

REPORT ON THE SEMINAR

The Austrian Islam Law, 2015: Origins, Enforcement, Interpretations

29/05/2020 (10 am-12:30 am on Zoom)

Introduction: Cinzia Piciocchi (UniTrento)
Speaker: Kerstin Wonisch (EURAC Bozen)
Discussants: Rossella Bottoni (UniTrento)
Davide Strazzari (UniTrento)
Roberto Toniatti (UniTrento)

Introduction by **Cinzia Piciocchi**, who thanks the speaker and the discussants as well as the participants and announces this is the first seminar of the PRIN Project 2017 “From Legal Pluralism to the Intercultural State. Personal Law, Exceptions to General Rules and Imperative Limits in the European Legal Space”. The organization of the seminars shifted a little because of covid-19 and seminars will now be online. Then she gives the floor to dr. Kerstin Wonisch to discuss Austrian Islam law as a paradigmatic example of relation between state and religion.

Kerstin Wonisch starts by giving an outline of her presentation.

At first, she discussed the **Constitutional statute of religions in Austria**, claiming that in the overall the constitutional attitude towards religions can be qualified as neutral.

The Basic law on the general rights of citizens (1867, still in force) provides some specific provisions on religion, such as art. 14, 15 and 16.

Other provisions can be found in art. 63(2) of the Treaty of Saint Germain (1919) and the principles of equality and non-discrimination on the base of religion are to be found in art. 2 StGG and art. 7 B-VG.

To sum up, the basic principles of Austrian law when it comes to religions are: Religious neutrality (in spite of the fact that all these provisions come from an era of Christian domination), secularity, parity and exclusivity.

According to Austrian law, there are three levels in the relationship between religious confessions: Wonisch suggests it is a sort of “ladder”. On the bottom we can find religious associations (Law on association 2002); then State registered religious communities (Law on confessional communities 1998) which are recognized as legal entities and enjoy legal protection (requisite: 300 members), on top we find Recognized churches and religious communities (Law on legal recognition of religious communities, 1874), which are public law corporation and enjoy specific sets of rights (such as right to religious instruction in public schools, right to consultation in the

legislative process etc.), according to §11 BekGG the requirements are 20 years of existence and that followers must represent the 2% of the population.

It must be noticed that these requirements were challenged by the case law of ECtHR (*Religiongemeinschaft der Zeugen Jehovas and Others v. Austria*, 2008) but remained almost unaltered.

Nowadays in Austria there are 16 recognized churches and 9 registered confessional communities.

The first **Austrian Islam Law** dates back to 1912 (RGBl NR 159/1912) at the time of the Austro-Hungarian empire. The law aimed at accommodating Muslim members into the empire, while Europeanizing Islam (with the specific goal of affirming a specific state dominated hierarchy in Bosnia Herzegovina).

It is a special legislation (very short, 8 paragraphs only) that does not comply with the conditions under Law on legal recognition of religious communities 1874 because it's a special law: it must be considered that back in that time it was even more difficult to refer to Islam as one community. Some of the main provisions under this law included: §1 cults community rights to self-management and self-determination; §2 the possibility to import servants from Bosnia; § 6 the recognition of the Islamic religion, its teachings, religious servant institutions and its rituals/costumes in so far as they do not conflict with state laws; §8 state marriage law prevails over religious one.

The speaker provided a sort of timeline of the evolution of Islam and law in Austria bringing to the approval of the new Islam law. Some of the most important events mentioned are: the constitution of Islamic religious community (1979) and the establishment of Islamic religious education in schools (1982/1983), the decision of the Constitutional Court in 2010 (B1214/09) which declared the unconstitutionality of the exclusion of other Islamic communities from legal recognition and the registration of Alevi community (2013).

In 2012 the "Dialog-forum Islam" was created to contrast social polarization and discuss a possible draft for the new Islam Law Act, which in the end was not possible due to many internal conflicts.

In 2014 there was a public presentation of a draft of this law written by the government in consultation with the IGGÖ and the Alevi community. IGGÖ was quite unsatisfied by the law, while Alevi supported it, the Dialog-forum Islam was against it, and many Muslim NGOs publicly advocated against it.

The main claim was that many inside the Islamic community were marginalized in this process held by Government. In the end the Government held a last consultation with IGGÖ, which resulted in slight amendments of the text.

