LEAGUE OF NATIONS.

Communicated to Council of the League

Geneva, March 16th, 1923.

2/27063/27063.

SAAR BANK.

ENACTMENT BY THE GOVERNING COMMISSION OF PROVISIONAL DEGREE WITH A VIEW TO THE MAINTENANCE OF ORDER AND OF PUBLIC SECURITY IN THE TERRITORY.

Letter dated March 9th 1923 with annexes from the Chairman of the Governing Commission.

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Note by the Secretary-General.

The Secretary-General has the honour to forward herewith, for the information of the Council, copy of the following documents concerning the enactment by the Governing Commission of a provisional Decree, with a view to the maintenance of order and public security in the Territory:

I. Letter dated March 9th, 1923, from the Chairman of the Governing Commission to the Secretary General, transmitting:

II. The text of the provisional Decree and

III. An introductory report regarding the draft provisional Decree.

The Chairman of the Governing Commission has asked that the explanatory report with regard to the provisional Decree should be considered as strictly confidential.
Sir,

I feel it my duty to bring to your notice without delay the text of an important **PROVISIONAL DECREES** which lays down certain measures with a view to the maintenance of public order and security and which, for this purpose, adapts to the political and administrative organisation of the Saar Territory, the Law of the Reich, dated July 21st, 1922, for the protection of the German Republic.

I have the honour to attach the text of this provisional Decree, which will come into force on March 12th, 1923, and will be submitted to the elected representatives of the inhabitants at the next session of the Advisory Council. When the latter has expressed its views on this question it will be for the Governing Commission to decide whether it is desirable that this provisional Decree should receive the force of a final decree.

Imperative reasons have obliged the Governing Commission to introduce into the Saar Basin, **mutatis mutandis** the German Law of July 21st, 1922 for the protection of the German Republic. These reasons are explained in the introductory Report on the draft provisional Decree submitted to the Governing Commission, a copy of which is annexed. I venture, however, to draw your attention to the strictly CONFIDENTIAL nature of this document, in accordance with the final paragraph of your letter (No. 3/4440/4119) dated May 25th, 1920.
Under the terms of the Peace Treaty, the Governing Commission is responsible "in all cases" for the protection of persons and property situated in the Territory of the Saar Basin. The present circumstances have rendered necessary the promulgation by the Commission of measures which it has hitherto avoided and has now only enforced after mature consideration.

I have the honour to be, Sir, etc.

(Signed) V. RAULT.
II. PROVISIONAL DEGREE.


In pursuance of paragraphs 19 and 20 of Chapter II of the Saar Basin Annex to the Treaty of Peace of Versailles,

And in pursuance of its decision, dated March 7th, 1923.

The Governing Commission of the Saar Territory hereby decrees as follows:


   Article 1.

Persons guilty of any of the following offences, that is to say:

1. Committing or conspiring with others to commit acts of violence directed against members of the Governing Commission of the Territory of the Saar Basin, or inciting to such acts of violence;

2. Approving or defending in public or at a meeting acts of violence committed against members of the Governing Commission of the Territory of the Saar Basin, and also rewarding persons guilty of such crimes, or aiding and abetting offenders or their accomplices (Penal Code, para. 257).

3. Taking part in secret meetings or meetings directed against the Government of the Territory (Penal Code, paras. 128 and 129) with intent to prejudice the régime set up in the Saar Territory by the Treaty of Peace of Versailles, or aiding and abetting any member for the furtherance of that object by word or deed, and especially by financial assistance.
4. Becoming a member of a secret association or an association directed against the Government of the Territory (Penal Code, para. 123 and 129) which is, or the members of which are, in illegal possession of arms.

5. Possessing or having the custody of a secret store of weapons and omitting to report to the authorities the place where such store is situated.

For the purposes of this Decree, rifles, mine-throwers, machine guns and automatic pistols shall be regarded as stores of munitions.

shall, unless more severe penalties are elsewhere provided for, be liable to imprisonment for not less than three months and not more than five years.

In specially serious cases the offender shall be sentenced to imprisonment with hard labour.

In addition to imprisonment the offender may be liable to a fine not exceeding 50,000 francs.

Article 2.

Persons committing any of the following offences shall be liable to imprisonment for a period not exceeding five years and, should the Court so decide, to a fine not exceeding 10,000 francs.

