



Germany's Encounter With Islam - Legal and Theological Issues -

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Abstract

Today in Germany, Muslim communities have the right to build their own places of worship, to train their own ministers of religion and to organize religious education in schools. Muslim workers have the right to paid holidays during their religious festivals and to participate in the Friday prayers. A series of legal rulings generally allow the traditional ritual slaughter of animals on important Feast days and they may organise their religious life according to the prescriptions of the Quran. Some points of conflict between the state and the Islamic communities remain unresolved. One issue is the question of whether Muslim women and girls should be allowed to wear an Islamic headscarf as a religious symbol in public institutions such as state-run schools. Another fragile issue which is the focus of many discussions is the integration of Muslim children into the ordinary daily life of a school – in practice, into the ordinary life of Germany. Some Muslim parents believe they have a duty to shield their children from what they view as the malign influences of modern society and try to stop their children from participating in some obligatory curricular activities, including sport. German courts make an enormous effort to understand the principles of the new religion they are confronted with and to apply the principle of non-discrimination and parity to it. On the other hand it also expects Muslims to make an effort to integrate in the new society in which they have chosen to live and to show openness towards it. In Germany, freedom of religion means not only freedom to practise a certain religion but also the freedom not to practice any religion at all.

Key words: Germany, Islam, religion, society, social life.

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In the 1960's, the role of religion in society was discussed in the framework of the individualization of religious belief. By the 1990's the focus was changing towards the role and practice of freedom of religion in the public sphere.

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Now, in the first decade of the 21st century we are seeking means of legalizing freedom of religion in all its practiced forms. And we are finding that in a country like Germany where the system of "Staatskirchenrecht"¹ developed special forms of co-operation between the majority churches (the so-called Volkskirchen – the people's churches) it is not easy to integrate minority religions into a system which was not constructed for them.

The German system of state and church co-operation which was established in the 1919 Constitution of Weimar (Art 137 par 3) began to be developed in the 19th Century. It is characterized by offering the churches the right of self-determination and a crucial place in society. The Basic Law drawn-up after World War Two created a model of exclusive co-ordination of church and state as equal powers. But today this model is struggling to find a solution to the role to be played by the growing number of other religious communities in German society.

As part of the legal system of the European Union, Germany is required to respect freedom of religion according to Art.8 of the European Convention on Human Rights which sees it not only as an individual right but as a constitutional principle². Germany is obliged to respect the principles of freedom of religion and non-discrimination. Against this background we shall analyze various problems connected with the presence of Islam in Germany.

I. Short History of Islam in Germany

The history of Islam on the German territory did not start with the coming of the guestworkers in the 1960s, but much earlier. It is believed that the history of Islam in Germany dates back to the time of the Caliph Harun al-Rashid who established diplomatic relations with Charlemagne in 797 or 801. Each side is said to have guaranteed freedom of belief to the members of the other religion in their respective empires and to those who wanted to move from one empire to the other one. At that time most of the Iberian Peninsula was under the control of the Moors who ruled over this part of the world until the Reconquista which ended in 1492. The great conquest of Islam over Europe took place in 1453 when Ottoman Turks

1 Winter, Jörg, *Das Staatskirchenrecht in der Bundesrepublik Deutschland*, 2nd ed., Luchterhand, Köln, 2008; Czermak, Gerhard / Hilgendorf Eric, *Religions- und Weltanschauungsrecht. Eine Einführung*, Springer, Heidelberg, 2007; Campenhausen Axel von / De Wall, Heinrich, *Staatskirchenrecht*, Beck, München, 2006; Puza, Richard / Ihli, Stefan, *Religionen als "Motoren Europas"*, LIT, Münster, 2007; Classen, Claus Dieter, *Religionsrecht*, Mohr Siebeck, Tübingen, 2006.

2 Christian Walker "Religious Constitutional Law. A Comparative and International Perspective".



captured Constantinople (today Istanbul) and put an end to the Eastern Roman Empire and this final bastion of Christianity in Asia Minor. From here they expanded throughout the Balkans as far as Vienna and Islamized Bosnia and Albania.

One cannot talk about a real interaction with Muslims before the 17th century. The congratulations of Sultan Mustafa II Ghazi (1664-1703)³ to King Frederick I of Prussia on his coronation in 1701 led to open diplomatic relations between these two powers. During the reign of Frederick II (1712-1786) tolerance towards other religions was shown in reference to the state and civil rights of Catholics: "All religions must be tolerated and the crown must ensure that none is detrimental to the other, for each must be allowed to worship in their own way... all religions are equal and good when the people who profess them are honest people; and should Turks and heathens come to populate the land, we shall endeavor to build mosques and churches for them"⁴. Frederick II also established diplomatic relations to the Sublime Porte and on Nov 9, 1763 the first Turkish envoy, Ahmed Resmi Efendi was sent to Berlin. Wilhelm II continued his good relations with the Ottoman Empire and during WW I the Germans and the Turks were allies. The Muslim soldiers of the Triple Entente were accommodated in camps in Wünsdorf near Berlin where they were provided with the first wooden mosque in 1915 (demolished in 1930).

The first Berlin Islamic Community was founded in Berlin in 1922 in order to promote Islam and built a mosque. The Ahmadiis established a mission in Berlin in Wilmersdorf from 1923-1928 and built here a large mosque⁵. The number of Muslims in Germany began growing with the arrival of so-called guest workers: Turks (from 1961), Moroccans (from 1963) and Tunisians (from 1965).

³ The Treaty of Karlovitz of 1699 under which the Empire lost Hungary marked the beginning of the decline of the Ottoman Empire. In these circumstances the Sultan sought to improve relations with European leaders.

⁴ In a 1740 note on the question whether a Catholic was allowed the citizenship of a Prussian city.

⁵ The Ahmadiyya Mosque is now the oldest building of its kind in Germany. Modelled on the burial mosques of the Mogul princes of India, and designed by the Berlin architect K.A. Hermann. The 32 meter high minarets were built after the women of the community sold their jewelry and donated the profits. The mosque was badly damaged in the WW II. Both Indian and British military authorities were involved in the reconstruction of the mosque and it was not until 1993 that the building was put under a preservation order. At the end of the 1990's, the adjacent house was redeveloped and one of the minarets rebuilt.



II. Muslim Associations

1. Introduction

Since Islam does not have any other organisational structure other than the Islamic community comprising all Moslems, the "Umma"⁶ it was difficult for the immigrants from traditional Islamic countries to create structures to promote their special religious interests in a non-Islamic environment. It was mainly in the early 1970s that Islamic communities and associations emerged and were formed in Germany. Most of them have the legal form of a non-profit registered association (rechtsfähiger Verein) according to §21 of the Civil Code). Other possible forms of association are trusts, political parties or commercial associations.

With regard to the associations of Muslims in Germany one should keep in mind two important points: Even though the associations represent the interests of Muslims, it is estimated that only 10-15 per cent of Muslims living in Germany are integrated into one of these associations. Secondly, these associations display the multitude faces of Islam: they not only represent theological schools such as the Shia, the Sunni, the Alevites and the Ahmandiyya but also many smaller groups. Also, the associations are organized according to the nations they represent⁷.

These distinctions make it difficult to refer to "the Islam" in Germany. The existence of a multitude of groups with specific theological and political interests is a sign of real multiculturalism but it also makes it difficult for the German authorities to find a discussion partner which is involved in all issues. Moreover some of the Islamic groups do not recognize other Islamic groups as being real Muslims (in regard to Alevites and Ahmandiyya) and even refuse a dialogue with them. Even the "Islamkonferenz" founded in 2006, which includes many of these groups, was unable to develop a unitary view on important issues regarding the Muslim presence in Germany.

According to statistics published by REMID in 2008 there are around 3.5 Muslims in Germany, of whom about one million have German citizenship and about 15,000 are of German origin (converts). According to this source there are around 2.6 million Sunnis, some 400,000 Alevites, about 225,000 Turkish Shiites and Iranian Imamites, 50,000 Ahmadiyya, 10,000 Sufi and 1,900 Ismaelites. The same source mentions the following membership of Islamic Associations: DITIB 150,000; IR 136,000;

⁶ Ulf Matyseek, Zum Problem der Trennung von Religion und Politik im Islam, in: *Der Islam im öffentlichen Recht des säkularen Verfassungsstaates*, Hg. Stefan Muckel, Duncker & Humblot, Berlin, 2008, 164-166.

⁷ Silvio Ferrari / Anthony Bradney (eds): *Islam and the European Legal System*, 2000.



IGMG 26,500; VIK 20,000, Nurculuk 12,000; ZMD 12,000; Islamische Gemeinschaft Jama't un-Nur 6,000; ATIB 1,300; Islamische Gemeinschaft in Deutschland 1,300 and the State of the Caliph, which is said to have had about 7,500 members before it was banned in 2001⁸. Turks form the biggest Muslim minority followed by 167,000 from Bosnia-Herzegovina, 116,000 from Iran and 81,000 from Morocco⁹. Of the Turkish population about 80% are Sunnis, 15% Alevis and about 4% Shiites.

However these figures should be accepted with reservation since the Muslim Associations say they are not accurate and there are more Muslims in Germany than is stated in these statistics. The Muslim Associations estimate the total number of Muslims living in Germany to be around 4-5 million.

The main goal of the Muslim Associations is to obtain recognition as a public corporation (*Körperschaft öffentlichen Rechts*)¹⁰. Some privileges are connected with this status: in regard to taxes, in participation in the public life of Germany and in regard to receiving assistance from the German state¹¹. Until now no Muslim organisation has been granted this status which is enjoyed by other religious organizations – such as the Roman Catholic church, the Evangelical church, several Orthodox Churches (Russian Orthodox church, the Greek Orthodox church, the Romanian Orthodox church) and the Jewish Community¹².

Under Art. 137 sect. 5 §2 of the Constitution of Weimar (*Weimarer Reichsverfassung – WRV*) every religious community seeking this status must offer a guarantee of permanence through its constitution and the number of its members. The guideline used for the size of membership is the population of the German province. Generally, the community should have been in existence for 30 years and it must have sufficient financial resources to carry out its duties.

⁸ Militant, extremists groups like Hamas, Gia, Hizbollah, Hizb ut-Tahrir, Khatm-e Nabuwwat, Muslim Brotherhood a.o. will not be mentioned in this essay. The Ministry of Interior knows that these groups have some structures in Germany but the majority of Muslims living in Germany do not have any connections with them.

⁹ Sen/Aydin, *Islam in Deutschland*, 2000, 15.

¹⁰ Axel Freiherr von Campenhausen, *Körperschaftsstatus der Kirchen und Religionsgemeinschaften*, ZevKR 46 (2001), 165.

¹¹ Solte, in: Lisl/Pirson (ed), *Handbuch für Staatskirchenrecht der Bundesrepublik Deutschland*, vol I, 2nd edition, 1995, 418 – 423.

¹² Other denominations which have been granted such status are: the Mormons, Seventh Day Adventists, Mennonites, Baptists, Methodist, Christian Scientists, and the Salvation Army. The Christian denomination Yehovas' Witnesses has been fighting for many years in courts to obtain this status. After many debates the Federal Constitutional Court finally granted them this status in 2000.



These conditions were set down more concretely in 2000 in a judgment of the Federal Constitutional Court (*Bundesverfassungsgericht*)¹³. Another condition which must be fulfilled is adherence (in the sense of faithfulness / *Treue*) to the German legal system and the German constitution (Art. 140 of the Basic Law in conjunction with Art. 137 of the WRV). Hence there must be a guarantee that the organisation's future behaviour will not jeopardise the fundamental constitutional principles set out in Art. 79 sect. 3 of the Basic Law such as the state protection of the fundamental rights of third parties and the basic principles of freedom of religion and of the *Staatskirchenrecht* as established in the Basic Law. These also include the rule of law and democracy.

The Basic Law also guarantees freedom of religion (Art 4) and freedom of organisation (Art 9). Due to the neutrality of the German State in regard to religion these freedoms are not restricted to Christian faiths. However the neutrality of the German state should not be compared with a strict laicism like that in France. Moreover in Germany a system of cooperation and support¹⁴ exists between the state and the religions.

The majority of the Moslems living in Germany come from Turkey and they have the highest level of organised infrastructure. These associations are the largest in numerical terms and will be described in detail. Arab Moslems of a Sunni persuasion, and Shiites from Iran and the Lebanon are usually organised in "Islamic Centres" or "Islamic Communities", e.g. the *Islamische Zentrum Hamburg*, which represents Iranian Shiites in Germany. Bosnian, Arab, Albanian and Afghan Moslems and those from other Islamic countries all have their own organisations which are part of a pan-European network.

2. Associations of the Turkish Islam

2.1. **The DITIB (Diyanet İşleri Türk İslam Birliği**¹⁵) represents an arm of the official Turkish institution in charge of religious affairs, the Diyanet. The DITIB is among the most influential associations of Turkish Muslims in Germany. Due to its affiliation it is closely bound to the Diyanet İşleri Başkanlığı (the Presidency for Religious Matters) which in turn is subordinated to the Turkish Prime Minister and is financed by the Turkish budget¹⁶. Its duties include the publishing of religious literature, edit-

¹³ Federal Constitutional Court, Press Release no. 159/2000 of 19 December 2000 or Judgment of 19 December 2000, Az. 2 BvR 1500/97.

¹⁴ Richard Puza/ Norman Doe, Religion and Law in Dialogue. Covenantal and Non-Covenantal Cooperation between State and Religion, Peeters, 2006.

¹⁵ Turkish-Islamic Union for Religious Affairs. Also see: www.ditib.de (DITIB).

¹⁶ Compare: Feindt-Riggers, Nils/ Steinbach, Udo: *Islamische Organisationen in Deutschland. Eine aktuelle Bestandsaufnahme und Analyse*, Hamburg, 1997, 16-17.



ing exemplary sermons, the administration of mosques, paying the religious personnel, organising courses in Quranic studies and organising pilgrimages¹⁷. The Diyanet (DIB) is expected to support the principle of laicism and to foster national solidarity and unity without becoming involved in political matters. In contrast to its own rules the Diyanet has developed over time into a strong institution of control over Islamic activities and of support for the Islam of Sunni orientation. For example, for many years the DIB denied the existence of Alevis in Turkey and contributed to their ideological persecution¹⁸. In recent years the attitude of the DIB has changed and its officers (mainly conservative theologians) now seek a dialogue with this Turkish minority. One can see from this short presentation that the DITIB is dependent on the policies of the Diyanet and indirectly to the political orientation of each Turkish government. Even the President of DITIB for Germany is selected in Ankara¹⁹. The ministers of religion of the DITIB are named by the Diyanet and are coordinated by the General Consulates in Germany. The first organization of the Diyanet in Germany appeared in Berlin in 1982. It was created by the Turkish state as part of an effort to counteract anti-laicist and anti-kemalist propaganda among Turkish immigrants²⁰. The present DITIB emerged out of this smaller association and was officially founded in Köln in 1984. According to its own statements, DITIB is made up of some 840 smaller associations and represents the interests of around 70 per cent of the Muslims of Turkish origin in Germany. DITIB is actively involved in the Christian-Muslim Dialogue, which many view as basically a dialogue between Germans and Turks²¹.