The Islamic Law Act was approved in 2015 and it is composed by 33 paragraphs and 6 sectors. It is a special religious law that resembles the Israelite law act 2012. For the first time this law addresses two communities (IGGÖ and Alevi).

According to the speaker the key provisions of this law are aimed at providing a legal status to Islam and recognizing other communities, the legislation affirms the right to self-organization and administration and right to publicly practice religion for Muslims. At the same time, however, for the first time the law affirms the precedence of national law and duty to respect general public norms.

The provisions of **special law on recognition** concerns:

- the dissolution of Islamic association connected to the recognized community spreading religious teaching (strong disapproval by existent associations) which might not be consistent with ECtHR case law such as (Serif, Metropolitan church of Bessarabia, Supreme Holy Council of the Muslim Community)
- prerequisite of economic sustainability and that income must be used for religious purposes only;
- requisite of having a positive attitude towards society and State (the absence may result in denial or revocation)
- requirement related to the presentation of doctrine, in particular a German translation of the sacred text (which apparently is against ECtHR case Bessarabia)
- Ban on the financing of operation from abroad. This requisite was upheld by the Constitutional court in 2019, which stated that this provision secures the autonomy of the communities from the influence of other States and their institutions (e.g. Turkey). It must be noticed however that private donation to communities, even from foreigners, are allowed.

For what concerns rights and obligations:

- The community has the right to choose a name
- Right to assess legislative and administrative measures which might be relevant for the community prior to their enactment
- Right to religious service in the army, prisons, health care institution to be financially covered by the federal government Respect of dietary rules in army, prison, public health institutions, schools and right to process meat products and other alimentary products according to religious rules
- State protection of religious holidays (but no official holidays, so no school or work holiday but no disturbance is granted)
- Dismissal of officials if they are convicted for more the one year (this provision is in contrast, according to some scholars, with the principle of non-interference with right to autonomy in the internal matters)
- Specific permanent section of cemetery (this provision is new)
- Internal subdivisions or associated associations can have legal personality (provision which is very often used and soften the one related to the spreading of religious teaching in §3.4)
- State must finance 6 positions to study Islamic theology at university of Vienna every year

Supervision rights of the State:

- Prohibiting religious events for public security
- Review electoral processes and electoral supervision complaint to the federal chancellor
- Enforcement of official decision including suitable fines

Some recent developments related to the relationship between Islam and Austria are:
The law prohibiting concealment of the face in public 2017; a decision from 2018 of the Government to close some mosques which were then censored in 2019 by the

Vienna regional administrative court; the 2019 law on school education which contains at §43 a provision prohibiting pupils to wear religious clothing before the age of 10, the rejection by the KULTUSAMT of the application from the Alevi community which was confirmed in 2019 by the Vienna regional administrative court. The Alevi are re-applying in 2020 after having announced and then abandoned the possibility of recurring against the decision in front of the ECtHR.

To conclude the speaker observes that the Islam law act constitutes a sort of balance between the idea of integrating these religious faiths while having a securitizing approach. If we compare this law to the previous one there are significant improvements, at the same time the power of supervision for the State is ample: the rigid recognition framework is cemented by this law.

Rossella Bottoni: after having thanked the speaker, declares she will focus on the conclusive remarks of the previous presentation by adding some reflections on this level. The dichotomy mentioned early (integration-securitarianism) is quite common in Europe. For what concerns the integrative approach she claims that it is common to talk about institutionalization of religious communities even in a critical way, with particular regard to the nationalization of specific churches. Here she notices that the process of institutionalization is common to all religions in different times (e.g. Gallicanism in France). However, for a successful institutionalization the top down initiative must be combined with a bottom up approach. For what concerns securitarianism the threat of terrorism is real, and it should also be considered that according to the ECtHR case-law national security can limit the fundamental rights contained in the Convention.

However, according to her we must distinguish (she draws from studies made by Susanna Mancini) when these kinds of provisions represent symbolic conflicts (coming from the majority's identity anxiety) and when they come from real conflicts. To conclude the discussant, highlights the following points:

- Religious freedom is a fundamental right, however it is derogable;
- Limitations must be consistent with democratic values;
- It must be assessed if this limitation pursues a legitimate aim: for example the use of ecclesiastical law for security reason is inappropriate;
- And if the aim is legitimate it will be necessary to evaluate the proportionality of these measures.