1. In public or at a meeting,

   a) Casting discredit on the Treaty of Peace of Versailles.

   b) Insulting or traducing:

      1) the League of Nations, its Members or the States signatories of the Treaty of Peace of Versailles,

      2) the Governing Commission, its members, organisations or the officials responsible for the conduct of its administration.

2. Uttering threats or using insulting or defamatory language in public or at a meeting, calculated to prejudice the free and independent exercise of the rights conferred by paragraph 34 of Annex IV, Part III of the Treaty of Peace of Versailles.
3. Inciting or attempting to incite against each other—by threats, insults, slanders or language calculated to bring the persons or institutions referred to into disrepute and under conditions capable of leading to a breach of the public peace—the various elements forming the population of the Territory of the Saar, irrespective of the original nationality of its inhabitants.

4. Insulting the colours of the Governing Commission in public or at a meeting.

5. Omitting to report immediately to the authorities the existence of any secret store of munitions of which a person may be aware, except in cases where the giving of such information would render the ascendants or descendants, brothers and sisters or husband or wife of that person themselves liable to punishment. The benefit of this proviso shall be granted to priests and ministers of religion, lawyers or physicians who have been entrusted with such information in the exercise of their profession or vocation. Under such circumstances paragraph 2, No. 5 of Article 1 shall apply.

Article 3.

In addition to the penalty inflicted for an offence, against Article 1, a fine, the maximum of which is not established, shall be imposed.

Moreover, the accused may, by order of the Court, be forbidden to reside in certain parts of the Saar Territory or in certain places therein, for a period not exceeding one year. Persons who have been convicted and who do not possess the status of a Saar inhabitant shall be expelled.

Offences against paragraph 2 of this article shall be punishable by imprisonment.
Article 4.

A sentence of imprisonment with hard labour passed in respect of any one of the punishable offences specified in Article 1 shall, in addition to the subsidiary penalties provided for in Article 31 of the Penal Code, entail ipso iure the loss of rights acquired through public elections, and in the case of officials, the loss of their salary, or if they have retired from service, the forfeiture of their pensions.

In the case of offences specified in Article 1 or of any contravention of the provisions of Article 2, in respect of which imprisonment is inflicted as penalty, the Court may decree the loss of public appointments, the permanent or temporary suspension of the right to discharge the duties connected with such appointments and the partial or total forfeiture either temporarily or permanently of any salary or pension derived therefrom. Nothing in this paragraph shall prejudice the provisions applicable to the loss of the rights conferred by public elections.

Article 5.

Legal proceedings may be brought against any person for offences under Articles 1 and 2, even if such offences have been committed outside the Saar Territory.

II. Jurisdiction.

Article 6.

A special chamber of the Saarlonia Supreme Court shall be instituted, which shall have power to hear and determine finally prosecutions for the offences referred to in Articles 1 and 2.

This Court shall consist of five members, including the President. They shall be appointed annually by the President of the Governing Commission, on the advice of the member of the Governing Commission responsible for the Department of Justice. An equal number of deputies shall be appointed under the same conditions from among the members of the Supreme Court or the Courts of first instance (magistrats d'instance).
The Procurator-General officiating in the Saarlouis Supreme Court shall act as representative of the Public Prosecutor's Department.

The procedure before the Supreme Court shall be the same as that applicable in the Police Court of the District Tribunal.

The Procurator-General may instruct the principal Public Prosecutor at Saarbrücken to institute proceedings.

III. Prohibited Meetings.

Article 7.

Meetings, processions and demonstrations may be prohibited when public feeling is so excited that there may be reasonable grounds for apprehending that language of a nature to constitute an offence under Articles 1 and 2, will be used at such demonstrations. Societies and meetings at which language of this nature is used and Societies and meetings, the object of which would render them liable to punishment under Articles 1 and 2, may be prohibited and dissolved.

A copy of the decision authorising such prohibition or suspension with a statement of the reasons therefor must be issued free of charge and without delay to any party concerned who may apply for it.

Article 8.

The provisions of Article 7, para. 1, shall not apply to meetings held previous to the elections to the Advisory Council, to Kreis Councils and Communal Councils or to any other elected Council which is intended to represent an organisation recognised by law during the electoral period.

Article 9.