¹⁷ Spuler-Stegemann, Ursula, in : Ende Werner /Steinbach Udo (eds), *Der Islam in der Gegenwart*, 1996, 241; Thomas Traub, *Der Islam im Völker- und Europarecht*, in Stefan Muckel (ed), *Der Islam im öffentlichen Recht des säkularen Verfassungsstaates*, Duncker & Humblot, Berlin, 2008, 218-220.

¹⁸ Spuler-Stegemann, Ursula, in : Ende/Steinbach (eds), *Der Islam in der Gegenwart*, 245.

¹⁹ Spuler-Stegemann, Ursula: *Muslimen in Deutschland. Nebeneinander oder Miteinander?*, Freiburg u.a., 1998, 112.

²⁰ Heinz Klautke, *Glauben in der pluralistischen Gesellschaft*, in: Rainer Isak / Hansjörg Schmid (eds), *Christen und Muslime in Deutschland*, Freiburg, 2003, 74.

²¹ Heinz Klautke, *Glauben in der pluralistischen Gesellschaft*, in: Rainer Isak / Hansjörg Schmid (eds), *Christen und Muslime in Deutschland*, Freiburg, 2003, 74.74.



2.2. The IGMG (Islamische Gemeinschaft Milli Görüs²²) is the second most important association of Turkish Muslims. Its founding was rather complicated and it reached its present status only in 1995. Its first organisation was founded in Köln in 1976 as the Türkische Union Europa e.V., which in 1982 was renamed the Islamische Union Europa e.V. In 1984 a group under the leadership of Camaleddin Kaplan split from this organisation and formed the İslami Cemaat ve Cemiyetler Birliği – Verband der Islamischen Vereine und Gemeinden e.V. Because of this split the association could no longer function but was reborn as Avrupa Milli Görüs Teskilatların – Vereinigung der neuen Weltsicht in Europa e.V.

The *Avrupa cami yapma ve Yasatma Birliği* E.V. (Europäische Moscheenbau-und-Unterstützungsgemeinschaft) is also integrated in IGMG. According to its own statements the IGMG consists of 323 local associations and has around 87,000 members. It also claims to have up to 300,000 non-registered members²³. However it is difficult to obtain a clear insight into the membership of this association and its activities. The IGMG was under observation by the German domestic intelligence service because of its ties to the Refah Partisi which was in conflict with the authorities in Turkey because of its anti-Semitic statements and instigation to violence²⁴.

2.3. The VIKZ (Verband der Islamischen Kulturzentren²⁵) has Sufism as its ideological orientation. It was founded in 1973 as an umbrella organisation for already-existing associations throughout Europe (the Netherlands, Belgium, France, Switzerland)²⁶. It claims that its membership includes 300 communities and 160 smaller institutions. The VIKZ has been accused of indoctrinating its members and of wanting to erect its own “state” in Germany. For this reason it was not granted the status of a corporation of public right. Some analysts place it alongside the Sufi movement Süleymanci, founded by the preacher Süleyman Hilmi Tunahan, the son of a Nakshibendi Sheikh who stresses the special meaning of the teaching and recognition of the Quran as the only authority in the life

²² Literal meaning: „national view“. The IGMG explains its name as a community-- related to the quranic meaning of the arabic concept „millet“. The concept milli görüs was part of the political-religious program of the former Prime Minister Necmettin Erbakan, who resigned in 1997. He founded the party Milli Selamet Partisi in 1972, which was banned; in 1983 the party Refah Partisi was founded but this too was banned by the Turkish Constitutional Court. The ideas of these parties were taken up by the Fazilet Partisi (Party of Virtue) founded in 1996 under the leadership of Recai Kutan. Information from: Bundeszentrale für Politische Bildung (ed): Türkei. Informationen zur politischen Bildung Nr. 277, 2002, 12-17.

²³ Lemmen, Muslime in Deutschland, 79; Spuler-Stegemann, Muslime in Deutschland, 121.

²⁴ <http://baden-wuerttemberg.de/verfassungsschutz/inhalt.php?ID=573.16>. On antisemitic statements see the homepage: www.harunyahya.org/de/autor.html.17

²⁵ www.vikz.de the Association of Islamic Culture Centers (VIKZ).

²⁶ Metin Gür, Türkisch-Islamische Vereinigungen, Frankfurt, 1993, 50.



of the people²⁷. The Süleymanci movement was founded in the course of the secularization of the Turkish state when many Sufi monasteries were expropriated. The concentration of its members on the teaching of its preacher as the sole way to acquire knowledge led them to deny the principles of the newly-emerging secular Turkish state. In the 1950's the movement began to play a real role in Turkey²⁸. In Germany the organization has a double leadership -- in the administration and in spiritual guidance, which is united in the person of the President. The members of this association see themselves as "the elected and illuminated ones" and as "the ones who keep the tradition of classical Islam." This approach led them to develop a kind of secret code accessible only to their own members. In the beginning the organization was very open for dialogue. In 2000 it even created in Cologne the Islamic Academy *Islah* in the "Villa Hahnenburg" whose goal was fostering the Christian-Islamic Dialogue. However the academy closed after two years. In 2000 the VIKZ withdrew its participation in the Zentralrat der Muslime in Deutschland.

3. Umbrella Organisations

3.1 The Zentralrat der Muslime in Deutschland (ZMD)²⁹ is a multi-ethnic umbrella organization for 18 associations³⁰ according to the German authorities but 19 according to their own statement. It was founded in 1995 in Köln and presented itself as a reliable discussion partner for the German state until internal contradictions led to one of its members, the VIKZ, leaving the organization in 2000. In 2000 the ZMD moved its headquarters to Eschwege. The ZMD defines its goal as the creation of an Islamic identity in Europe which can help Muslims to become equal partners with the traditional religions of Europe. The ZMD formulated the Islamic Charter³¹, which describes the relationship of

²⁷ Gertientje Jonker, *Eine Wellenlänge zu Gott*, Bielefeld, 2002.

²⁸ Gür, *Türkisch-islamische Vereinigungen*, 51; Lemmen, *Muslimische Organisationen*, 65.

²⁹ www.zentralrat.de

³⁰ Some of its members are: ATIB (Avrupa Türk-Islam Birliği – Union of the Turkish-Islamic Cultural Associations in Europe the only Turkish association in the ZMD), the Islamic Center in Aachen, the Islamic Center in Munich, the Shiite Islamic Center in Hamburg, the German Muslims belonging to the House of Islam, the Muslim Student Organisation, The German-Muslim Liga in Bonn, the German-Muslim Liga in Hamburg and several Bosnian and Albanian organisations

³¹ Islamic Charta: 16-18. Nr 11: „Ob deutsche Staatsbürger der nicht, bejahen die im Zentralrat vertretene Muslime daher die vom Grundgesetz garantierte gewaltenteilige, rechtsstaatliche und demokratische Grundordnung der BRD, einschließlich des Parteipluralismus, des aktiven und passiven Wahlrechts der Frau sowie der Religionsfreiheit. Daher akzeptieren sie auch das Recht, die Religion zu wechseln, eine andere der gar keine Religion zu haben. Der Koran untersagt jede Gewaltausübung und jeden Zwang in Angelegenheiten des Glaubens; Nr 12 Wir zielen nicht auf Herstellung eines klerikalen Gottesstaates ab; Nr 13: Es besteht kein Widerspruch zwischen der islamischen Lehre und dem Kernbestand der Menschenrechte; Nr. 14: Die europäische Kultur ist vom klassisch griechisch-römischen sowie jüdisch-



Muslims to the German state. According to the Charter there is a compatibility between Islam and human rights. Although the ZMD does not have many members it is one of the most representative Islamic organization in Germany, especially through the personalities it attracts (e.g. the Secretary General Dr. Ayyub Köhler).

3.2 Islamrat der Muslime in Deutschland (IR)³² was founded in Berlin in 1986 with the goal of co-ordinating the activity of Islamic religious communities throughout Germany³³. The IR wants to unite all Muslims in Germany, to contribute to the introduction of Islamic religious instruction in schools and to persuade the state to accept it as a corporation of public law. The main ideological stream in the IR is "Milli Görüş". The administrative centre of the IR is to be found in Soest and its several presidents worked for centres of the IGMG. It has cultural and political interests and is also involved in financial and economic activities.

3.3 Koordinationsrat der Muslime in Deutschland (KRM)³⁴. On March 28, 2007 the four big organizations: DITIB, IR, VIKZ and ZMD were united under this umbrella organization. It wants to constitute "a binding road map to put Islam on an equal footing" with Christianity in Germany. This concept of an "equal footing" could lead to the introduction of Islamic instruction in German public schools or even the titling of Muslims through the German tax office³⁵. The Koordinationsrat claims to represent the interests of an estimated 3.2 million Muslims living in Germany; in other words about 85 per cent of German "mosque associations". The organisation's short-term goal is to be at least recognized as a religious association. This basic federal recognition, which is not the same as public corporation status, would at least allow the organisation of religious classes for Islamic children. Milli Görüş, which has long been under observation by Germany's domestic intelligence agency, is not among the founding members of the KRM. However it is indirectly associated with it because it is an influential member of the Islamic Council.

christlich-islamischen Erbe und der Aufklärung geprägt. Sie ist ganz wesentlich von der islamischen Philosophie und Zivilisation beeinflusst.

³² www.islamrat.de

³³ The IR consists mainly of the IGMG and its subordinate organisations which do not officially admit that they are connected with Milli Görüş: Europäische Moscheebau und – Unterstützungsgesellschaft, Internationale Humanitäre Hilfsorganisation e.V., Selpa Lebensmittelhandel, Islamische Union Europa, Muslimischer Sozialbund, Gesellschaft Muslimischer GeisteswissenschaftlerInnen, Institut für Internationale Pädagogik und Didaktik, Detuschsprachige Islamische Frauengemeinschaft, Muslimische Studentenvereinigung Deutschland and many other Islamic Federations.

³⁴ www.islam.de

³⁵ German Jewish organisation have received funding since 2003.



4. Minorities Associations

4.1. The Alevi. The history of the Alevi can be traced back to the 14th-15th century in Persia when an order of the dervishes emerged under the dynasty of the Safavides. After the growth of Ottoman power and of Sunni-islam the Alevi became a movement of opposition to the leading class of those times. The leader of the community is called Dede and is a person of special knowledge and wisdom. The Alevi rely on a common spiritual experience which is reflected in their rites³⁶. The teaching of the Alevi can be integrated into a Sufi and Shiite context as they emerged in a syncretic environment. They consider themselves Muslims but do not recognize the authority of the Quran, of the Sharia or of the Five Pillars of Islam and they add to the confession of faith the statement "Ali is the friend of God".

Their main aim is the fulfillment of the human person into a perfect being and the recognition of the "Holy Power" which expresses itself in the recognition of God and rationality³⁷. The first communities of Alevi in Germany were formed as "Workers Unions" in the 1970's. These were politically orientated towards the Birlik Partisi³⁸. In 1979 they emerged into the "Federation of Patriotic Union" and the first local organizations were founded in the 1980's. In 1988 an Alevi cultural center was founded in Hamburg and 1992 saw the foundation in Köln of the *Almanya Alevi Birlikleri Federasyonu - Föderation der Alewitischen Gemeinden (AABF)* which stresses its support for the neutrality of the state³⁹. 1990 saw the foundation in Mainz of Die Vereinigung der Aleviten-Gemeinde e.V which was renamed in 1994 as *Avrupa Alevi Birlikleri Federasyonu (Föderation der Alevitengemeinden in Europa)*. Its goal is to achieve the recognition of the Alevi communities in Turkey. They believe they are attacked by the Sunnis who want them to convert to a Sunni Islam⁴⁰. An expression of this attempt to convert them was the opening of the Turkish foundation CEM (Republikanisches Stiftungszentrum für Bildung und Kultur) which has a headquarters in Germany which aims at persuading Alevi intellectuals to join a Sunni Islam and so weaken their own organizations⁴¹.

³⁶ Vorhoff, Karin: Zwischen Glaube, Nation und neuer Gemeinschaft. Alevitische Identität in der Türkei der Gegenwart, Berlin, 1995.

³⁷ Gülcicek, Ali Duran: Der Weg der Aleviten, Köln, 1996. Also: www.alevi.com

³⁸ Kaplan, Ismail: Avrupa'da Alevi Örgütlenmesine Bakis (Die Organisation der Aleviten in Europa), in: Engin I / Franz E (Hg), *Aleviler / Alewitin*, Bd3, Hamburg, 2000. German summary on pages 259-260.

³⁹ www.alevi.com

⁴⁰ Spuler-Stegemann, Muslime in Deutschland, 55.

⁴¹ Lemmen, Muslime in Deutschland, 99- 105.



4.2. The Ahmadiyya-movement⁴² represents a special form of the Indian-Pakistani Islam. Its founder, Mirza Ghulam Ahmad (born 1835) saw himself as being sent by God to preach that he was both the Jewish-Christian messiah and the Shi'ite Mahdi in one person. After Mirza Ghulam's death in 1908, the movement split into two sub-sects. One group maintained his doctrines and considered him a "prophet" but not a law-prescribing prophet. The other group held Mirza Ghulam to be a "renewer" only and did not wish to lose solidarity with the rest of the Islamic world. It became involved in anti-imperialist politics. In a controversial decision in 1974 the Pakistan parliament ruled that the Ahmadis are not a Muslim minority⁴³. The first Ahmadi mosque in Germany was founded in 1924 in Berlin-Wilmersdorf. After World War Two a missionary center was founded in Hamburg but since 1969 their main headquarters has been in Frankfurt. Since 1988 they have been organized as Ahmadiyya-Muslim-Jamat⁴⁴. According to their own estimates they have between 20,000-60,000 members and 32 mosques. They have their own publishing house Der Islam and publish several magazines, including "Der Islam" and "Weisses Minarett".

4.3 Nurculuk⁴⁵ is a form of religious order even though it does not define itself as such. The community was founded in 1923 by the Turkish politician Said Nursi (1876-1960) who did not agree with Atatürk's vision of a secular state on the Western model. At the same time he believed that Islam was compatible with modern philosophical movements and technology. Later he preached an Islam open to modern society. The community Jamaat un-Nur (Islamische Gemeinschaft Jamaat un-Nur) was founded in Köln in 1979. It does not have its own mosques but operates about 120 religious schools (after the model of the Ottoman Medresses) around Germany⁴⁶. The association is hierarchically structured and all male members willing to live a celibate life for up to 10 years have a good chance of becoming part of the hierarchy controlling the organization⁴⁷.

⁴² Smith, Wilfred Cantwell: Ahmadiyya. Encyclopedia of Islam, 1960, 301-303.

⁴³ Ahmad Munir: Ausschluss der Ahmadiyya aus dem Islam. Eine umstrittene Entscheidung des pakistanischen Parlamentes, *Orient* 16 (1975), 112-143.

⁴⁴ www.ahmadiyya.de

⁴⁵ Karpat, Kemal: Nurculuk, Encyclopedia of Islam, vol. 8, 136-138.

⁴⁶ Duße Elke: Nurculuk, Jamaat an-Nur, in Grübel Nils/ Radmacher, Stefan: Religion in Berlin, Berlin, 2003, 356.