Davide Strazzari: the discussants start by congratulating on the speaker's presentation. He comments on the requirement of positive attitude towards the state set in 2015 law: it does not refer to conclusive behaviours but acceptance of state values. Then the law refers not to concrete public order but an abstract notion of it. Is it compatible with the European Convention on fundamental rights? The second issue addressed starts from the consideration that, in theory, according to this law it is possible to institutionalize one or more communities, at the same time the law is contradictory and potentially violates religious autonomy in many parts. For example, the State can refuse registration if a doctrine is not different enough from an already

recognized one. At the same time minority groups are required to reach a certain numeric threshold. He asks: what's the role of the judiciary in this? Can an expert be called to analyse a doctrine issue?

The final questions concern the effectiveness of the law: in particular the discussant asked if other Muslim communities found their own ways to exist, for example with associations, outside the legislative framework. On this matter: how to distinguish between religious and cultural scope? Would that imply different disciplines?

Roberto Toniatti: he thanks the speaker and announces he is going to make some comments and ask some questions.

The first comment starts from the consideration of the long history of Austria with Islam related to the annexation of Bosnia Herzegovina. Does this heritage play a role in the current regulation of Islam in Austria? Apparently, the country shares the same mistrust and fear with countries that have no experience with Islam (e.g. Italy). Is it a problem of European societies which are unable to cope with diversity outside Christianity or maybe a problem of Islam (considering that the approach is not the same with Hinduism, Judaism and other confessions)? However, the consideration here is that the fact that Austria legislated so early makes the experience of this country unique.

The second comment concerns the divisions in between Islam. Here probably a more flexible attitude of the State is needed, for example Austria recognized two different communities. Italy shows no intention of doing so by refusing any form of agreement, claiming that the responsibility is on the Islamic community division. The State in this case needs to be flexible and Austria showed to be capable of doing so.

The third comment starts from a data: apparently in 2017 the 56% of Austria was Christian. How we can identify then the constitutional identity of Austria as neutral from the point of view of religion? The discussant brings the case *Lautsi v. Italy*, where, according to the ECtHR the crucifix becomes not only a symbol of Christianity but a symbol of the State and its democratic values. From this point of view Italy is not a State with a neutral approach towards religions. How about Austria?

The fourth point concerns the unregulated areas, the ones left out by this law, are they regulated by religious laws and recognised by state law? For example, male circumcision. Is it considered an individual freedom, why there is no regulation?

Another question is connected to the issue of funding from abroad: is there in Austria any training for imams? Training imams on the territory is often considered preferable. For example, in France this is a reality while in Italy there is nothing on this point.

A last consideration, a more technical one: in literature how do scholars qualify the provisions of individual rights in Austrian Islam law? As special rules or general rules for Muslims? Also, this list of rights: is it a closed list or is it object of judicial expansion?

What Austria and Italy have in common is that there is no general provision on religious freedom (such as the one in Spain). Is the principle of parity between confessions respected? To conclude the discussant observes that in the last 15 years many different coalitions succeeded in the government of Austria, but apparently there

is a remarkable policy continuity in the legal provisions concerning Islam (exception made for the law on the concealment of the face in public), does this show a wide spread societal attitude towards Islam?

Kerstin Wonish:

She starts by answering the question on the imams training which might affect the future of Muslim community in Austria. This training was set up by law in 2016 and is based in Vienna, there are not many students (the Alevi have 6-8 students). This point was very criticized by the Alevi community because in their community the training is family-based, so this institutionalization is not well seen. Inside the university system for example at the beginning there was this famous scholar who was very close to IGGÖ, then his study became closer to the position of the government and the relationship changed.

In Innsbruck there is no imam training but Islam pedagogy is taught. For what concerns the respect of the Principle of parity, we must consider that it requires that different needs imply different treatments, in this case differences are justified (e.g. the discipline of Muslim cemeteries). According to Wonish there has been a change of attitude from the State toward Islam starting from the constitutional court decision in 2010: the decision to open up to the different Islamic communities was very important, the affirmation on the fact that there is no reason why they have to be in the same umbrella (e.g. Shia community nowadays). However, the fact that each community is required to submit their dogmas and prove the difference is very critical if we look at the ECtHR case law (it looks like a monopoly).