Meetings, even under the conditions laid down in Article 8, may be prohibited when offences against Articles 1 and 2 are committed and permitted at those meetings.

Article 10.

The member of the Governing Commission responsible for the Department of the Interior will appoint the appropriate authority to take the measures provided for in Articles 7 to 9.
Article 11.

In the event of the dissolution of an association or society, the property of such association or society may be seized and confiscated.

Article 12.

Persons committing any of the following offences shall be liable to imprisonment and, if the Court so decide, to a fine not exceeding 10,000 francs:

1. Organising meetings, assemblies and processions forbidden under Article 7 and subsequent articles, or speaking at such meetings, assemblies and processions,

2. Retaining membership of societies dissolved under Article 7, paragraph 2, or furthering or assisting them in any other manner.

For the purposes of this Article, any ostensibly new society which, in point of fact, has only been founded to replace a former society, shall be regarded as a dissolved society.

IV. Seizure and Prohibition of Printed Matter.

Article 13.

The stipulations of Articles 23 to 25 of the Imperial Press Law of May 7th, 1874, regarding the provisional seizure of printed matter, shall apply to the offences specified in Articles 1 and 2, subject to the following provisions:

1. In Article 24, para. 1 of the press Law of May 7th, 1874, the words "District Court" (Tribunal Regional) shall be substituted for the words "Competent Court" (Tribunal Competent).

E. Article 25 of this Law shall be amended to read as follows:

"The public prosecutor's Office may appeal against the decision of the District Court on the question of the validity of the temporary seizure. This appeal shall have the effect of suspending all proceedings."

The special Chamber of the Saarlouis Supreme Court referred to in Article 6 shall be authorised to hear these appeals.
Article 14.

Any periodical publication containing matter which constitutes an offence under Articles 1 and 2 may be suppressed for a period not exceeding four weeks in the case of daily newspapers and not exceeding six months in other cases.

Any allegedly new periodical, which, in point of fact is issued merely for the purpose of ensuring the publication of a suspended periodical, in a new form, shall also be suppressed.

The suppression shall be published in the form of an Order by the member of the Governing Commission responsible for the Department of the Interior.

Article 15.

Any person printing, issuing, publishing or circulating a printed periodical which has been prohibited under Article 14 shall be liable to imprisonment. He may also be sentenced to pay a fine not exceeding 10,000 francs.

V. Appeal Procedure.

Article 16.

An appeal may be made against the Orders issued by the member of the Governing Commission responsible for the Department of the Interior, or the decisions taken by him or his representative, under Article 7 et seq., and Article 14 of this Decree within a period of fifteen days from the date on which the order has been notified, or on which a copy of the decision has been submitted to the High Administrative Court of the Saar Territory, which will then proceed to hear the appeal in the customary manner.

VI. Final Provisions.

Article 17.

All provisions contrary to this Decree are hereby cancelled.
Article 18.
This Decree shall come into force on March 12th, 1923.

Article 19.
This Decree shall be submitted for the consideration of the elected representatives of the people at their first session following its publication.

Saarbrück,
March 7th, 1923.
For the Governing Commission,
(Signed) V. RAULT.
Chairman, Councillor of State.
Translation.

Gentlemen:

After mature consideration, the Chairman of the Governing Commission, who is responsible for the Department of the Interior, and the member of the Governing Commission responsible for the Department of Justice, have decided to submit for your approval the attached draft Decree, which is intended to give them effective powers to deal with disturbers of public order and, in particular, with Press agitations.

Since it came into power - that is to say, for more than three years - the Governing Commission has endeavoured to show its trust in the people. One of its first acts was to repeal the Orders of the military occupation authorities, who had, in virtue of the Armistice Agreement, subjected the Press and public meetings to supervision in certain matters. The Governing Commission has always adhered to this line of action, and it may be said that there are now few countries in the world in which the Press is as free as in the Saar Basin. Moreover, by the establishment in March 1922, of an Advisory Council, elected in accordance with a system of universal suffrage by all the inhabitants of the Saar, united as one constituency, and by defining the powers of this body, the Governing Commission has allowed the elected representatives of the people to play an important part, and has given unmistakable evidence of the liberality of its views. The Council of the League of Nations recognised that the Governing Commission had gone as far in this direction as the Peace Treaty permitted. For the past three years the Commission has unhesitatingly relied upon the loyal
co-operation of the population and of public opinion, to
which it has given every facility for self-expression.