⁴⁷ Spuler, Ursula: Zur Organisationsstruktur der Nurculuk-Bewegung, in: Römer, Hans R. / Noth, Albrecht (Hg): Studien zur Geschichte und Kultur des Vorderen Orients. FS für Bertold Spuler zum 70. Geburtstag, Leiden, 1981, 423-442.



5. Sufi Orders

5.1. Naqhsibandiyya is a prominent Sufi order founded by Muhammad Baha ad-Din Naqshband of Bokhara (1317-1389)⁴⁸. The principal spiritual method of the Naqshbandis is dhikr ("invocation") with the heart, in other words silent mystical meditation. In Germany we find representatives of two of the Naqhsibandiyya traditions. The leader of one group, the Haqqani-Tariqa is Nazim Adil al-Haqqani (born 1922). Muhammad is the centre of their belief: through him they come nearer to God⁴⁹. The group's centre is at the Osmanische Herberge in the Eiffel which was founded in 1996 with the goal of helping people develop into new Ottomans⁵⁰.

The second group is linked to Sheikh Muhammad Raschid who died in 1933 at Menzil in Turkey. They call themselves Menzilci. They are more religious than the first tradition and can also be radical. In Germany they are structured in local Derqah associations (similar to monasteries) and have around 750 members. Their centre is the *Fatih Glaubens-und Kulturzentrum GmbH* in Castorp-Rauxel⁵¹.

5.2. Mevleviye is a Sufi order in Turkey founded by the poet Jalal ad-Din ar-Rumi (died 1273). Members of this order are sometimes called "Whirling Dervishes" in the West because part of their method of spiritual realization consists of dancing to flutes and drums. His followers call the founder "Maulana" (arab. Our Master) which gave the movement its original name-- Maulawiyya. It was later changed to Mevleviye⁵². In 1273 the son of ar-Rumi founded in Konya a mystical order which functioned there until 1923 when it was forbidden like all other mystical orders in Turkey. Since then its headquarters have been in Damascus but there is no central leadership of the order. In the 1950's the Turkish government legalized the order as an "association".

In Germany the headquarters of the Mevleviye order is in Trebbus⁵³, where there is a dervish monastery, an Institute for Islamic studies and the Sufi archive. The order is conducted by a German convert, Abdullah Dornbach, who offers courses in meditation. There is another

⁴⁸ Algar, Hamid/ Nizami, Khaliq Ahmad: Nakshbandiyya, in: Encyclopedia of Islam, vol. 7, 934-939

⁴⁹ Böttcher, Annabelle/ Schemeit, Markus: Naqschbandiyya/ Tariqa Naqschbandiyya – Einleitung, in: Grübel, Nils/ Rademacher, Stefan (Hg): Religion in Berlin. Ein Handbuch, Berlin 2003, 352-373.

⁵⁰ Spuler-Stegemann, Muslime in Deutschland, 138.

⁵¹ Spuler-Stegemann, Muslime in Deutschland, 137.

⁵² Yazici, Tahsin: Mawlawiyya, in: Encyclopaedia of Islam vol. 6, 883-887.

⁵³ Schemeit, Markus: Mevleviyye/ Tariqat Mevleviyye, in: Grübel, Nils/ Rademacher, Stefan (Hg): Religion in Berlin, Berlin, 2003, 355.



Mevleviye group in Germany, the Hazret Mevlana Foundation led by Süleyman Wolf Bahn, which does not have many followers.

6. The Association “Kalifatstaat” (the Caliphate State)⁵⁴

The radical Islamic movement known as the “Kalifastaat” was founded by the Turkish-born Metin Kaplan who came to Germany in 1983. The movement, based in Köln, was declared illegal in December 2001 because it was considered to endanger the constitutional order, Germany’s internal security and to incite hatred among groups of citizens. Kaplan was deported back to Turkey in 2004 and in 2005 was sentenced to life imprisonment for plotting against the Turkish State.

In Germany the “Kalifastaat” understood itself as a real state based on the will of Allah and on Islamic law. In its own view it was a proper statal power with its own constitution and legal system and a political leader – the Caliph Metin Kaplan. Germany’s Federal Administrative Court approved the ban on the “Kalifastaat” in two separate hearings. It considered that this religious community expressed itself aggressively against democracy⁵⁵, the state of law, against human dignity and against the constitutional order of a state. Islamic organizations in Blumberg, Bad Kreuznach and Braunschweig were also banned because of their relationship with the “Kalifastaat”. Their appeals to the Administrative Court were rejected and the organisations dissolved.

7. Die Deutsche Islamkonferenz⁵⁶

In September 2006 the German Interior Minister Wolfgang Schäuble convened a conference between German specialists and Islamic organizations. Schäuble said the goal was to improve the religious and social integration of Muslims in Germany while requiring complete acceptance of Germany’s liberal democracy. Follow-up meetings were held in 2007 and 2008 and officials say others are expected to follow at regular intervals. The discussions involve 15 negotiators on either side. Five of the Muslim negotiators represent Islamic associations and the other 10 represent non-organised Muslims. In March 2009, a German Interior Ministry official, Wolfgang Bosbach, told a questioner: “it is worth the effort (Ja, die mühe lohnt sich). He stressed that the German side is cooperating not just with

⁵⁴ Federal Administrative Court: Press Release Nr. 44/2002 of 27. November 2002

⁵⁵ In November 2000 the “Caliphate state” issued the death penalty against the so-called “false Caliph”. This imposition of the death penalty was confirmed by the Muslim Regional Court in Düsseldorf. In the same time “citizens” of this “state” used defamatory statements against Turkish politicians and Jewish population.

⁵⁶ www.bmi.bund.de/nr_1018358/Internet/Content/Nachrichten/Pressemitteilungen/2006/Einzelseiten/ Islamkonferenz_Kurzinfo.html



representatives of Islamic organizations but also with important personalities of Islamic culture. Bosbach said it was this continuing dialogue which made the conference so important.

The negotiators are meeting in four working groups. Some German officials have told journalists they feel the representatives of orthodox Islam have won a domineering role even though they represent a minority of Muslims in Germany. Another German official, Marcus Kerber, says he is optimistic that sooner or later a binding agreement will emerge. Until now it has not been achieved.⁵⁷

III. Dress Code Prescriptions

1. The Headscarf as a Religious Symbol in Society

Symbols have always played a major role in all religions in trying to explain what could not be explained rationally. Whether it is a crucifix, a Jewish skullcap, a headscarf, traditional clothing, a candle or an icon it is undeniable that symbols project a new perspective on the object they signify. A purification of any religion from its symbols would make that particular religion so much poorer in depth and tradition.

The use of religious symbols in modern, secular states has lately given rise to major controversies since modern states try to ensure a balance between neutrality and religious belief within their borders. In countries where there is a strict separation between church/religion and the state – such as the USA or France – this can be achieved in a different manner than in Germany where the main recognized churches are perceived by the state as a public force and other religions also aim at obtaining this status in society.

Islam has clothing prescriptions for both men and women. While the prescriptions for men are not very different to Western traditions women are asked to dress according to the prescription of the Quran (Sura 24, 31f and Sura 33,53.59)⁵⁸. However every legal school interprets these prescriptions in a different way.

⁵⁷ France began a similar project in the 1990's. Unfortunately it did not meet its goals because the organizer, the French government, was unable to involve the entire spectrum of Islamic organizations in the conference. See: J. Branine/M. Renard, *Bilan d'une introuvable représentation, Islam en France 1* (1998), 1-22. A similar attempt was made in Belgium where the government tried to create an Islamic body with whom they could negotiate based on the principle of proportionality and nationality. In this way the compact religious groups were split according to nationality which created huge problems. See: Lionel Panafit, *Quand le droit écrit l'Islam*, Bruxelles, 1997.

⁵⁸ Mathias Rohe, *Islam – Alltagskonflikte und Lösungen*, 2ed, 2001, 144ff.



In Germany the major issue regarding clothing prescriptions was the wearing of a headscarf. Even calling the headscarf a “symbol” can be a source of dispute and controversy⁵⁹. Whether it is obligatory for a woman to cover her head according to the prescriptions of the Quran is not always interpreted in the same way by experts in Islamic law. It does not lie within the scope of this article to go deeply into the Quran exegesis on this matter. National or cultural traditions obviously play a major role in determining the interpretation of this issue.

However, irrespective of the Quran exegesis, in western countries the wearing of a headscarf or chador in public and in public buildings is protected through the human right to the free development of personality and the guarantee of the freedom to practice a religion. Therefore the question which arises is not necessarily the meaning of the symbol but the extent to which adherents of various religions should be permitted to display symbols in public when they are involved in state educational training.

1.1 Headscarf in Schools

In Germany the controversy over the wearing of the headscarf reached its high point with the case of Fereshta Ludin⁶⁰, a woman Muslim teacher born in Afghanistan who was denied employment as a teacher in the province of Baden-Württemberg because she wanted to wear her headscarf in the classroom. In September 2003 the Constitutional Court found her complaint to be valid⁶¹. It ruled that the issue could not be solved under the existing legal situation and that each of Germany's 16 provinces (Länder) must introduce an appropriate law⁶².

Following the Constitutional Court decision, half of the provinces – Bavaria, Berlin, Bremen, Baden-Württemberg, Lower Saxony, North Rhine-Westphalia, Hessen and Saarland – now have laws prohibiting public school teachers (and other civil servants in several provinces) from wearing the headscarf at work. The other eight German provinces have no such restrictions. Some of the laws allow some exemptions for Christian and “Western” cultural traditions.

⁵⁹ Janbernd Oebbecke, Das „islamische“ Kopftuch, in: Stefan Muckel (ed), Kirche und Religion im sozialen Rechtsstaat, FS Wolfgang Rübner, 2003, 593-595; Sonja Rademacher, Das Kreuz mit dem Kopftuch. Wieviel religiöse Symbolik verträgt der neutrale Staat?, in: Veröffentlichungen der Potsdamer juristischen Gesellschaft, Bd. 8, 2005.

⁶⁰ Rüdiger Zuck, Nur ein Kopftuch? Die Schavan-Ludin-Debatte, NJW 1999, 2942-2950.

⁶¹ September 24, 2003.

⁶² A detailed analysis of this issue in: Nina Coumont, Islam und Schule, in: Stefan Muckel (ed), Der Islam im öffentlichen Recht des deutschen Verfassungsstaats, 2008, pp 440-484.



The Constitutional Court also ruled that according to Art. 33, Para. 2 of the Basic Law every German citizen has equal access to every public office according to his/her eligibility, ability and professional qualifications. It acknowledged that the exercise of a fundamental right, such as the right to freedom of religious expression by a civil servant while at work, can be limited by the general demands of the position or by the special requirements of the public office in question. At the same time, the equality of access to employment in the civil service could be limited by subjective acceptance criteria as provided, for example, in the Law on Guidelines for Employment in the Civil Service (*Beamtenrechtsrahmengesetz*) and the Laws on State Civil Servants (*Landesbeamtenengesetzen*)⁶³. According to the Constitutional Court the lawmaker has a wide range of possibilities to set the criteria.

Another case which has to be mentioned is that of a 58-year-old German schoolteacher in Baden-Württemberg, Doris Graber, who converted to Islam in 1984 and in 1995 began wearing a headscarf in her classroom. In December 2004 she was ordered by the local education authorities to stop doing so.

She went to court and won a temporary victory in 2006 when the Administrative Court Stuttgart⁶⁴ accepted her argument that three nuns who taught at a particular state school were permitted to wear their religious habits while teaching and she should be treated in the same way on the grounds of religious equality. But this ruling was overturned by a judgment of the Administrative Court Mannheim on March 18 2008 which ruled that she was violating her obligation to keep religious expression out of the classroom. The court said the ban on her wearing a headscarf fully complied with the Basic Law. The authorities acknowledged that the three nuns were permitted to wear their habits in the classroom but said this was because the school had once been a monastery and the authorities were bound by a contract giving it exceptional status.

The problems over the headscarf arose from Article 4 of the Basic Law according to which religious freedom is guaranteed by the German Constitution. Religious freedom also encompasses the right to profess and to preach one's faith and to base all one's behavior on the teachings of one's religion and the maintenance of religious convictions. These rights are guaranteed unconditionally. Therefore any limitations on them must

⁶³ The Court conceded that "[i]n principle, the lawmaker has wide discretion in setting eligibility criteria for a particular position in the civil service and in defining the job description against which to judge the qualifications of an applicant for that position."

⁶⁴ Stuttgart 18K 3562/05.



also be grounded in the Basic Law. Another criterion which must be taken into consideration is the obligation to demonstrate neutrality in regard to matters of religion and faith. This requirement arises from parental rights (Art. 6 of the Basic Law, Art. 15 sect. 3 LV), the negative confessional freedom of pupils (Art. 4 Basic Law) on the one hand and the “enforced situation” of schools which are run on behalf of the state (Art. 7 Basic Law). According to the principles of the professional civil service anchored in Art.33 sect 5 of the Basic Law teachers who are civil servants must comply with the standards of objectivity and neutrality.

To illustrate the development of the laws, I shall describe two different approaches -- the law as applied in Baden-Wurttemberg and in Berlin⁶⁵. In Baden-Wurttemberg teachers in public schools are not permitted to display openly their political or religious affiliations. The state has a duty to ensure the neutrality of teachers and pupils and not to place them under pressure in any way. Representing West European cultural and educational values does not contradict the principle of neutrality according to Art. 12. para.1 and Art. 15 para.1 and Art. 16 Para.1 of the Constitution of Baden Wurttemberg.

The appointment of someone as a schoolteacher according to Art. 9 Para. 2 of the Law on Civil Servants presupposes respect for Art. 2 during school activity. Respect for Art. 2 Para. 2 is obligatory for admission to the teacher-training course in public schools and for the entire period of teacher-training. Exceptions may be granted only in unusual circumstances and only if the exception does not violate respect for the fundamental rights of pupils and parents and does not interfere with concept of neutrality and the atmosphere of peace in the school.

In 2008 the Administrative Court in Freiburg⁶⁶ in Baden-Wurttemberg even forbade school teachers to wear a beret instead of a headscarf. The argumentation was that wearing any kind of head covering to indicate a religious affiliation was banned. The Mannheim ruling on the wearing of a religious nun’s clothing was mentioned in this case.

⁶⁵ Baden-Württemberg: Gesetz zur Änderung des Schulgesetzes vom 01.04.2004; Lower Saxony: Gesetz zur Änderung des Niedersächsischen Schulgesetzes und des Niedersächsischen Besoldungsgesetzes vom 29.04.2004 (Nds. GVBl. S. 140-142); Saarland: Gesetz Nr. 1555 zur Änderung des Gesetzes zur Ordnung des Schulwesens im Saarland (Schulordnungsgesetz) vom 23.06.2004; Bavaria: Gesetzentwurf der Bayerischen Staatsregierung zur Änderung des Bayerischen Gesetzes über das Erziehungs- und Unterrichtswesen vom Feb. 18 2004 (Drucksache 15/368); Berlin: The draft law was accepted on March 31 2004; Hesse: Gesetzentwurf der Fraktion der CDU für ein Gesetz zur Sicherung der staatlichen Neutralität vom Feb. 10 2004; North Rhennania-Westfalia: Gesetzentwurf der Fraktion CDU zur Änderung des Schulordnungsgesetzes (SchOG) und des Schulverwaltungsgesetzes (SchVG) vom Nov. 4 2003.

