der Zwecke der amtlich anerkannten Verbände der freien Wohlfahrtspflege (§ 23 der Umsatzsteuer-Durchführungsverordnung), ihrer Unterverbände und ihrer angeschlossenen Einrichtungen und Anstalten;	9. the promotion of the general welfare system, especially of officially recognised welfare associations (see § 23 *Umsatzsteuer – Durchführungsverordnung*) [VAT-Implementation Ordinance], their sub-associations, institutions and facilities;

10. die Förderung der Hilfe für politisch, rassisch oder religiös Verfolgte, für Vertriebene, Aussiedler, Spätaussiedler, Kriegsopfer, Kriegshinterbliebene, Kriegsbeschädigte und Kriegsgefangene, Zivilbeschädigte und Behinderte sowie Hilfe für Opfer von Straftaten; Förderung des Andenkens an Verfolgte, Kriegs- und Katastrophenopfer; Förderung des Suchdienstes für Vermisste;	10. the promotion of aid for victims of political persecution, racist and religious discrimination, displaced persons, resettled persons,[103] victims and survivors of war as well as prisoners of war, disabled persons and victims of crime; promotion of the remembrance of the victims of persecution, victims of war and disasters; promotion of services for tracing missing people;
11. die Förderung der Rettung aus Lebensgefahr;	11. the promotion of the saving of lives;
12. die Förderung des Feuer-, Arbeits-, Katastrophen- und Zivilschutzes sowie der Unfallverhütung;	12. the promotion of fire protection, employment protection, civil protection, disaster control and the prevention of accidents;
13. die Förderung internationaler Gesinnung, der Toleranz auf allen Gebieten der Kultur und des Völkerverständigungsgedankens;	13. the promotion of an international attitude, tolerance in relation to all aspects of culture and the promotion of understanding between the peoples of the world;
14. die Förderung des Tierschutzes	14. the promotion of animal welfare;
15. die Förderung der Entwicklungszusammenarbeit;	15. the promotion of development cooperation;
16. die Förderung von Verbraucherberatung und Verbraucherschutz;	16. the promotion of consumer protection and advisory services for consumers;
17. die Förderung der Fürsorge Strafgefangene und ehemalige Strafgefangene;	17. the promotion of care for prisoners and ex-prisoners;
18. die Förderung der Gleichberechtigung von Frauen und Männern;	18. the promotion of gender equality;
19. die Förderung des Schutzes von Ehe und Familie;	19. the promotion of marriage and family;
20. die Förderung der Kriminalprävention:	20. the promotion of crime prevention;

103 The provision mentions two kinds of resettled persons. One term (*Spätaussiedler*) refers to people of German origin from the countries of the former Soviet Union. Those people were granted an unconditioned right to move to Germany, which was used by a considerable number after 1992.

21. ie Förderung des Sports (Schach gilt als Sport);	21. the promotion of sports (chess is considered sport);
22. die Förderung der Heimatpflege und Heimatkunde;	22. the promotion of the protection of local heritage (*Heimatpflege*)[104] and local history;
23. die Förderung der Tierzucht, der Pflanzenzucht, der Kleingärtnerei, des traditionellen Brauchtums einschließlich des Karnevals, der Fastnacht und des Faschings, der Soldaten- und Reservistenbetreuung, des Amateurfunkens, des Modellflugs und des Hundesports;	23. The promotion of livestock and plant breeding, allotment gardens, traditional customs including carnival,[105] care for soldiers and reservists, amateur radio operation, model aircraft and 'dog sport'[106];
24. die allgemeine Förderung des demokratischen Staatswesens im Geltungsbereich dieses Gesetzes; hierzu gehören nicht Bestrebungen, die nur bestimmte Einzelinteressen staatsbürgerlicher Art verfolgen oder die auf den kommunalpolitischen Bereich beschränkt sind;	24. The general promotion of the democratic political system within the geographical scope of this statute; efforts which only pursue singular civic interests or municipal interests are not regarded as supporting the democratic political system;
25. die Förderung des bürgerschaftlichen Engagements zugunsten gemeinnütziger, mildtätiger und kirchlicher Zwecke.	25. the promotion of civic volunteering for the benefit of public utility, benevolent and ecclesiastical purposes.