The legitimate hopes which the Governing Commission
based upon this policy have been utterly disappointed. Not
once has the Press of the Territory loyally responded to this
generous treatment; not once has it joined in the efforts of the
Governing Commission to preserve order and quiet in the
country. It has never abandoned its systematic policy of
causing dissension, its attacks on the foundation of the
legal order established in the Saar Basin by the Peace Treaty and
its attempts to destroy the authority of the Governing
Commission and to incite one section of the inhabitants of the
Territory against another.

At the same time there are certain indications
which suggest that secret preparations are being made by
associations with a view to action incompatible with the
security of the country.

This attitude on the part of the Press, and the
suspicious actions to which we have referred, are rendered
specially dangerous by the peculiar position in the Saar
Basin.

The Saar Territory has been granted, for a limited
period, a status which is absolutely unique in the world,
which can only be uphold under certain conditions, and
which justifies special protective measures.

By virtue of the Peace Treaty, the Territory
is placed under a Government foreign to it, which has no roots in
the country, and which would fail in its duty of impartiality
if it attempted to find support in a particular party or
following. The Governing Commission is entrusted with the
responsible task of executing the Peace Treaty, of providing
simultaneously for the welfare of the population and for the
free exploitation of the French State mines, and of
ensuring that the 1935 plebiscite shall be carried out under
conditions of perfect freedom. It is, therefore, impossible for the Governing Commission under any circumstances to favour certain parties, or to obtain adherents in its own support in the Territory. If its mission is to be satisfactorily performed it must remain independent, and above the internal politics of the country and must have no interests but those entrusted to it by the Peace Treaty and the League of Nations.

It is obvious that under these conditions the Governing Commission should be protected, even more than any other government, against systematic attacks by interested parties. If it is to fulfil its mandate satisfactorily, its authority and prestige must remain unimpaired, and it must be in a position to suppress campaigns carried on by agitators, the sole object of which is to render the execution of the Peace Treaty of Versailles impossible in the Saar Basin. The power of the Governing Commission is purely temporary; the administrative organisations which it has set up will not endure. It has, therefore, some difficulty in recruiting officials, since the latter are the object of ceaseless attacks, amounting to terrorism. The Governing Commission is under the strict obligation to protect these officials; and only on this condition will it be able to retain and acquire a sufficient number of the loyal helpers who are indispensable to its work. Great as may be the devotion of these officials, they cannot be expected to be patient for ever under insults, — the authors of which, being assured of impunity, display an ever increasing audacity and effrontery.

This is not all. The system of government which has been established in the Saar has no other foundation than the Peace Treaty of Versailles; it is wholly based upon an international organisation — the League of Nations — created
represented to the people, in newspapers and at public meetings, as a monument of hatred and iniquity. An attempt is thus being made to undermine in public opinion the very foundations of the authority of the League of Nations and its representatives in the Saar.

The League of Nations itself has also been the object of definite insults, and certain of its Members have been subjected for some weeks past to unprecedented campaigns of calumny and abuse. Indeed, since France and Belgium—both Members of the League of Nations, represented on the Council of the League and on the Governing Commission of the Saar Territory—have, in order to enforce the application of certain clauses of the Peace Treaty of Versailles, adopted various "sanctions" against Germany in the Ruhr Valley and in the Rhine Provinces, the majority of newspapers in the Saar have continually published false news and hostile and insulting articles directed against these two allied countries. How far can the Governing Commission, as an organ of the League of Nations, tolerate such outrageous attacks upon the honour of Members of the League? We are forced to the conclusion that the Governing Commission must, in view of the special character of its power and the actual source of this power, take special measures to prevent campaigns of insult and incitement against the Treaty of Versailles, the League of Nations, the Members of the League, the régime set up in the Saar under the Treaty, and the Governing Commission and its officials.