⁶⁶ Administrative Court Freiburg, 9.10.2008, Az 4 K 1984/06



The Berlin law is radical in regard to the banning of religious symbols⁶⁷. It bans all religious symbols of all religious groups from workplaces in the public sector. The law was agreed after months of debate. The difference between the Berlin law and that in other German provinces is that the ban in Berlin covers a much larger area of civil service and affects all of the city's 140,000 civil servants. City-run kindergartens, adult education institutions and vocational schools are exempted from the ruling. Religious education in public schools is not affected by the decision. The Berlin approach which was intended to create an unbiased legislation has drawn criticism from Christian denominations who see in the law a restriction on the freedom of worship.

1.2 Headscarves in Photographs in Identity Cards or Passports

A debate on whether a Muslim woman can obtain an identity card with a photograph showing her wearing a headscarf has also developed in recent years. The regulation on passports (Verordnung zur Bestimmung der Muster der Reisepässe § 3)⁶⁸ which is a concretization of the Law on Passports (Passgesetz §4, par. 1) prescribes that the person applying for a passport must present a photograph by which he/she can be identified.

Some exceptions from the rule can be granted through the Allgemeinen Verwaltungsvorschriften zur Durchführung des Passgesetzes (VwVPass G). According to this, members of religious communities and religious orders who are obliged by the rules of their institutions to cover the head in public are permitted to use photographs in which they wear that particular head-covering⁶⁹. This rule respects the fundamental right of free practise of religion (Art. 4 Para. 3 Basic Law⁷⁰). The second sentence of the administrative prescription names those for whom this exception can be made: Sisters of the Red Cross, of the Diaconic communities

⁶⁷ Pieces of jewelry, such as crosses on a chain are permitted.

⁶⁸ "Der Passbewerber hat bei der Beantragung eines Reisepasses ein Lichtbild aus neuerer Zeit in der Größe von mind. 45 mm X 35 mm im Hochformat ohne Rand abzugeben. Das Lichtbild muss das Gesicht im Ausmaß von mind. 20 mm darstellen und den Passbewerber zweifelsfrei erkennen lassen. Es muss die Person im Halbprofil und ohne Kopfbedeckung zeigen; hiervon kann die Passbehörde Ausnahmen zulassen. Der Hintergrund muss heller als die Gesichtspartie sein."

⁶⁹ „Für Angehörige von Religionsgemeinschaften und geistlichen Orden, die nach ihren Regeln gehalten sind, sich in der Öffentlichkeit nicht ohne Kopfbedeckung zu zeigen, dürfen Lichtbilder verwendet werden, die den Antragsteller mit der vorgeschriebenen Kopfbedeckung zu zeigen“.

⁷⁰ This was also decided by the OVG Berlin, 27.06.79; AZ: OVG I S 133.79. See Commentary to „Pass- und Personalausweisrecht“ Hg. Medert/ Süßmuth, vol 1, 2nd ed, 164, note 31.



and of other similar orders⁷¹. Muslim believers and their dress code are not listed under the exceptions.

The Administrative Court in Wiesbaden ruled on July 10, 1984⁷² that not accepting a photograph of a person wearing a headscarf is an offence against freedom of religion as defined by Art. 4 of the Basic Law and a disregard of the principal of parity according to Art.3 of the Basic Law.

The same discussion took place in regard to the issue of a driving licence. This situation falls under the prescriptions of §21 par.3 sent. 1 Nr. 2 of the EU-Prescription (EU-Verordnung über die Zulassung von Personen zum Straßenverkehr und zur Änderung straßenverkehrsrechtlicher Vorschriften)⁷³. Since August 18, 1998 exceptions are allowed to be made by the institution which issues the driving licence. In this case the same prescriptions apply as in the case of a passport.

These rules are valid only in Germany. When foreign authorities issue passports or driving licences, their regulations have to be accepted by the German authorities. Thus the German authorities have an obligation to check whether foreign travelers respect the regulations regarding passports in their country of origin. (Foreigners Law – Ausländergesetz §70 para. 4 S 1 und 2) and to check whether they have passports of their country of origin (§4 par. 1 AusIG §25 DV Aus1G)⁷⁴.

1.3 Headscarf in Other Occupations

The issue of wearing the headscarf became also relevant in other professions outside the educational system. Here are several examples of how different German courts have dealt with cases involving the wearing of religious clothing in everyday life.

One of the first cases involved a woman of Moroccan origin who had been employed since 1985 as a salesperson and cashier in a supermarket. In 1991 she began wearing a headscarf for religious reasons. When she

⁷¹ It is granted for: „Für Schwestern des Roten Kreuzes, der Arbeiterwohlfahrt und des Diakonischen Werkes, dem Hilfswerk der Evangelischen Kirche in Deutschland und dem Deutschen Paritätischen Wohlfahrtsverband angeschlossener Schwesternschaften dürfen Lichtbilder verwendet werden, die sie in der vorgeschriebenen Kopfbedeckung zeigen.“

⁷² VG Wiesbaden, 10.07.1984; Az: VI/1 E 596/82 in NVwZ 1985, 137 f. A similar decision was taken by the Administrative Court Berlin: VG Berlin, 18.01.1989; Az: 1 A 146/87 in NVwZ 1990, 100. The same decision was taken by the Administrative Court of Kassel (VG Kassel of 04.02.2004 , Az.: 3 G 1916/03) which did not even consider it necessary that the applicant presents a certificate from her religious community attesting her obligation to wear a headscarf.

⁷³ BGBl. 1998 Teil I Nr. 55, S. 2214. The photograph has to show the applicant without headcovering from a half profile.

⁷⁴ Düsseldorf, Judgement of 11.11.2002 – Az. 24 L 2529/02 -, InfAusR 2003, 63.



refused to stop doing so she was removed from working as a cashier. Eventually her work contract was cancelled with the argument that the headscarf does not belong to the generally-accepted dress code in Germany. But in June 1992 the Labor Court in Frankfurt-am-Main ruled that in this particular case the wearing of a headscarf could not lead to a dismissal on behavioural grounds⁷⁵.

In another case a Muslim woman of Turkish origin went through several courts before winning a judgment on the 10th of October 2002 allowing her to wear a headscarf. The claimant started training as a salesperson in a big department store in 1989. When she returned to work after maternity leave she declared that she would start wearing a headscarf permanently in public. Since the employer did not want her to continue working while wearing a headscarf she was dismissed from work on October 31st, 1999. The claimant considered her dismissal unjustified and an intrusion in her private sphere of belief. The Labour Court in Hanau⁷⁶ did not accept her claim as being founded and the revision at the Provincial Labour Court in Frankfurt a.M. was not a success either. The Court ruled that the claimant has to „accept the traditional-conservative character of the department store where she worked and to adjust her dress code according to the cultural expectations of the local customers“⁷⁷.

However in a judgement issued on October 2002 the Federal Labor Court⁷⁸ ruled that her employer was not justified in demanding that the woman stop wearing a headscarf as a sign of her religious identity and belief. It said wearing a headscarf because of religious convictions was protected by law. The court ruled that the employers' fears that her appearance could lead to disturbances were insufficient to justify a ban on her employment. It suggested that the employer could have left the woman in her position and waited to see if any of the feared consequences actually occurred. And if problems indeed arose, the employer could consider other responses apart from dismissal. This judgement of the Federal Labour Court marked a very important step for the protection of employees in as far as their public practice of religion is concerned. A successful integration of foreigners also requires that they are integrated in the working world and that their religious beliefs are respected. The judges of the Labour Court said that they hoped a time would come

⁷⁵ Bundesarbeitsgericht, Urteil vom 10. Oktober 2002 - 2 AZR 472/01

⁷⁶ Arbeitsgericht Hanau, Urteil vom 13.04.2000, Az.: 3 Ca 293/99

⁷⁷ Hessisches Landesarbeitsgericht, Urteil vom 21. Juni 2001 - 3 Sa 1448/00, NJW 2001, 3650

⁷⁸ Bundesarbeitsgericht, Urteil vom 10. Oktober 2002 - 2 AZR 472/01



when wearing a headscarf was not looked upon as being opposed to “western clothing”⁷⁹ but would belong to a German normality.

Following this judgement the Labour Court in Dortmund in 2003⁸⁰ ruled that a Muslim woman employed by a city kindergarten was protected in her right to wear a headscarf through the guarantee of religious freedom and could not be dismissed for doing so.

In another example, a Christian hospital in Köln dismissed in 2007 a Muslim nurse who had been employed for 19 years because she persisted in wearing a headscarf when she returned to work after having a child. In the first Instance, before the Labor Court in Cologne, the hospital was told it could not dismiss the nurse since the work contract did not contain any prescription regarding a particular dress code. The Christian hospital appealed the decision arguing on the right of self-determination of churches and the institutions connected to them. In its argumentation the hospital relied on a judgement of the Federal Constitutional Court of 1985⁸¹ which granted the organized Churches the right to decide for themselves what are the elements which contribute to the credibility of their mission. Therefore if an ecclesial employer wishes to place in the foreground a particular image of its employees, then it is entitled to do so. Therefore the second Instance before another Labour Court in Cologne⁸² ruled that the hospital had the right to dismiss her because the employer was entitled to demand that its employees comply with the Christian values of their institution.

Another case should be also mentioned: An employee of a branch of the Catholic Caritas-organisation was dismissed for behavioral misconduct because she decided to wear a headscarf. She argued that wearing the headscarf would not impede her in fulfilling her profession. She was dismissed without a previous warning from the hospital, which she considered religious discrimination. The Court⁸³ ruled that the Institution had the right to dismiss her on the basis of the self-determination principle of Churches and their institutions.

She was to appeal to the Labour Court in Cologne.

This debate also reached the legal profession. Although the court rulings concerning the headscarf were mostly related to activities in the public sector they also had an effect in the legal profession. I will focus on

⁷⁹ LAG Hessen, Urteil vom 21. Juni 2001 - 3 Sa 1448/00, NJW 2001, 3650

⁸⁰ ArbG Dortmund 16.01.2003, Az.: 6 Ca 5736/02 (Urteil noch nicht rechtskräftig)

⁸¹ Judgement of 4th of June, 1985 - 2 BvR 1703/83

⁸² Labour Court Cologne on 03.12.2008, 3 Sa 785/08.

⁸³ Administrative Court Gelsenkirchen, 27.02.2008, Az 1K 1466/07



the debate on whether one is allowed to appear in Court (either as a lay assessor or as a trainee barrister) with a headscarf.

In Berlin in 2004 the defence attorney in a law case demanded that a lay assessor should not be accepted because she was wearing a headscarf. His demand was rejected.⁸⁴ Two years later a court in Bielefeld took a different view and did not allow a lay assessor to be present if she was wearing a headscarf⁸⁵. This was interpreted by some as a case of discrimination since a lay assessor does not work for the public sector⁸⁶.

The first case was registered 1998 when a trainee barrister failed in an appeal to the Administrative Court Cologne when she was not allowed to participate as a trainee at court cases. In 2000 a trainee Protocol-writer at the Civil Court Düsseldorf was not permitted to write the Protocol in the courtroom next to the Judges' table. The Court found a compromise in that she was allowed to write the Protocol in the public area⁸⁷.

Trainee Barristers are also not accepted in the courts if they are wearing a headscarf. In 2003 a trainee barrister had to provide a written declaration to the Court in Oldenburg that she would not wear the headscarf when she practiced her profession at the Attorney's Office in Osna-brück⁸⁸.

The Minister of Justice of Hessen decided in July 2007 after a complaint from the lawyers' associations that a trainee barrister in the Offenbach court should not be allowed at the Bar but should sit in the public area in order to participate at the hearings. She was not allowed to hear evidence or to substitute for any other barrister. Participation in all these matters was part of her training. If she was forbidden to do them she could not successfully complete her training⁸⁹.

⁸⁴ [http://www.welt.de/print-](http://www.welt.de/print-welt/article295150/Erstmals_Schoeffin_mit_Kopftuch_in_einem_Berliner_Gericht.html)

welt/article295150/Erstmals_Schoeffin_mit_Kopftuch_in_einem_Berliner_Gericht.html
⁸⁵ Landgericht Bielefeld, Judgement of 16. March 2006, Az. 3221 b EH 68, *Neue Juristische Wochenschrift* (NJW) 2007, 3014; Landgericht Dortmund, Judgement of 7. November 2006, Az. 14 (III) Gen Str. K, 14 (VIII) Gen.Str.K., *Neue Juristische Wochenschrift* (NJW) 2007, 3013; Landgericht Dortmund, Judgement of 12. February 2007, Az. 14 Gen Str K 12/06

⁸⁶ „Mit Kopftuch außen vor?“, Broschüre der Landesstelle für Gleichbehandlung in Berlin über die Diskriminierung von Frauen mit Kopftuch – auch außerhalb des öffentlichen Diensts, 2008.

⁸⁷ Sigrid Kneist, „Religionsstreit: Muslimische Referendarin darf nicht mit Kopftuch in den Gerichtssaal“, *Der Tagesspiegel*, 7. Oktober 2001, <http://www.tagesspiegel.de/berlin/art270,1972352>

⁸⁸ See: „Kopftuch ist in Niedersachsens Justiz tabu“, *Welt Online*, 14. November 2003, http://www.welt.de/print-welt/article273006/Kopftuch_ist_in_Niedersachsens_Justiz_tabu.html

⁸⁹ See: „Ungenügend wegen Kopftuch“, *Der Spiegel* 27/2007, 2. Juli 2007, S. 18, <http://wissen.spiegel.de/wissen/image/show.html?did=52109088&aref=image036/2007/06/30/ROSP200702700180018.PDF&thumb=false>



At present in Berlin, Hessen, Lower Saxony and North Rhine – Westphalia women who want to begin their period as trainee barristers are not allowed to be involved in court cases unless they remove their headscarf.

The headscarf issue continues to come before German courts with different outcomes – thus demonstrating that the wearing of the headscarf by Muslim women in different occupations remains a contentious issue.

2. Religious Motivated Dress-code for Schoolchildren and Its Implications For School Education

2.1. Wearing of a headscarf in schools

Germany is not alone in trying to resolve differences with its Muslim population in regard to the headscarf. It is also a controversial issue in France and some other countries. In 2004 the French parliament banned students at public primary and secondary schools from “wearing signs or clothing which conspicuously show a student’s religious affiliation.” It was described as an application of the principle of the separation of church and state. Several commentators said that while the ban also covered such things as Jewish skull caps or large Christian crosses it was primarily aimed at the headscarf. Students at public schools who refused to obey the law were temporarily suspended and some were expelled if they continued to display religious symbols.