Of course we must admit that as Rossella Bottoni said there are many symbolic measures on this topic. There is still a need to open up to other and smaller Islamic communities, IGGÖ somehow still has a monopoly, for example on education in school, and from many teachers, for example, the Shia community is not well represented. There is a need to articulate and frame better. State should maybe check and interfere a little on this side. The review on the doctrine is usually carried out from independent experts. In general the fact that IGGÖ still somehow has a sort of monopoly has an impact on smaller communities.

QUESTIONS FROM THE PARTICIPANTS

Nausica Palazzo: asks to know something more about polygamy, which was mentioned at the beginning of the presentation and the related public debate in Austria.

Kerstin Wonish: According to 1912 Austrian law state marriage law prevails over religious marriage, but this doesn't mean that religious marriages aren't being practiced. She knows from interviews that Islam marriages are being conducted by some imams without state registration. For what concerns polygamy, the debate was very vivid in 1912 especially in Parliament, but the debate is now less animated. As we know that some imams conduct marriages without state registration, there are some possibility of polygamy, but she has no further information and no certainty.

Adrian Overbeeke: Thanks the speaker for this presentation. It was very important for him because in the Netherlands in the 2019 they started planning for regulation of funding of religious communities from abroad. In this debate Austrian law is often mentioned, so this presentation was a good opportunity to understand also the limit of the Austrian approach.

The questions: Concerning Paragraph 3.4 on the possible dissolution of associations, what are the experiences with this section of the law? The law mentions “positive attitude to society and state”, how is this understood?

Kerstin Wonish: This requirement on positive attitude is highly debated, if we read explanatory notes pluralism and also acceptance of different conceptions of life, marriages etc. are mentioned. During interviews with offices it has been said that this notion might be applied when there are teachings that might be perceived as “aggressive”. For example, at the time when she was carrying out interviews the Islamic community had just filed the complaint in front of the constitutional court against the law on prohibition of face veiling in school (that was the first time the community challenged the State). She asked whether this could be understood as a negative attitude. The answer was no, what they had in mind was: teachings undermining the constitution, the rule of law, democracy in general, wanting to create an Islamic state.

It is interesting to see how the presidency of the community can have a role into it. For example when the law was enacted we had a president who was for positive integration, then another one who came from another section, and now a new president who has Turkish influences that can be seen as critical.

The relation between the government and Islam in 2018-2019 was very sour, at the moment the Islamic community has a new president (a lawyer, by the way) who was born raised and educated in Austria and he was very cooperative since the beginning. Some of the smaller communities in mosques are threatened by the system of funding. (Dr. Wonish shows and comments some slides on the structure of the IGGÖ community)

This morning news reported that during a celebration there was a speech in Vienna spreading negative attitude on Christians. Here there is the topic of Turkish influences on Islamic communities.

Parola Parolari: Could you please say something about the Arbitral Tribunal mentioned in the last slide? Also, in Austria is there something similar to sharia councils in England? Thank you

Kerstin Wonish: No there is nothing similar to the sharia councils. There is this Arbitral Tribunal that comes from the new constitutional change of the IGGÖ dated February 2020. They existed before, but now it is more official. These tribunals however should be mainly used in community trials and controversies, they have no competence in family issue. But again, it is something very new.

Roberto Toniatti: could you tell us something more about the Islam Dialog-forum? What about acts of anti-Semitism in Austria?

Kerstin Wonish: The forum is not working anymore, it stopped working after the law was approved, at that time there was an established dialogue. There is something inspired by the previous platform at a governmental level, but nothing comparable to the previous Islam forum. Unfortunately, Anti-Semitism is something real and it is on the rise, but it doesn't come from Islam exclusively and it is spreading in public debate. Anti-Semitism is on the rise but islamophobia as well.

Adriaan Overbeeke: There are a number of denominations (diyanet and so on). Who nominates their imams and is responsible for overseeing them? Is there a choice for Ankara? (e.g. problem with Belgium, where diyanet imam prefer to be payed by Turkey)

Kerstin Wonish: Usually within the system as explained before it is the President and the Schura Council that should decide, in the reality it's the 27 cult communities. They have the power and they oversee their own mosques and also require the imams. We should consider that the imams trained in Vienna are very small in numbers, especially if the compare them to the number of mosques in the Austrian territory. So many mosques are sharing imams, and many of them are coming from Belgium. For what concerns the Shia community, for example, they sometimes get their imams from Shia platforms.

Cinzia Picocchi ensures there are no further questions from the audience, thanks the speaker the discussants and the participants and close the seminar at about 12:30.

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