Moreover, it must not be forgotten that the Saar Basin is a plebiscite territory. The Peace Treaty deliberately granted its inhabitants a period of fifteen years, to enable them to decide with full freedom when the excitements and passions due to the war had died away. No pressure is to be brought to bear on public opinion before 1935. The object of the Peace Treaty in entrusting power to an international Commission, almost wholly foreign to the country, was
to secure to the inhabitants as it were, a period of quiet during which they would be free from political strife.
Yet there is perhaps no country in Europe in which public opinion has been more excited, and inflamed than in the Saar Territory. The freedom of the plebiscite is jeopardised even now, for, in point of fact, a section of the Press is systematically issuing incitements to hatred and violence. It is no exaggeration to say that this Press is establishing a reign of terror over the country and its inhabitants. Any person who displays, we will not say a friendly, but even a merely correct attitude towards France or a French Administration or even towards the Governing Commission, is charged with "treason" and dragged through the mud. Under these conditions there can be no question of an impartial plebiscite. We should be justified in showing some anxiety for the future of the Saar Territory if such abuses were to continue. It may be predicted that every conceivable excess will take place at the time of the plebiscite if, during the intervening period, feelings continue to be excited and passions to be inflamed.

The present situation in the Saar Basin is not merely characterised by the existence of a Governing Commission and the prospect of a plebiscite. It was also created by the Peace Treaty owing to the transfer of all mines existing in the Territory to the French Government and the establishment of the French Customs régime on its frontiers. France must be free to exploit the mines, and, under the Peace Treaty, the presence in the Saar Territory of French engineers, employees, teachers, doctors and miners is obligatory. In theory the whole staff of workers employed in the mines might be recruited in France. It is also necessary that French Customs officers and, in any case, a French member of the Governing Commission, should be present in the Saar. Is it tolerable that these Frenchmen, whose presence
in the Saar Basin is a necessary consequence of the Peace Treaty, should see their country systematically insulted every day by a Press whose violence and treachery has as yet found no limits. Can it be said that the freedom to exploit the mines is really respected, when Saar workmen are told that the engineers in authority over them are members of a robber nation capable of brigandage and nameless atrocities? It is here necessary to go into details. The Peace Treaty provides for the absolute equality of all the inhabitants of the Saar Territory under the authority of the League of Nations. The Governing Commission has, in faithful execution of this provision, defined in a decree the status of a Saar inhabitant and declared that all the inhabitants, without distinction of nationality, should be equal before the law: yet the incitements of the Press are sowing the seeds of hatred between the inhabitants of the Territory of different nationalities. Everything Belgian or French is held up to execration, and the most regrettable feeling of hostility is thus being aroused in the population. These fears are not without foundation in fact. On January 15th last from 1,500 to 2,000 young persons of German nationality excited by the newspaper campaign, took possession, in obedience to a definite call from the Press, of the busiest thoroughfare in the town of Saarbrück, immediately in front of the seat of the State Mines Administration, which flies the French flag by virtue of the Peace Treaty . . . . . . They stopped all traffic, and, in particular, held up carriages belonging to the Mines Administration, and insulted and even struck the occupants. They freely abused Franco and Belgium, and molested French soldiers who attempted to make their way through the crowd. The statement that the inhabitants of the Saar Territory are being incited to mutual hatred is thus borne out by the case quoted.
The demonstration of January 15th was dispersed without difficulty, but it should serve as a grave warning. If such incidents should be repeated it may be impossible, in course of time, to reckon on the forbearing attitude of the French colony. Serious demonstrations and riots may take place. The situation in the Ruhr and on the Rhine is so strained that it is our duty to take every possible measure of protection in the Saar. The Governing Commission is responsible for the safety of persons and property, for which, according to the Peace Treaty, it must "provide in all cases". The present circumstances are serious and justify exceptional measures. On January 15th, the safety of certain persons was temporarily endangered. Should further demonstrations take place and if the German population is continually incited against France the safety of the French colony and of the mines may be exposed to the gravest risks.

The German penal code contains a special provision for the suppression of incitements to hatred between different social classes: workmen and employers, or peasants and workers. It is surely at least equally necessary, in view of the special position of the Saar Basin, to suppress appeals intended to excite the hatred of the inhabitants of German nationality against those of French nationality or vice versa.

The arguments which have been outlined above show the absolute necessity of taking certain steps to ensure the preservation of public order in the Saar Territory. The Chairman of the Governing Commission, who is responsible for the Department of the Interior, definitely states that, unless the Governing Commission arms him with the new powers for which he asks, he can no longer guarantee the preservation of order, or the safety of persons and property.