On December 4th, 2008 the European Court of Human Rights dismissed a complaint by two French Muslim girls in the town of Flers who were expelled after repeatedly refusing to remove their headscarves for physical education classes. They argued that the school had violated their freedom of religion and their right to an education. The girls are French nationals and were 11 and 12 respectively when they were expelled. The court observed that the purpose of the restriction on the applicants’ right to manifest their religious convictions was to adhere to the requirements of secularism which is taken very seriously in the state schools of France. On September 2, 2004 a law banning pupils from wearing conspicuous signs of their religion at school took effect. The ban includes all overtly religious dress and signs (including Muslim headscarves, Sikh turbans, Jewish skullcaps and large Christian crosses). This led to an uproar focused mainly on the banning of Muslim headscarves or hijabs. The law angered the 5 million Muslims living in France (five to 10 per cent of the population) who argued that the law limits the individual freedom of religious expression and political neutrality. Others supported the law in



the belief that the ban will help prevent the division of society into ethnic communities and promote integration into French society⁹⁰.

In Germany, Muslim girls are permitted to wear a headscarf at school so long as it does not cover the face. Article 6 of the Basic Law declares that parents have the right to educate their children according to their religious beliefs⁹¹.

According to Islamic law, the teachings about wearing modest clothing apply from the age of puberty. In practice this means girls should wear the headscarf and respect Islamic dress codes. According to Art. 6 of the Basic Law parents have the right to educate their children according to their own religious prescriptions until the children reach the age of 14⁹². There is no doubt that wearing a headscarf involves a religious prescription which is protected under the German constitution⁹³. That is why the courts have until now never dealt with the interdiction for schoolgirls to wear a special Muslim dress code. What matters is the protection of Art. 4 par. 1 and 2 of the Basic Law and the interpretation of the meaning of the dress code for a particular religious person. The impression which this person leaves on the outside world is irrelevant for the law since the state respects the principle of neutrality in this case.

2.2. Engagement in sport activities

Another controversy between Muslims and the German authorities involves efforts to engage Muslim girls in sport⁹⁴. As a rule German schools have three hours of sports instruction each week. But a growing number of schools report that Muslim girls are finding excuses to avoid sport and physical education.

⁹⁰ Similar issues were discussed in Canada where in March 2004, the Quebec Court of Appeal ruled that a Sikh student, could not wear his kirpan, a ceremonial dagger, to school, arguing that security concerns were more important. In September 2003, Quebec's Human Rights Commission agreed to investigate a private school's decision to expel a Muslim student for wearing the hijab, which apparently did not conform to the school's dress code.

⁹¹ MKS / Starck, Art. 4, Rn 112; Weber, ZAR 2004, 54-55. Gromitsaris A., Laizität und Neutralität in der Schule, Ein Vergleich der Rechtslage in Frankreich und Deutschland, AöR 121 (1996), 359; Spies Axel, Verschleierte Schülerinnen in Frankreich und Deutschland, NVwZ 1993, 637; Rädler Peter, Religionsfreiheit und staatliche Neutralität an französischen Schulen. ZaÖRV 1996, 353; Grewe Constance, Die islamischen Kopftücher oder die Reinterpretation der französischen Laizität, KuR 1997, 27.

⁹² According to the Quran there should be no forceful obligation in exercising religion (2:256).

⁹³ Berliner Kommentar zum GG, Muckel zu Art. 4 Rn. 23; GG-Kommentar Sachs-Kokott, zu Art. 4 Rn. 57.

⁹⁴ Sport activities are not forbidden by the Quran. On the contrary, the body is seen as being a gift of God which has to be treated with respect, honor and pleasure. See: Birgit Krawietz, in: Klöcker Michael/ Tworuschka Udo (Hg), Ethik der Weltreligionen. Ein Handbuch, Darmstadt, 2005, 161ff.



The basis for all the cases of parents taking action against schools which offer co-educational sport activities is the Judgement of the Federal Administrative Court⁹⁵ in 1993 which ruled that in some circumstances Muslim schoolgirls can be released from co-educational sport activities in which they would be obliged to wear tight clothing⁹⁶, if there are no male attendants during this process⁹⁷. On the other hand if the schoolgirl was not allowed to participate at sport activities because her parents did not want her to grow “into an emancipated woman after a Western model” the exemption should not be put into practice. In the above mentioned case the parents declared that the primary reason for their action was to prevent their daughter from being emancipated. The Court ruled that the school should offer Muslim schoolgirls the possibility of engaging in sport activities solely for girls, since the aim of participating in sport was viewed as being more important than co-educational schooling. But there are some schools which do not have enough staff to provide separate swimming lessons for boys and girls.

It is interesting to note that in the same year (1993) the Federal Administrative Court⁹⁸ rejected a plea from the parents of a Christian schoolgirl who argued that co-educational sport did not correspond to the teaching of the Bible and the daughter should be excused from it.

Incidentally, the protests about co-educational swimming classes are not always about women. On May 30th, 2005 the Administrative Court Düsseldorf⁹⁹ rejected a complaint by parents who wanted to keep their 11-year-old boy from attending co-educational swimming classes. The court argued that in the swimming pool the young boy could not avoid seeing his female classmates scantily clad in their bathing suits. They described this as “a dangerous influence on the emotional world of young people”. In rejecting the case, the court said that religious beliefs are not a reason to prevent children from attending swimming classes. They argued that their decision would lead to the strengthening of the educational duties of the state in comparison to that of parents. Another ruling from Hamburg decided that a 9 year old girl of Pakistani origin belonging to the Ahmadiyyas must attend swimming classes¹⁰⁰.

⁹⁵ BVerG 94, 82ff.

⁹⁶ KHO / Heine, 196.

⁹⁷ Anger, Thorsten: Islam in der Schule. Rechtliche Wirkungen der Religionsfreiheit und der Gewissensfreiheit sowie des Staatskirchenrechts im öffentlichen Schulwesen, Berlin, 2003, 223

⁹⁸ BVerwG, Judgement 25.8.1983; Muckel, Stefan: Befreiung vom Sportunterricht aus religiösen Gründen, BVerwG, Urteil vom 25.8.1993, JA 1994, 109 - 117.

⁹⁹ Az: 18 K 74/05

¹⁰⁰ VG Hambrug, 14.04.2005, AZ: 11 E 1044/05



In 2006, the Berlin Senator responsible for Youth, Education and Sports, Klaus Böger, sent a letter to all schools that religion and ideology are not acceptable reasons for missing physical education.

In a case in 2008, the parents of a 12-year-old girl sued her school in the northern city of Remscheid after it refused to allow her to avoid swimming classes. Citing religious reasons, the parents said they did not want their daughter to participate because her body would not be covered. The school said it had offered to let her swim in leggings and a shirt but the parents refused, arguing that the material would cling to her body. In May, 2008 the Administrative Court in Dusseldorf¹⁰¹ rejected their protests and ruled that the state's responsibility to educate the girl outweighed the potential infringement on her religious freedom. The court also concluded that because most of a swimming lesson takes place under water, the girl's body would be obscured even in wet clothing. The parents plan an appeal on the ruling trying to use the "modesty"¹⁰² law of Sharia to break the requirement of Remscheid¹⁰³.

According to Islamic Law, women may participate in sporting activities and wear tight clothing only when no males are present. However most German schools insist that girls take part in sport.

2.3. Obligatory curriculum subjects and extracurricular activities

German courts have also heard appeals for Muslim schoolchildren, particularly girls, to be freed from some obligatory curriculum subjects, such as biology or sex education¹⁰⁴, or other obligatory non-curricular activities like going to the theatre, going on a school trip¹⁰⁵, classes of cooking or sowing. The Federal Administrative Court¹⁰⁶ gave a completely different interpretation to these cases. School children should not be exempted from participating in these activities because these classes or extracurricular activities have as their goal the socialisation of a child

¹⁰¹ 18 K 301/08).

¹⁰² A prescription of the modesty law in the Quran: "O children of Adam, We have provided you with garments to cover your bodies, as well as for luxury. But the best garment is the garment of righteousness. These are some of God's signs, that they may take heed." (Sur 7:26). The prophetic traditions also illustrate the significance of modesty: modesty linked to faith: "The Prophet (peace be upon him) said: 'Faith consists of more than seventy branches. And *haya* (modesty) is a part of faith'" (al-Bukhari).

¹⁰³ Similar decision was taken by the Labour Court Wuppertal on 29.07.2008. Az: 4 Ca 1077/08 and by the Administrative Court Baden-Württemberg on 14.03.2008, Az 4 S 516/07.

¹⁰⁴ Bergmann, Jan: Vom Umgang des deutschen Rechtsstaates mit dem Islam, ZAR 2004, 135 - 147; Anger, Thorsten: Islam in der Schule, 229.

¹⁰⁵ The argument in this case was that a Muslim girl should not be expected to go on a school excursion which would oblige her sleeping away from home. So the Judgement of the Administrative Court Gelsenkirchen of 11.08.2008, Az 4 L 526/08.

¹⁰⁶ BVerwG 94, 82, 84; BVerwG 47, 46, 71.



into an environment where he will live as an adult person and his integration into German society.

As these cases indicate German courts do try to find a solution to issues concerning Muslim children, particularly girls, while recognizing that they should integrate into German society and not grow up as outsiders. Religious prescriptions sometimes conflict with the law of the state but the Courts often try to offer viable solutions in regard to the exercise of religious freedom.

The Courts are consequent in regard to not allowing parents to offer their children private education at home. The issue arose in a case judged by the Administrative Court Niedersachsen (Hannover)¹⁰⁷ on a request by parents who are members of the 7th Day Adventists who wanted to stop their children attending state schools. They said the children would receive private education at home from teachers of the Free Christian School Philadelphia Siegen. They wanted to prevent their children from attending classes of sexual education, of sport, of biology. They also wanted their children not to be confronted with the theory of evolution. Their request was based on the parental right to education (Art 6 par 2 Basic Law). Nevertheless the Court rejected their request.

IV Prescriptions for Life Conduct

1. Circumcision

Circumcision of boys is a ritual tradition followed by most Muslims, although it is not mentioned in the Quran. The age at which it is performed varies from region to region and occurs between the ages of three and fifteen but most often age seven is preferred. Despite its widespread observance there is no mention of circumcision in the Qu'ran, but there are only references to it in the Hadith. Male circumcision is mentioned in Bukhari's collection as a practice of pre-Islamic prophets such as Abraham.¹⁰⁸

In recent years some German medical professionals have opened a discussion about the legacy of circumcision of underage boys. The discussion was partly conducted in juridical and medical magazines. In the *Deutsches Ärzteblatt* of August 2008, Maximilian Stehr, Holm Putze and Hans-Georg Dietz¹⁰⁹ argued that doctors should not perform religiously-motivated circumcision on Muslim and Jewish boys. Their main argument

¹⁰⁷ OVG Niedersachsen (Hannover), 5.03.2003, Az 13 Lb 4075/01

¹⁰⁸ Puberty Rites, *The Oxford Encyclopedia of the Modern Islamic World*, vol. 3, 366-367.

¹⁰⁹ Maximilian Stehr/ Holm Putze/ Hans-Georg Dietz: Zirkumsision bei nicht einwilligungsfähigen Jungen: Strafrechtliche Konsequenzen auch bei religiöser Begründung, DÄ 1051, Heft 34-35, August 2008, 1777-1781.



is that the necessity for circumcision cannot be religiously proved and that only a minority of believers share this opinion. The authors acknowledge that the parents have the right to decide on the religious education of their children, but argue that parents should also respect the freedom of choice of the appropriate religion for the child.

Günter Jerouschek underlines that human dignity and the right to an „undefiled body“ are to be seen as being of higher importance than the right of the parents to decide on the religion of the children.¹¹⁰ He also argues that one should allow the adult man decide whether he wants to undergo this operation for religious reasons or not. The authors also ask whether circumcision should not be viewed as bodily injury according to § 223 para 1 des Penal Code (Strafgesetzbuches). Dr. Holm Putzke suggests in another article¹¹¹ that one should perform circumcision only on boys who are over the age of 16.

The arguments started by these medical doctors in one of the most prestigious medical magazines for the public seem to be an overreaction to a traditional ritual practiced by Islam and Judaism, since in most medical circles circumcision is not viewed with skepticism and in fact is recommended by the World Health Organisation (WHO)¹¹².

2. Eating Prescriptions

2.1 Ritual Slaughtering

All religions include eating prescriptions in their laws. Religious people of different faiths are expected to fast or refrain from consuming certain types of food at certain times. Western civilizations have begun to be rather lax in observing these prescriptions since it was recognized that they concern disciplinary rather than doctrinal matters but the Eastern religions (Orthodox churches or Islam) still consider them as unavoidable for believers.

Among the most controversial issues is ritual slaughtering of certain animals as practiced both in Islam (where it is known as “halal”) and in Judaism (where it is called “shechita”). In the Islamic rite, the animal is laid on the ground with its head turned towards Mecca. Its carotid artery is severed with a sharp object and the butcher utters the “bismillah” (invo-

¹¹⁰ Günter Jerouschek: Beschneidung und das deutsche Recht – Historische, medizinische, psychologische und juristische Aspekte, NSTZ 2008, Heft 6, 319.

¹¹¹ Holm Putzke: Juristische Positionen zur religiösen Beschneidung, NJW 22 (2008), 1570.

¹¹² The WHO claims that there is evidence that male circumcision reduces the risk of acquiring HIV infection in men by approximately 60%. WHO/UNAIDS recommendations emphasize that male circumcision should be considered an efficacious intervention for HIV prevention in countries and regions with heterosexual epidemics, high HIV and low male circumcision prevalence. In: <http://www.who.int/hiv/topics/malecircumcision/en/index.html>



cation of Allah) while the blood drains out¹¹³. According to Islamic law unnecessary suffering for the animals must be avoided.

It is not the right to ritual slaughtering that is questioned, but only the stunning of the animal, i.e. the conflict is between the animal protection activists and religious people who believe that the meat from stunned animals is not “clean”.

Another matter is also relevant for the discussion: the politicised history of ritual slaughter in Germany. While ritual slaughtering was permitted for Jewish communities at the beginning of the 20th century it was banned by the National Socialist Party (Nazi party) when it seized power in 1933 as a deliberate attack on Jewish traditions. The German parliament had decided on the 2nd of June 1917 that ritual slaughtering should be performed only by specially trained slaughterers who had a permit to do so. Between 1930 – 1933 laws were passed in Bavaria, Braunschweig, Thuringia and Oldenburg which banned ritual slaughtering if the animal had not been previously stunned. The obligation to stun animals before slaughter was introduced for the entire German Reich by the Act on the Slaughtering of Animals of 21st of April 1933¹¹⁴ during which a general interdiction for ritual slaughtering was issued¹¹⁵ “for reasons of animal protection.”

After the end of WW II ritual slaughtering was tolerated without any special issuing of laws¹¹⁶. The discussion inflamed again with the growth of the Jewish life in Germany and the beginning of the Muslim immigration in the 1960's.

The first judgements on ritual slaughtering were rather liberal. The Administrative Court Berlin ruled that ritual slaughtering should be done according to legal prescriptions¹¹⁷. The Labour Court (Arbeitsgericht) Balingen came to the conclusion that it belongs to the free expression of religion when Turkish Muslims slaughter their animals in a ritual manner during the Sacrifice Feast¹¹⁸.

In 1986 the Federal Government enlarged the law for protection of

¹¹³ A detailed description of the method of slaughtering is to be found in: Israel Meir Levinger, *Die Jüdische Schlachtmethode*, in: Richard Potz / Brigitte Schinkele / Wolfgang Wieshaider (eds), *Schächten. Religionsfreiheit und Tierschutz*, 2001, 1-20.