104 *Heimat* is a word without exact translation. It is the place where one feels at home and to which one has a special personal bonding. "*Heimat"* might be an area in a city or in the countryside. It cannot be translated as "fatherland", which has broader and more patriotic meaning. The concept is illustrated in a series of films by the German director Edgar Reitz.

105 The Act names Karneval, Fastnacht and Fasching, which all mean carnival in different areas of Germany (Karneval: Rheinland especially Cologne and Düsseldorf, Fastnacht: Rheinhessen, especially Mainz and Frankfurt; Fasching: everywhere else in Germany)

106 This has nothing to do with dog racing. This charitable purpose mainly embraces the drill of dogs (mostly Alsatian) in obedience classes and has its origin in the education of police dogs.

Sofern der von der Körperschaft verfolgte Zweck nicht unter Satz 1 fällt, aber die Allgemeinheit auf materiellem, geistigem oder sittlichem Gebiet entsprechend selbstlos gefördert wird, kann dieser Zweck für gemeinnützig erklärt werden. Die obersten Finanzbehörden der Länder haben jeweils eine Finanbehörde im Sinne des Finanzverwaltungsgesetzes zu bestimmen, die für Entscheidungen nach Satz 2 zuständig ist.	In case a legal entity pursues a purpose which is not recognised in sentence 1, but altruistically supports the public in a material, intellectual or moral way, this purpose can be recognised as being of public utility. The supreme tax authority of each federal state (*Land*) has to nominate a tax authority responsible for decisions under sentence 2.
§ 53 Mildtätige Zwecke Eine Körperschaft verfolgt mildtätige Zwecke, wenn ihre Tätigkeit darauf gerichtet ist, Personen selbstlos zu unterstützen, 1. die infolge ihrer körperlichen, geistigen oder seelischen Zustands auf die Hilfe anderer angewiesen sind oder 2. deren Bezüge nicht höher sind als das Vierfache des Regelsatzes der Sozialhilfe im Sinne des § 28 des Zwölften Buches Sozialgesetzbuch; beim Alleinstehenden oder Haushaltsvorstand tritt an die Stelle des Vierfachen das Fünffache des Regelsatzes. Dies gilt nicht für Personen, deren Vermögen zur nachhaltigen Verbesserung ihres Unterhalts ausreicht und denen zugemutet werden kann, es dafür zu verwenden. Bei Personen deren wirtschaftliche Lage aus besonderen Gründen zu einer Notlage geworden ist, dürfen die Bezüge das Vermögen die genannten Grenzen übersteigen. Bezüge im Sinne dieses Gesetzes sind: (...)	§ 53 Benevolent Purposes Benevolent purposes are pursued if an entity's activities selflessly aim to support people 1. Who as a result of their physical, intellectual or mental state are dependent on the help of others 2. Whose income is not higher than four times the regular rate of social welfare. If a person lives alone or is head of a family its income shall not be higher than five times regular social welfare. This does not include people of whom it can be expected that they use their personal means for their living. People who reached a state of financial distress because of particular circumstances might receive a higher income. Income for the purposes of this law shall be considered to comprise: (…)

§ 54 Kirchliche Zwecke (1) Eine Körperschaft verfolgt kirchliche Zwecke, wenn ihre Tätigkeit darauf gerichtet ist, eine Religionsgemeinschaft, die Körperschaft des öffentlichen Rechts ist, selbstlos zu fördern.	§ 54 Ecclesiastical Purposes (1) A legal entity pursues an ecclesiastical purpose if its activities aim selflessly to support a religious community, which is a public corporation.
(2) Zu diesem Zweck gehören insbesondere die Errichtung, Ausschmückung und Unterhaltung von Gotteshäusern und kirchlichen Gemeindehäusern, die Abhaltung von Gottesdiensten, die Ausbildung von Geistlichen, die Erteilung von Religionsreligionsunterricht, die Beerdigung und die Pflege des Andenkens der Toten, ferner die Verwaltung des Kirchenvermögens, die Besoldung der Geistlichen, Kirchenbeamten und Kirchendiener, die Alters- und Behindertenversorgung für diese Personen und die Versorgung ihrer Witwen und Waisen.	(2) This purpose especially serves the building, decoration and maintenance of chapels and parish halls, the celebration of divine services, the education of priests, religious education, the burial and preservation of the memory of the dead, the administration of church property, the salary of priests, clerks and sextons, providing for their old age or disabilities and the support of their widows and orphans.