These powers would be new only in the Saar Territory.
The provisions of the attached Decree are merely an adaptation to the administrative system of the Saar Territory of the "Law for the protection of the Republic" enacted in Germany on July 31st, 1922.

The object of this law is the protection of members of the Republican Government of the Reich, or of any German State, against assassination by private individuals on their own initiative, or as a result of incitement by others or with the support of secret societies; against acts of violence which might be committed against them, and insults and slanders with which they might be attacked. In order to give full force to this law, provision is made for action against the Press, societies and meetings; publications of all kinds may be suspended, societies suppressed and meetings broken up. The competent Court to hear cases of crimes or offences covered by this law is the State Court of Justice, the members of which are appointed by the President of the German Republic.

We are of opinion that only slight modifications and a few deletions are necessary to adapt the Law of July 31st, 1922 to the special situation in the Saar.

The extension of a measure, regarded as indispensable by the German Reichstag, to the Saar Territory, the political institutions of which are even more artificial and delicate than those of the Reich, can scarcely occasion any surprise.

The Decree—modifying certain laws now in force—which is submitted for your consideration with the present report, will have to be presented later to the elected representatives of the people. In view, however, of its indisputably urgent character, it should be promulgated in the form of a provisional decree.

The Governing Commission is entitled to promulgate such provisional decrees in accordance with the terms of Article
63 of the Prussian Constitution, which reads as follows:

Should the preservation of public safety render it necessary, or should it become manifestly urgent that steps should be taken to improve a precarious situation - but in no other case - the Ministry of State is authorised to enact, on its own collective responsibility and in the absence of the Chambers, decrees having the force of law and conforming to the Constitutional laws. These decrees shall be submitted to the Chambers for approval at their first subsequent session."

It appears from this Article that in order to adopt a provisional decree the Governing Commission must:

1. Establish the manifest urgency of the measure.

The necessity for the immediate adoption of the measures embodied in the attached draft Decree has been shown in another part of the present report.

2. Conform to the constitutional laws.

The Governing Commission could not, for example, in proclaiming a new series of punishable offences, institute by provisional decree, a preliminary censorship of the Decree. Such a decision would be unconstitutional.

The Governing Commission may, however, while respecting the liberties secured by the Constitution, enact that, or from a certain date, a number of actions shall be regarded as offences, or, if they are already so regarded, shall be punishable by heavier penalties, and that such offences, by whomsoever and in whatsoever way committed, shall be suppressed.

Just as private individuals will be prosecuted if they are guilty of any of the offences dealt with in the draft Decree, so the Press, societies, organisers of meetings, etc., will be liable to the principal and subsidiary penalties laid down in the Decree if they do not observe the new regulations.
If this were not the case, the Press, societies, etc., would occupy an unduly favourable position as regards the penal law and would enjoy an immunity which would constitute a privilege that cannot be legally upheld.

That the provisions of the draft Decree are in no way unconstitutional is moreover sufficiently clear from the fact that on July 21st, 1922, the Government of the Reich enacted in the form of law, a similar series of regulations.

As the two above-mentioned conditions have been fulfilled, the Governing Commission is entitled to adopt a provisional Decree having, as is stated in the constitution, the force of law. This means that, legally speaking, the provisional Decree is equivalent to a law; it can be enacted in order to deal with any question, the settlement of which requires a law; it can modify or repeal laws now in force.

The suppression of certain offences can be ordered by provisional decree as by law; a provisional decree, like a law, can fix the principal and subsidiary penalties.

This principle, as it affects the Press and public meetings, is confirmed, by Article 4, No. 16, of the Constitution of the Reich of 1871. Under the terms of this Article, the power of legislation on these subjects belongs to the Reich, and consequently belongs, in the case of the Saar, to the Governing Commission.

It is clear from the foregoing statement that, confronted with certain situations, the Governing Commission may ordain by a final or provisional Decree that a certain number of actions will be regarded as offences, and may – in dealing with such offences, even by preventive police measures – order the dissolution of meetings or societies and the seizure and suspension of publications of all kinds.
The member of the Governing Commission responsible for the Department of the Interior, and the member of the Commission responsible for the Department of Justice, have therefore the honour to request the Governing Commission to promulgate the provisional Decree, the text of which is annexed to the present report.

(Signed)  V. FAULT

L. HOUTKAMP-HUITFELDT.