¹¹⁴ See: Gerhard Anschütz, *Die Verfassung des Deutschen Reiches vom 11. August 1919*, 14ed, 1933.

¹¹⁵ Typical for this interdiction was the regulation of the 22nd of March in Saxony. See: Gerhard Anschütz, *Die Verfassung des Deutschen Reiches vom 11. August 1919*, 14ed, 1933.

¹¹⁶ Andelshäuser Beate, *Schlachten im Einklang mit der Scharia*, 1996, S. 140 f

¹¹⁷ Berlin, Urteil vom 19.03.1979 – 14 A 224/77;

¹¹⁸ AG Balingen, Judgement of 14.01.1981 – 1 OWi 291/80, NJW 1982, 1006.



animals (Tierschutzgesetz TierschG)¹¹⁹ with §4a, in which it was stipulated that the animal should be stunned before the ritual slaughter. However it allowed exceptions if members of a particular religious community have as a legal prescription the necessity of consuming meat from ritually slaughtered animals. From that point on the courts had to take decisions on how to interpret Art 4a in relation to the free exercise of the freedom of religion.

Controversy erupted in 1995 when the Federal Administrative Court handed-down its first ruling regarding ritual slaughtering according to Islamic Law. It ruled that the canteen of a mosque in Hamburg¹²⁰ was not permitted to slaughter animals which had not been stunned. The court ruled that the convictions of an individual were insufficient to ignore a 1999 decision by the Darmstadt Administrative Court that animals should be stunned before they are ritually slaughtered.

The Darmstadt court ruled that Islamic law knows no special prescription that one should only consume meat from ritually slaughtered animals. Therefore the consuming of other meat does not affect the free exercise of Islamic religion since Muslims are not obliged to eat only meat, but they can also eat vegetarian food or fish or they can import halal-meat if they cannot eat the meat which is available in the supermarkets. An individual's conviction was not enough to justify changing the Darmstadt decision on ritual slaughtering¹²¹. This decision was viewed very critically by the legal and academic press¹²² which considered that the right of the individual to freely exercise his religion had not been protected but had been assimilated into the free exercise of religion by a particular group.

In the aftermath of this decision, German authorities generally refused to grant exception permits to Muslims even though Jewish butchers were always granted exception permits to perform ritual slaughters. Because of this split practice the applicant appeared before the Constitutional Court and quoted the equal treatment-clause in Article 3 (1) and (3) of the Basic Law.

¹¹⁹ See BVerwG, Judgement of 15.06.1995 – 3 C 31/93 – NVwZ 1996, 61.

¹²⁰ VG Hamburg, Urteil vom 14.09.1989 – 9 VG 703/89; OVG Hamburg, Urteil vom 14.09.1992 – Bf III 42/90 -, NVwZ 1994, 592

¹²¹ Oebecke, Das deutsche Recht und der Islam, in: Hdb. Recht und Kultur des Islams, S. 305 Fn. 64; BVerwG, Urteil vom 15.06.1995 – 3 C 31/93 -, BVerwGE 99, 1;

¹²² Eckehard Packe, JA 1996, 454, 456; Matthias Mayer, Religionsfreiheit und Schächtverbot, NVwZ 1997, 562; Jörg Müller-Volbehr, Religionsfreiheit und Tierschutz: Zur Zulässigkeit religiös motivierten Schächtens, JuS 1997, 223; Hans-Georg Kluge, Vorbehaltlose Grundrechte am Beispiel des Schächtens, ZRP 1992, 141; Thomas Kuhl / Peter Unruh, Religionsfreiheit versus Tierschutz, DÖV 1994, 644; Muckel Festschrift Listl, 248 ff.; Kokott, in: Sachs Grundgesetz-Kommentar, Art. 4 Rn. 63;



The unequal treatment of Jewish and Moslem butchers emerged from the fact that German authorities believed that an exception permit under Section 4a could be granted only to members of religious associations whose undisputed rules required ritual slaughter. In contrast to the homogenous Jewish community, there are no uniform prescriptions concerning ritual slaughter in Islam, they said.

The controversy continued. On January 15, 2002, the German Constitutional Court ruled on a case brought by a Moslem butcher seeking a so-called "exception permit" to perform ritual slaughters¹²³. The Court found that Moslem butchers may be permitted to perform ritual slaughter in exception to the general rules on the slaughter of animals, since Art 4a permits that when a religious community has special precepts for consuming ritually slaughtered meat. This decision was considered very important for the integration of Muslim communities in Germany because it suggested a possible openness to accepting other traditions¹²⁴ but at the same time it was criticised by those who perceive the practice of ritual slaughter as a means of preventing the integration of Muslims into German society by fostering the existence of parallel societies with their own rules. It was also criticized by societies for the prevention of cruelty to animals.

The question which arises is what one understands as "a religious community". Is it an association as described in Art 137 § 5 of the Constitution of Weimar or in Art 7 § 3 GC or is it just a simple group within the Islamic community which can be different to any mainstream community. The Constitutional Court ruling suggests it is enough for a community to present convincingly its views in order to obtain a special permission for the ritual slaughter. In making its decision, the Court decided not to evaluate the necessity or unavoidability of ritual slaughter in the Islamic faith. It was sufficient for the Court to accept that the claimant was a member of a Muslim group which could be distinguished from other Muslim groups by its religious convictions.

¹²³ BVerfG, Urteil des Ersten Senats vom 15.01.2002 – 1 BvR 1783/99 –, DVBl 2002, 328; Nina Arndt / Michael Droege, Das Schächturteil des BVerfG – Ein „dritter Weg“ im Umgang mit der Religionsausübungsfreiheit, ZevKR 48 (2003), 188-192.

¹²⁴ Johannes Rux, Zur Erteilung einer Ausnahmegenehmigung zum Schächten an einen ausländischen muslimischen Metzger, ZAR 2002, 152; Gernot Sydow, Ausnahmegenehmigung für das Schächten, Jura 2002, 615; Uwe Volkmann, Anmerkung zum Urteil des BVerfG, DVBl 2002, 332; Nina Arndt / Michael Droege, Zur verfassungsrechtlichen Beurteilung des Schächtens durch einen nichtdeutschen muslimischen Metzger, ZAR 2002, 111; Johannes Caspar, Verfassungs- und verwaltungsrechtliche Aspekte des Schächtens, NuR 2002, 402; Rico Faller, Schächten als Konkurrenzproblem, KJ 2002, 227.



One has to mention one alternative to stunning: the short-time stunning through electrocution. In this method the animal loses for a short time his feeling of pain, which is enough for a butcher to slaughter it ritually. Since the heart of the animal continues beating all the blood of the animal can be pumped out. Also electrocution does not harm the integrity of the animal¹²⁵.

In Western Europe there appears to be a consensus on the legitimacy of performing ritual slaughter provided it is carried-out competently by skilled people to spare the animal avoidable pain and injury.

2.2 Food and Alcohol

The Quran requires Muslim believers to abstain from eating certain kinds of meat (Sure 5,3) and reject wine and other forms of alcohol (Sure 5,90). This poses a challenge to the around three million Muslims in Germany because it is often difficult to discover exactly what is contained in the commercial food available in stores. Many products contain substances which Muslims are forbidden to consume.

According to §1 III of the LMKV (Lebensmittel Kennzeichnungsverordnung/ Regulations for labeling food products) it is not obligatory for manufacturers to include on the label all the ingredients of the product. Any ingredient which makes up more than 25 per cent of the product's composition has to be noted on the label but those which make up less than 25 per cent do not have to be mentioned. This applies to such items as milk products, chocolate, cocoa, candies, bread, cheese, yoghurt and even meat rolls.

The alcoholic content of wine must be noted on the bottle but sometimes even products labeled as "alcohol-free" may contain up to 0.5 % Vol. alcohol. Emulsifiers are another problem. They are listed on the label but it is impossible for the ordinary customer to identify which type of emulsifier has been used. And many German food products contain gelatine which may contain pork fat; in some cases up to 90 per cent and is therefore banned for Muslims. It is clear that many products contain substances which are forbidden to Muslims¹²⁶.

Germany makes a serious attempt to overcome some of these problems. Public institutions such as hospitals, kindergartens and schools try to meet the needs of patients and school children. So do prisons. Accord-

¹²⁵ Almuth Hirt / Christoph Maisack / Johanna Moritz , *Tierschutzgesetz, Kommentar*, 2ed, Munchen, 2007, here commentary to §4a, note 7.

¹²⁶ www.helal.de; or *Einkaufsführer für Muslime* (shopping guide for Muslim believers): fileadmin/pdf/integration_dialog/einkaufsfuehrer_fuer_muslime.pdf.



ing to §21 S.3 StVollzG (strafvollzugsgesetz – Penitentiary Law) prisoners have the right to follow the eating prescriptions of his/her religious community. However in 1983 the provincial court (Oberlandesgericht) in Hamm ruled that the prison administration does not have an obligation to offer inmates the foods which their religion requires. However the prison should offer inmates the possibility of receiving the food which they wish to eat.¹²⁷

In 1993 the provincial court in Koblenz ruled that during the fasting month of Ramadan a Muslim prisoner has the right to receive warm food after sunset according to the prescriptions of his own religious community¹²⁸.

The military attempts, within limits, to accommodate the needs of Muslim young men liable for military service. The Federal Administrative Court ruled in 1979 that a Muslim recruit could not be exempted from military service simply because he might be unable to eat the food served in the barracks. But the authorities are required under § 18 of the Military Law (Soldatengesetz) to respect the young man's right to develop his own personality and the right to practise his religion (Art. 4 and Art. 2 of the Basic Law). The military authorities are also obliged to provide the conditions which enables these fundamental rights to be respected.

3. Burial

The majority of Muslims living in Germany are buried in their home countries. However about 10-15 per cent are interred in Germany¹²⁹. Problems sometimes arise because of conflicts between Muslim rituals and the strict German burial regulations which are controlled by the individual provinces¹³⁰. Creating Muslim-only cemeteries would help resolve the problems but under present regulations only corporations of public right have the right to open their own cemetery (Article 140 of the Basic Law and Art. 137 Constitution of Weimar)¹³¹.

At present only Berlin¹³² allows the opening of Muslim cemeteries although their communities have not obtained the status of a corporation

¹²⁷ OLG Hamm, Beschluss vom 14.12.1983 – 7 Vollz (Ws) 140/83 -, in MDR 1984, 427

¹²⁸ OLG Koblenz, 2.12.1993 – 3 Ws 286/93 in Kirche 31, 519 ff

¹²⁹ Lemmen, *Islamische Bestattungen in Deutschland*, 1999, 7.29; Spuler-Stegemann, *Muslime in Deutschland*, 2002, 175.

¹³⁰ Adel Theodor Khoury, *Der Umgang mit Sterbenden und Toten*, in: ders / Peter Heine / Janberd Oebbecke (eds), *Handbuch recht und Kultur des Islams in der deutschen Gesellschaft. Probleme im Alltag – Hintergründe – Antworten*, 2000.

¹³¹ This regulation is viewed very critically by Rohe Mathias, *Alltagskonflikte und Lösungen*, 2001, S. 183.

¹³² § 3 II BestG Berlin (Burial law).



of public law¹³³. The national government has said that in principle it is in favor of granting Muslims this status but wants them first to agree on a single organisation with which it could deal. In the meantime several communities have responded to the Muslim dilemma by reserving a special space in their cemeteries for so-called "Islamic burial fields"¹³⁴. About 70 of these now exist. The first was opened in Munich in 1955 at the "Waldfriedhof". Municipalities in Baden-Württemberg, Bavaria, Berlin and many other *Länder* have made use of the possibility of creating a special place in cemeteries where Muslims can be buried.

The main points of conflict between German and Islamic burial customs include: the time of burial, the place of burial, the ritual washing, the necessity to bury the body in a linen shroud and not in a coffin and the "time of rest"¹³⁵.

The first point of conflict is the timing of the burial, which has to be done at the first opportunity, without any delay, preferably within 24 hours or less¹³⁶. However under German law a burial cannot take place until at least 48 hours after death. An exemption is possible only in special cases¹³⁷. The Muslim custom is that the deceased should be placed on his right side, with his face pointing towards Mecca. In Germany this would be pointing towards the South-East, which is not always possible because the structures of cemeteries do not correspond to this requirement.

Muslim custom calls for the relatives to perform a ritual washing of the body. At present this can be performed either in hospitals or at the cemetery.

According to Islamic tradition, the body should then be wrapped in a white linen cloth¹³⁸ and buried in the earth, facing Mecca. But according to German legal prescriptions the body should be placed in a coffin of real wood. Only as an exception can a metal coffin be used¹³⁹. This is done to avoid pollution of the ground water and to stimulate the putrefaction of the body within the "time of rest"¹⁴⁰.

¹³³ The only Muslim cemetery is the Turkish Cemetery in Berlin at Columbiadamm 126, where no more burials are now taking place.

¹³⁴ The first Islamic burial field was opened in Munich, at the Waldfriedhof in 1955.

¹³⁵ Stefan Muckel, *Der Islam unter dem Grundgesetz. Muslime in einer christlich vorgeprägten Rechtsordnung*, in: *Kirche und Gesellschaft*, ed. Katholische Sozialwissenschaftliche Sozialstelle Mönchengladbach Nr. 273, 2000, 11.

¹³⁶ see § 9 I BayBestVO; § 36 I BadWürttBestG; § 9 I SaarBestVO

¹³⁷ see § 5 NWBestVO; § 9 II SaarBestVO; § 9 BayBestVO.

¹³⁸ *Bund der islamischen Welt (Hrsg.) Bestattungsregeln im Islam*; Thomas Lemmen, *Islamische Bestattungen in Deutschland, Eine Handreichung*, Altenberge, 1996.

¹³⁹ Compare for instance § 1 INWBestVO; § 11 I BremsFriedhofsO; § 20 I 1 Alt. 1 BayBestVO

¹⁴⁰ Seeger, *Bestattungsrecht*, 1971, § 43 Rn. 1 ff



Burial without a coffin is not allowed at all in Bavaria. In Brandenburg it appears to be problematic but a few German authorities do respect the Muslim desire to have the body buried in the earth in a shroud. They include Essen, Krefeld, Aachen, Paderborn, Hamburg and Soltau. Muslims argue that there is no danger of polluting the groundwater when the body is buried without a coffin. When the authorities reject their arguments the body is wrapped in linen and then placed in the coffin¹⁴¹. There is also a fetwa which allows internment in a coffin¹⁴².

There are also differences about the use of the grave. Muslim custom is that the dead should be buried for all eternity in a Muslim graveyard. In Germany, however, graves can only be held for a certain number of years (usually 30) and then made free for another burial. This limited occupancy of a grave contradicts the Islamic and Jewish concept of "eternal rest of the dead"¹⁴³. A number of municipalities have therefore extended the period during which Islamic graves are left untouched or have allocated corresponding fields for elective graves.

Some theologians have suggested that the grave might be re-used after several years if it no longer held the remains of the dead or if the remains were buried very deeply – far under the newly-deceased individual.

On another issue, the Administrative Court in Berlin ruled in 1992¹⁴⁴ that the costs involved in the ritual washing of the dead are part of a dignified funeral and therefore correspond to §15 of the Federal Law on Social Help and should be paid by the local communities.

