

Recent Developments in the Protection of Religious Freedom in Germany and its Impact on Religious Identity

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Abstract

The paper argues that the approach taken to freedom of religion under future German law falls short of basic legal principles and it does not signal compliance with international obligations. Moreover, it entails an increased difficulty for non-Christian citizens to maintain their religious identity.

Religious freedom is protected under Art. 4 of the German constitution: “(1) The freedom of faith, conscience and the freedom of religious denomination and of philosophy of life are inviolable. (2) The undisturbed practice of religion is guaranteed.” A further relevant provision is Art. 3 of the constitution, which prohibits discrimination, inter alia on grounds of religion. The paper will explain and analyse the mechanisms in which human rights can be restricted in the FRG.

In recent times, conflicts arose when public sector employers requested Muslim employees to take off the veil whilst at work. One case went to the Federal Constitutional Court which without taking sides decided that it is for the federal states to issue law within the constitutional framework that includes rules as to what religious dress is appropriate in their respective public services.

Currently eight out of 16 federal states intend to enact legislation that prohibits the state employed to openly show their religious denomination. This is highly

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problematical for several reasons. For instance it is very complicated to decide whether a “religious symbol” is obvious enough to be banned or not. Since headscarf, hijab and kippah are more easily visible than a small cross on a chain, these are the most likely to come within the definition of the unacceptable. Assumptions will be made on how this could impact on the religious identity of the affected people.

After examining the relevant case law the paper will assess the compatibility of the proposed federal state legislation with German law and European provisions the country is compelled to follow. On the national level any court ruling and statute has to be issued in line with constitutional prerequisites. Regardless of the fact that religious freedom is not defined in the constitution and, therefore, can be interpreted as meaning merely internal freedom, law needs to be worded in accordance with the proportionality principle and the rule that personal freedom cannot be interfered with unless the rights of others are violated. This in particular is seen as questionable in the given context.

Due to its membership in the European Union Germany is subject to the law of this organisation. Several instruments govern the areas of employment and human rights, but they are not necessarily precise enough in order to give a clear answer to the question as to whether the proposed legislation could withstand challenges on the basis of EC law in the German courts.

Germany is also a signatory to the Council of Europe and consequently has to act upon the institution’s judicial decisions. Currently there is no directly relevant case law, but conclusions will be drawn from the general interpretation the Council’s court employs as regards freedom of religion and discrimination.

The paper will come to the conclusion that the proposed federal state legislation would not withstand criticism and predicts that national and international mechanisms will not allow for the Federal Constitutional Court to remain impartial on the matter.

Keywords: Religious Freedom; Religious Identity; International Obligations; Constitution.

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