4. Changing of Names

Those who convert to Islam sometimes wish to change their first name or add a second, Islamic, name to their birth name. Although it is not compulsory for a convert to change his name some desire it as a sign of a new identity. The religious argument offered by the convert is the statement by the Prophet that "on the Day of Judgment you will be called

¹⁴¹ Katja Hertlein, *Der rechtliche Rahmen für Bestattungen nach islamischen Vorschriften*, NVwZ 2001, 890.

¹⁴² Fetwa of the Academy of Islamic Law in Mekka, mentioned in: Hubert Herkommer, *Islamische Bestattungen in Deutschland*, *Der Arabische Almanach 1999/2000*, 27, 29; Kokkeling, *Islamische Bestattung auf kommunalen Friedhöfen in Gerhard Höpp / Gerdien Jonker (Hrsg.) In fremder Erde – Zur Geschichte und Gegenwart der islamischen Bestattung in Deutschland 1996*, I.

¹⁴³ Seeger, *Bestattungsrecht*, 1971, § 43 Rn. 1 ff.

¹⁴⁴ VG Berlin, *Judgement of 03.11.1992*, - Az.: 8 A 286.89 -, NVwZ 1994, 617; OVG Hamburg, NJW 1992, 3118; OVG Münster, NJW 1991, 2232.



by your name and by the name of your fathers. Therefore choose a beautiful name for yourself."¹⁴⁵

The Christian analogy is the changing of the first name when someone enters a religious order.

Germany allows a change of the first name when serious arguments for doing so are presented to the court. The procedure comes under §3 NÄG (Namensänderungsgesetz). If the change is religiously-motivated it is viewed as an expression of the freedom of religion according to Article 4 of the Basic Law.

However separate German courts have reacted differently to requests for name changes. In June 1992 the Administrative Court in Munich accepted a request by a convert named Andreas to add the name "Abdulhamid"¹⁴⁶ to his German name. The court ruled that his conversion was a sufficient reason to change his name according to §3 INÄG. It considered it sufficient that the man had affirmed his confessional affiliation to Islam and ruled that it was not relevant whether Islamic law demanded a change of name by the convert.

But in October 1992 the Administrative Court in Koblenz¹⁴⁷ rejected the request of a convert to change his first names of Dirk Olaf to Abdul-Faruk. The court ruled that it was in the public interest to maintain the original first names of the claimant. It said recognition of his identity took priority over his religiously-motivated desire for a change of name.

In 2008 the Federal Administrative Court (2nd Senate)¹⁴⁸ ruled against parents of Turkish origin whose daughter who was registered in Germany under the name Melisa Sengül. When they sought to have the registration accepted in Turkey, the authorities there refused to recognize the name Melisa which is a Greek name. According to the Turkish Law on Names (Art 10) Muslims are not allowed to have forenames of foreign origin. The girl was then registered in Turkey under the name of Ipek Dilara. The parents wanted this name to be accepted automatically by the German authorities. The Federal Administrative Court ruled that it could not accept an entire change of name. If the Christian name "Melisa" had been dropped and only the second name had been kept, that would have

¹⁴⁵ Ebu Davud, Edeb, 61.

¹⁴⁶ VGH München, Judgement of 3. Juni 1992, Az.: 5 B 92.162 NJW 1993, 346; similar OVG Koblenz, Judgement of 22.06.1993 – 7 A 12338/92 in KirchE 31, 211; OVG Hamburg (1994) KirchE 32, 259

¹⁴⁷ VG Koblenz, Urteil vom 27. Oktober 1992, Az.: 2 K 2499/91 Ko, KirchE 30, 382, confirmed by the Judgement of OVG from 22.06.1993.

¹⁴⁸ Federal Administrative Court, 16.12.2008, Az 2 B 46/08.



been acceptable. In the present circumstances the parents have to follow Germany's rules for a legal change of name.

5. Religious Education

5.1. Islamic Religious Education at Primary and Secondary Level

According to Art 7 par 3 Basic Law, religion is an ordinary subject in the school curricula. The state has the right of supervision of the content of religious education but the religious groups themselves are responsible for the curriculum¹⁴⁹. The framework for this organized religious education is provided in the laws of the individual provinces in Germany. The main problem in introducing Islamic religious education in schools is to find a partner for the dialogue with the state government. The Islamic associations are unable to agree on a unified approach to the content of religious education, which makes it impossible for the provincial governments to introduce regular Islamic religious education for all Muslim pupils.

In 2001, a state-appointed commission issued a report which called for the introduction of "regular" Islamic education in the curriculum of German schools. According to the report this would be "an important step towards the equal treatment of Muslims compared to the already-established religious communities in schools offering general education".

A year later, in 2002, Germany's two biggest political parties came out in favor of Islamic education in public schools for the estimated 350,000 Muslim pupils. A senior member of the ruling Christian Democratic party, Wolfgang Bosbach, told a press briefing: "Islamic education in the German language with a State-approved curriculum should be introduced throughout Germany". The other major party, the Social Democrats agreed. Some provinces have introduced Islamic religious education as part of an experiment: it began in 2001 with Bavaria, followed by North Rhine-Westphalia, Baden-Württemberg and Hamburg¹⁵⁰.

In practice Islamic studies are taught only in some German provinces. It is not considered "regular religious instruction" under the terms of the Basic Law but takes place under the responsibility of the individual

¹⁴⁹ Martin Heckel, *Der Rechtsstatus des Religionsunterrichts im pluralistischen Verfassungssystem*, 2002; ders. *Unterricht in Islam an deutschen Schulen – seine Gründe und Formen. Voraussetzungen und Grenzen*, RdJB 2004, 29 – 43.

¹⁵⁰ The issue of Islamic religious education is very complex and has been the subject of complex studies. This is why I will only mention in this chapter some of the problems encountered with the introduction of Islamic religious education. See one of the latest publications on this topic: Thomas Bauer / Lamy Kaddor / Katja Strobel (eds), *Islamischer Religionsunterricht: Hintergründe, Probleme, Perspektiven*, LIT, Münster, 2008.



provincial authorities. The first German school book for Islamic studies was published in September 2008 and has so far been approved for use in four provinces.

Education authorities complain that one obstacle to the introduction of Islamic education under state supervision is the difficulty of identifying an educational authority which can fairly represent the many expressions of Islam. They say that to offer the subject in the same way as it is done for Catholics and Protestants, the authorities need an Islamic religious community to serve as a representative organization. However there is no single body representing the majority of the country's Muslims.

The Alevi religious community (which has about half a million members in Germany) is now offering regular religious instruction in three German provinces from the 2008/2009 school year.

4.2 Islamic Religious Education at Tertiary Level

Connected with the question of introducing religious education at the primary and secondary level is the issue of teacher training. This could be done in special faculties of Islamic Theology (which at present do not exist in Germany) or in a system of cooperation with departments for Islamic studies and Faculties of Educational Sciences, like those which exist in Austria and France. No matter what form of training one chooses the government will be faced with the problem of acceptance of the graduates by the different Islamic organizations.

Four chairs of Islamic theology have been established in Germany for theologians and teachers of Islamic religion. The University of Erlangen-Nuremberg introduced in the 2002/2003 semester the Muslim faith as one of its curricular subjects. Eight students enrolled immediately and the number later grew to 30. The course includes subjects such as Islamic jurisprudence, the Quran, Hadith (prophetic tradition) and Islamic history. The alumni will be qualified to teach Islam in primary and secondary schools.

In 2004 the University of Münster opened a Centre for Religious Studies which is expected to contribute to a specialisation in Islamic studies and to inter-religious dialogue. The Centre offers teacher-training courses for teachers of the Islamic faith¹⁵¹. The original leader of the Centre, Professor Muhammad Sven Kalisch, a German who converted to Islam

¹⁵¹ Thomas Bauer, Das Centrum für Religiöse Studien der Universität Münster, in: ders. /Lamya Kaddor / Katja Strobel (eds), *Islamischer Religionsunterricht: Hintergründe, Probleme, Perspektiven*, LIT, 2008, 7-15; Asiye Köhler, Islam in deutschen Schulen und Hochschulen. Stellungnahme des Zentralrats der Muslime in Deutschland, in: *Islamischer Religionsunterricht: Hintergründe, Probleme, Perspektiven*, 43-49.



at the age of 15, was removed from his post in 2008 after he publicly voiced doubts whether the Prophet Muhammad really existed. Another theologian has been appointed to lead the Centre. The Centre co-operates with the department of philology and with the departments of Judaism, religious studies, religious philosophy, biblical and systematic theology. It also has a department for Orthodox theology and plans to introduce departments for the study of Hinduism and Buddhism.

Several experts have suggested creating a State Faculty of Islamic Theology along the lines of the existing Faculties of Catholic and Protestant theology¹⁵². Others are doubtful whether the idea would be successful because of the common complaint that there is no single authority which can represent the many faces of Islam in Germany.

VI. Religious Festivals and Time of Prayer

1. Muslim Festivals

The two major festivals in Islam are the Festival of the Breaking of the Fast¹⁵³ and the Feast of Sacrifice¹⁵⁴. In these Muslims celebrate two of their primary religious duties: the end of the Fast during the month of Ramadan and the completion of the pilgrimage to Mecca. Other important festivals are: the Night of Power or the Birthday of the Prophet Muhammad. These festivals are connected to the lunar calendar and therefore their date is variable.

The German legal order takes Islamic commitments into account only indirectly, but at the same time it is secular enough to allow free time for pupils, employees and employers who want to respect them. I will mention some areas in which the keeping of these feasts is made possible.

1. *State schools*: In Baden-Württemberg, in accordance with the Land School Attendance Regulation (*Schulbesuchsverordnung*) dated 1982/1995 and its appendix, pupils who belong to the Islamic faith may be excused from school for one day for both festivals. Pupils can also be excused from school attendance to take part in the "Friday prayers". The same regulation has been valid in Bavaria since 1978 (according to Nr 4 KMBek, KMBL. I S. 434). In Berlin the pupils are also allowed to take a day off on the two most

¹⁵² Richard Puza, The Rights of Moslems and Islam in Germany, EJSR 8 (2001), 61-89; Richard Puza, Fragen um den staatlichen Religionsrecht um den in Deutschland, ThQ 181 (2001), 307-328.

¹⁵³ This festival is celebrated for up to three days from the first day of the ending of the fast. Celebrations begin after the first sighting of the new moon following the fasting during the month of Ramadan. Special attention is given to charity.

¹⁵⁴ The feast takes place on the tenth day of the month during which the annual pilgrimage to Mecca is made. The animal sacrifice concludes the pilgrimage, marking the completion of the rites and duties of the haji in accordance to the law of the Qu'ran (2:26-38).



important Muslim festivals mentioned above. The same regulation has been valid in Bremen since 1999 (Richtlinien über Unterrichts- und Dienstbefreiung an religiösen Feiertagen vom 11. Mai 1999) and in Hamburg since February 28, 1981 (Verordnung über die Befreiung vom Schulbesuch)¹⁵⁵. In Lower Saxony not only the pupils may take these two festivals as holidays but also the teachers, provided that the educational program is not affected by it. In the provinces of the former East Germany regulations concerning these festivals were introduced after 1994. The first to do so was Thuringia with the Regulation for Exemption from School instruction on Religious Grounds issued on January 20, 1994 (§§ 6 and 7) and updated on January 17, 2000.

2. *Work life*: According to German legislation, Sundays and public holidays are the only days in which employees are entitled to paid leave from work. They have no connection with any Islamic feasts. However there are ways in which a Muslim may be able to honor the feasts. According to § 66 BGB an employee is entitled to paid leave if he cannot be expected to carry out the work which he is obliged to do. According to § 616 BGB (Civil Code) every employee has the right to a paid leave of absence when his work permits it. It is still an open question whether the days of religious observance can be justified by this prescription¹⁵⁶. According to § 242 Civil Code employers have an obligation to provide welfare services and freedom of religion in accordance with Art. 4 sect. 2 of the Basic Law. Therefore employees can refer to this stipulation if they request a paid leave in order to keep their religious observance.

A related issue is whether Muslim workers may interrupt their work on Fridays in order to fulfill their religious obligation of prayer¹⁵⁷. As mentioned above everyone in Germany has the right to practice their religion (guaranteed by Art 4 par 1 Basic Law¹⁵⁸). The right to pray falls under this category¹⁵⁹. What matters is whether the believer considers this activity to be obligatory for the practise of his religion. This is why one could expect the employer to respect the conflict of conscience of the employee and grant him the possibility to interrupt his work for one hour¹⁶⁰.

¹⁵⁵ Same regulations in Saarland, Rhenania Palatinate, Northrhine-Westphalia, Schlesvig-Holstein.

¹⁵⁶ Axel Freiherr von Campenhausen, in: v. Mangoldt/Klein/Starck, GG-Komm., Bd. 3, 4. Aufl., 2001, Art. 139 WRV Rn. 18).

¹⁵⁷ Rainer Rehwald, Gebetspausen während der Arbeitszeit, Anmerkung zum Urteil des LAG Hamm vom 26.02.2003, AuR 2003, 73

¹⁵⁸ BVerfG vom 05.02.1991 - 2 BvR 263/86 - NJW S. 2623, 2624

¹⁵⁹ Starck in von Mangoldt/Klein/Starck, GG I Art. 4 RdNr. 53; Böckenförde, NJW 2001, S. 723, 724

¹⁶⁰ BVerfG vom 15.01.2002 -1 BvR 1783/99 - NJW2002, S. 663, 666



However the Courts do not always share this opinion. One case concerns a Muslim employee who left his place of work in order to fulfill his Friday obligation of prayer. The Labour Court in Hamm¹⁶¹ overruled a decision of the Labour Court in Münster¹⁶² which did not allow the worker to take time off in order to fulfil his religious observation. The first instance ruled that the interruption of work led to disorder in the flow of work. The second instance stressed in its decision that the employee has the right to the free practice of his religion (Art 4 Basic Law) and may leave his work place for a short time. However in accordance with the stipulation of § 616 Civil Code (BGB) he must consult his employer before doing so. The obligatory prayers in Islam do not have to be held at a particular hour on Friday but at a time depending on the position of the sun. Therefore, the employee has some flexibility in choosing the right time of prayer and is not obliged to leave his work place every week at a certain time.

3. *Civil servants* may be excused from service, insofar as it is not contrary to the interests of their service. Within the framework of flexible working time it is also possible to stay away from work for a particular time (e.g. to go to the mosque) or by taking a day off. Similar provisions are in force in the German provinces and municipalities.

4. *Military*: On the basis of the Central Service Regulation for Military Pastoral Care (*Zentrale Dienstvorschrift Militärseelsorge -ZDV66/1*) commanding officers are instructed to be open to the religious concerns of soldiers and to make arrangements so that they have sufficient opportunities for religious observance. The regulation does not mention any entitlement to have leave on Islamic holidays.

VII. Religious Buildings

1. Mosques

There are an estimated 2,500 mosques in Germany. The mosque is not only a place for prayer but also a place for teaching, for gatherings and for organizing marriages or birth ceremonies or funerals. Traditionally the mosques also perform political functions. The prophet Muhammad helped build the first mosque in Medina next to his own house and made it a centre for discussion and debate¹⁶³.

¹⁶¹ LAG Hamm, Urteil vom 26.02.2002 - Az.: 5 Sa 1582/01 in AuR 2003, 72

¹⁶² ArbG Münster, Urteil vom 07.09.2001 - Az.: 4 Ca 915/01

¹⁶³ Akbar S. Ahmed, Art. Mosque, The Oxford Encyclopedia of the Modern Islamic World, vol. 3, 140 - 143.



In recent years a public debate has developed on the necessity of building new mosques and their place in the architecture of German towns. The controversy focused mainly on the height of the minarets and the size of the building. Unfortunately the discussion became politicised.

In fact, mosques are nothing new for German towns. The oldest mosque in Germany was built between 1792-1793 in Schwetzingen (Heidelberg). In 1843 Wilhelm IV ordered the construction of a mosque in Potsdam with a 38 meter high minaret.

The massive building of mosques began in the 1990s. Representative mosques are: the Umar ibn Al-Khattab Mosque in Berlin (which has a glass dome, 4 minarets, 7 floors housing prayer and washrooms, several meeting rooms and many offices); the Aachen Mosque (a modern-style building with around 600 sqm for prayer rooms); the Mosque in Ingoldstadt and the Mosque in Duisburg-Marxloh which is the largest in Germany.

The Mosque which has provoked the most controversy is in Cologne. It is intended to accommodate 1250 faithful. According to the plans, the Mosque will have approximately 2,455 sqm of retail space, a 36-meter-high dome and two 55-meter-high minarets. The building has been strongly criticized by immigrants who have distanced themselves from the Islamic faith and become involved in human right issues regarding the Muslim population in Germany (for example, the jurist, Seyran Ates¹⁶⁴, born in Turkey, who is now a member of the Ex-Muslim Central Council or Mina Ahadi¹⁶⁵ and Ayaan Hirsi Ali¹⁶⁶). Local politicians see in the planning of this mosque a show of force from the Muslim side.

The former Minister President of Bavaria, Edmund Stoiber argued that cathedrals should be taller than mosques since the country's leading culture is Christianity¹⁶⁷. He was supported by representatives of the Jewish Central Council in Germany. Even the architecture of the Dome of the Cologne mosque -- designed by Paul Böhm¹⁶⁸ -- is interpreted in different ways: whereas the liberal newspaper "Zeit" considers the see-through

¹⁶⁴ Jens Jabobsen, Kuppeln und Ängste, Die Zeit 8.3.2008.

¹⁶⁵ Mina Ahadi is an Iranian human right activist living in Germany, one of the founders of the Ex-Muslim Central Council. She is the main figure of the International Committee against Execution and the International Committee against Stoning. She is living at present under police protection because of death threats issued against her.

¹⁶⁶ Ayaan Hirsi Ali is a Dutch politician, writer, feminist and Islam critic born in Somalia. She wrote the screenplay for Theo VanGogh's film Submission. Since his assassination in 2004 she has been living under police protection

¹⁶⁷ Edmund Stoiber, Moscheen sollen nie größer als Kathedralen sein, Weltonline. 21.09.2007.

¹⁶⁸ His father Gottfried Böhm was known for designing churches in rocks and with a concrete-glass architecture.



globe of the Dome as a symbol of Islamic openness towards the world¹⁶⁹, the sociologist and Islam critic of Turkish origin, Necla Kelek, views it as a symbol of conquest, as a demand for world domination and as a symbol of political Islam in concrete. She also sees in these large mosques a seed for the creation of a parallel society¹⁷⁰.

On the other hand, the churches largely support the building of mosques since they consider that Muslim believers also have the right to practice their faith in a dignified place¹⁷¹. As far as the legal status of the building of mosques is concerned, they must comply with the regulations of the public building law¹⁷². Religious buildings are under the protection of the Basic Law of Germany.

2. The Call to Prayer

The Call to Prayer (Arabic: Adhaan; Turkish: Ezan) is considered as part of a prayer and is intended to bring Muslims together for their hours of prayer¹⁷³. Muslims are summoned to prayer and worship five times each day and to congregational worship in the Mosque at noon on Fridays. Muhammad introduced this call to prayer. In earlier times it was made from the rooftop or the doorway of a mosque. Later, when leadership of the Islamic community passed from Medina to Damascus under the Umayyads, the call was intoned from the balcony of a minaret. It was only at that time that a minaret became a distinctive feature of the architecture of a mosque¹⁷⁴. Muslim law teachers consider the call to prayer as an obligatory act and part of the introduction into the prayer. With the growing numbers of Muslims in Germany several associations have asked for permission to call for prayer publically. Until now the issue has been

¹⁶⁹ Jörg Lau, Raus aus der Fabrik, Die Zeit 31.05.2007, Nr. 23.

¹⁷⁰ FAZ, 5.6.2007, Nr. 128, 33; SpiegelOnline 12.07.2007.

¹⁷¹ There were also some negative voices: Two well-knowns bishops of the Roman Catholic Church were very outspoken and negative on this issue: Cologne's cardinal, Joachim Meisner called the Muslims in Germany to start fighting for the rights of Christians in Muslim countries and in return for their implication they should be allowed to build mosques here and will be supported to practice their faith. The Bishop of Augsburg, Walter Mixa also stressed the fact that Christians do not have any rights to practice their religion in Muslim countries and demands that this issue be treated with parity (Weltonline 27.07.2007).

¹⁷² Werner Hoppe / Christian Bönker / Susan Groffels, Öffentliches Baurecht – Bauplanungsrecht, Bauordnungsrecht und Grundzüge des Raumordnungsrechts, 2nd ed., 2002.

¹⁷³ Guntau Burkhard, Der Ruf des Muezzin in Deutschland - Ausdruck der Religionsfreiheit?, ZevKR 43 (1998), 369; Stefan Muckel, Streit um den muslimischen Gebetsruf, NWVBI 1998, 1; Otten Olaf, Wenn der Muezzin ruft. Ein Beitrag zu den Grenzen des Rechts und den Grenzen der Toleranz, in Städte- und Gemeinderat 1997, 65; Arndt Schmehl, Der Ruf des Muezzin und das Lautsprecherverbot, JA 1997, 866.

¹⁷⁴ Hulmes Edward, Call to Prayer (Adhan), in: Encyclopedia of Islamic Civilization and Religion, ed. Ian Richard Netton, Routledge, 2008, 119-121.



discussed at the level of local administration but some fear that in the future there could be open conflicts on this topic¹⁷⁵.

The call to prayer is constitutionally protected by the right to free exercise of religion (Art. 4 I, II Basic Law)¹⁷⁶. The controversy arises from the use of loudspeakers to amplify the sound. Some fear this could contribute to increased noise pollution and might constitute a road safety hazard, since drivers could be distracted by the noise. Some jurists consider that the call to prayer should be treated in the same way as the ringing of church bells¹⁷⁷ on the basis of the non-discrimination prescription (Art. 3 I, II GG). One can make distinctions between the two¹⁷⁸, but fundamentally the sound of the muezzin and the ringing of bells call the believers to a religious gathering and represent a sign of a religious community¹⁷⁹.

However the call to prayer of the muezzin has the content of a confession of a profession of faith¹⁸⁰ and is not a simple sound without any religious content like the church bell. Certainly the church bell is religiously motivated but the content it transports is more open than in the case of the call to prayer¹⁸¹.

For a legal assessment of the two types of calls one has to take into consideration the regulations on the protection of noise emission and on the traffic (§ 33 I 1 Nr. 1 StVO¹⁸²). Although one must concede that the call of the muezzin rarely disturbs the everyday traffic¹⁸³. But even in such a case the law (§ 46 I 1 Nr. 9 StVO) allows the granting of a special permission. The use of a loudspeaker does not require the issuing of a special permission (according to §§ 22 ff. BImSchG¹⁸⁴).

¹⁷⁵ Listl/Pirson, *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, Erster Band, 2. Auflage, Berlin 1994, S. 912

¹⁷⁶ Stefan Muckel, *Berliner Kommentar zum GG*, Art. 4 Rn. 33; Kokott in *Sachs GG-Kommentar*, Art. 4 Rn. 55

¹⁷⁷ Martin Völpel, *Streitpunkt Gebetsruf. Zu rechtlichen Aspekten im Zusammenhang mit dem lautsprecherunterstützten Ruf des Muezzins*, Mitteilungen der Beauftragten der Bundesregierung für die Belange der Ausländer, 1997 Bonn.

¹⁷⁸ Stefan Muckel, *Streit um den muslimischen Gebetsruf*, NWVBl 1998, 1-12.

¹⁷⁹ BVerwGE 90, 163, 165

¹⁸⁰ For Sunni Muslims the call consists of seven statements: 1. Allah is most great, 2. I bear witness that there is no god other than Allah, 3. I bear witness that Muhammad is the messenger of Allah, 4. Come to prayer, 5. Come to Salvation, 6. Allah is most great, 7. There is no other god than Allah.

¹⁸¹ Hartmut Maurer, *Religionsfreiheit in der multikulturellen Gesellschaft*, in: Carl-Eugen Eberle / Martin Ibler / Dieter Lorenz (eds), *Der Wandel des Staates vor den Herausforderungen der Gegenwart*, FS Brohm, 2002, 455.

¹⁸² *Strassenverkehrsordnung – Road Traffic Regulation*

¹⁸³ VG Giessen vom 27.11.2000 – Az.: 6 E 1080/96

¹⁸⁴ *Bundesimmissionschutzgesetz – Law for Immission Control*



According to §§ 24 I, 25, 22 I Nr. 1 of the Law for Emission Control the use of such equipment can be banned if it disturbs the neighbours or if it contributes to lowering the value of houses in that particular area, i.e. if it restricts the fundamental rights of the other party¹⁸⁵.

VIII. Conclusions

This analysis of the legal position of Islam in the German constitutional system makes clear that there is still a long way to go before the complex integration of Muslims into German society can be fully achieved. However important steps have taken place in recent years and today Islam is a religious community second in importance only to Christianity with its many denominations.

Germany offers a generous environment for religious development. It is a secular state with a Constitution which guarantees freedom of religion. The state is neutral towards all religious faiths and is prepared to allow them a place in the public area without expecting any advantage in return. The secular state, unlike the laic state does not exclude religion from public life but offers it an opportunity to develop; to be practised openly. Germany allows its people the right to confess a particular belief or to ignore it; it allows them the right to live according to the principles of any form of religion providing that this religion respects the legal principles on which the state is founded.

In Germany there is a balanced separation between religion and state from which all religious communities can profit. Christianity constitutes the leading religious force and public life is dominated by practices common to Christianity (public holidays on certain Christian feast days, Christian religious education in schools, financing of state faculties for different Christian denominations etc.). Islam has benefitted from religious tolerance and developed dramatically.

It began with the 1960s when thousands of Turkish workers came to Germany. The self-confidence of the Muslim population grew as time passed and over the decades Muslims obtained many rights. Today Muslim communities have the right to build their own places of worship, to train their own ministers of religion and to organize religious education in schools. Muslim workers have the right to paid holidays during their religious festivals and to participate in the Friday prayers. A series of legal rulings generally allow the traditional ritual slaughter of animals on im-

¹⁸⁵ Muckel Stefan, Religionsfreiheit für Muslime, FS Listl, Dem Staate, was des Staates ist, der Kirche, was der Kirche ist, 1999, S. S. 239, 251



portant Feast days and they may organise their religious life according to the prescriptions of the Quran.

Some points of conflict between the state and the Islamic communities remain unresolved. One issue is the question of whether Muslim women and girls should be allowed to wear an Islamic headscarf as a religious symbol in public institutions such as state-run schools. In some cases courts have been asked to decide whether an Islamic woman can wear a headscarf while employed in a shop or business. But questions have also been raised about other symbols such as the wearing of turbans or large Christian crosses. In this matter, the German state treats all religions equally in keeping with its obligation to remain neutral. In the public sphere no religious symbol is allowed to dominate over another one.

Another fragile issue which is the focus of many discussions is the integration of Muslim children into the ordinary daily life of a school – in practice, into the ordinary life of Germany. Some Muslim parents believe they have a duty to shield their children from what they view as the malign influences of modern society and try to stop their children from participating in some obligatory curricular activities, including sport. Again the German state tries to find a balance between parental rights regarding the education of a child and the necessity of integrating the child into the everyday society where most of them will spend their lives.

From these and other cases we may conclude that German courts make an enormous effort to understand the principles of the new religion they are confronted with and to apply the principle of non-discrimination and parity to it. On the other hand it also expects Muslims to make an effort to integrate in the new society in which they have chosen to live and to show openness towards it.

In conclusion, I would like to mention another matter which is often passed-over when one discusses religion. In recent decades religiosity has decreased in Western Europe. This applies to both Christian and Muslim religiosity. Religiosity no longer plays the major role in the life of the modern man that it once did. Thus a religiously-neutral state has to be alert in protecting the rights of those who come from countries where Islam is the rule and have chosen to live without the influence of one religion or another. In Germany, freedom of religion means not only freedom to practise a certain religion but also the freedom not to practice any religion at all.



Özet:

**Almanya'nın İslâm'la Yüzyüze Gelmesi
-Kanunî ve Dinî Konular-**

Günümüz Almanyası'nda, Müslüman topluluklar kendi ibadet yerlerini inşa etme, kendi din görevlilerini yetiştirme, okullarda dini eğitimi düzenleme haklarına sahipler. Müslüman işçiler, dinî bayramlarında ücretli izin hakkına ve Cuma namazlarına katılma hakkına sahipler. Kanunlar genellikle kurban bayramında kurban kesilmesine müsaade etmekte, ve müslümanlar Kur'an'a göre hayatlarını düzenleyebilmektedirler. Bu ifade edilenler yanı sıra devlet ve müslüman topluluklar arasında çözüme kavuşturulamamış bazı anlaşmazlıklar da bulunmaktadır. Bunlardan biri, müslüman kadın ve kızların devlet okulları gibi kamu kurumlarında dini bir sembol olarak İslâmî baş örtüsü takıp takamayacağı problemidir. Pek çok tartışmanın odağı olan bir başka hassas konu da, müslüman çocukların günlük okul hayatına uyumu veya pratikte günlük Alman yaşamına uyum problemidir. Bazı müslüman ebeveynler, çocuklarını modern toplumun zararlı olarak gördükleri etkilerinden korumak gibi bir görevleri olduğuna inanmaktadırlar. Çocuklarının okul müfredatının gerekli gördüğü, spor gibi bazı etkinliklere katılmalarını engellemeye çalışmaktadırlar. Alman makamları karşı karşıya buldukları bu yeni dinin kurallarını anlamak ve bu dine karşı ayırım yapmama ve eşitlik ilkelerini uygulamak için büyük gayret göstermektedirler. Diğer taraftan müslümanların içinde yaşamayı tercih ettikleri bu topluma uyum sağlamak için gayret göstermelerini ve açık olmalarını beklemektedirler. Almanya'da dinî özgürlük, sadece bir dine tanınmış bir özgürlük anlamına gelmemekte, aynı zamanda hiç bir dinin uygulanmaması hususunda da özgürlük anlamını taşımaktadır.

Anahtar kelimeler: Almanya, İslam, din, toplum, sosyal hayat.

