

Institutionalized Islamophobia

The Draft of the Austrian Islam-Law

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- **Is this draft guaranteeing Muslims the same rights as other public religious bodies?**
 - **What differences exist between the draft for a new Islam-law and the newly published law concerning the Jewish Community?**
 - **What differences exist between the draft for a new Islam-law and the law concerning the recognition of the Protestant Church?**
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Although Muslims have been living in Austria since 900 years ago, the recent history of Muslim presence in Austria dates back to as early as the end of World War II. When the first waves of labor immigration of Turkish origin started coming to Austria in 1966, Islamic institutions were still few and small. It was 13 years later that the Islamic Council of Austria (IG-GiÖ) was established based on the Islam-law dating back to 1912, when Bosnia and Herzegovina were incorporated into the Austrian-Hungarian Empire. This legal recognition of an Islamic religious body paved the way for many unique relations between the state and its Muslim constituency compared to most other Western European countries, where Islam is neither recognized as an official religion nor as an organized religious body (i.e. Germany). It grants the Islamic Council, one of 16 legally recognized churches and legal religious bodies, the status of a public corporation. It also gives the IGGiÖ the right to teach Muslim pupils Islamic classes in public schools and gives it the right to review law-drafts.

The role and importance of the IGGiÖ has subsequently increased with Islam becoming a more and

more politicized issue in the public space.¹¹ The president and the media spokespersons are regularly debating on Islam and negotiating with the government in a number of political fields related to religion. In fact, this institutionalized communication has brought a number of advantages. Most importantly: There has been a trust relationship. And on this trust, a good working atmosphere made many actions possible from which both sides profited. To give but one example: During the Danish Cartoon Crisis, when Austria was heading the European Presidency, it organized a number of dialogue initiatives to calm the atmosphere.

A new law has long been an interest of the IG-GiÖ. The lawmaker, the current government consisting of the Social Democratic Party (SPÖ) and the Conservative Party (ÖVP), presented one on October 2, 2014, pointing to the law which recognizes the Jewish community (Israelitengesetz) in 2012 as a model. This article will analyze whether or not this claim was truly met. Also, the question of how far the draft for a

¹¹ Farid Hafez, 'One representing the many, institutionalized Austrian Islam', Samuel Behloul, Susanne Leuenberger, Andreas Tunger-Zanetti (eds.), *Debating Islam. Negotiating Religion, Europe, and the Self*, Bielefeld, Transcript Verlag, 2013.

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new Islam-law would advance the status of Muslims, if at all, will be examined. Thus, the overall question is: Are Muslims and their religious public corporation, the IGGiÖ, treated equally the same as other legally recognized churches and legal religious bodies? The relevance of this question is based on a basic assumption: The Austrian Constitution sees equal treatment of all churches and legal religious bodies as a must according to what is called the ‘Gleichheitssatz’ (rule of equality) and the ‘Paritätsprinzip’ (principle of parity).²² This perspective aims to study whether this equal treatment is really put into practice or not.

PARADIGM SHIFT IN THE ISLAMPOLITIK?

During the presidency of Anas Schakfeh the then-minister of interior, Maria Fekter, approached him to set up an initiative like the German Islam Conference (Deutsche Islamkonferenz) in order to institutionalize the dialogue between the IGGiÖ and state bureaucracy. Schakfeh’s answer was very clear: A dialogue would only have made sense if it had been a dialogue with all churches and legal religious bodies. At the very same time, a platform for dialogue aiming at establishing a framework for the IGGiÖ to speak to the Austrian ministries would not make sense, as there clearly has already been such a framework. The Kultusamt, which was then part of the Ministry of Education, was the relevant department in the political system for all legally recognized churches and legal religious bodies.³ This institutionalized framework of trust between churches and the state is a main characteristic of the Austrian secular system that sees these religious actors as partners of the state.⁴ And it is this trust that seems to be jeopardized in these days, when the government has been working on a draft to amend the current existing Islam-law. In fact, this has been an aim of the IGGiÖ itself since 2003. And there are many arguments for such an amendment. The Muslim popula-

tion has changed in terms of its number, its depth of institution-building, and so have their needs. A new law has been necessary for a long time.

CRITICISMS

The draft, however, which was presented by the government and can now be assessed by different interest groups until November 7, has a number of critical aspects. Before going into detail it has to be mentioned that it was the new IGGiÖ leadership’s own fault to accept the invitation of the ministry of interior to participate as the only partner in the Dialogue Forum Islam (DFI) in 2012. Internally, there had been lots of criticisms.⁵ One of the many outcomes of the DFI was a discussion on the Islam-law. Although it was not the official mission of the DFI to create a draft for a new Islam-law, three ministries (education, interior, foreign affairs) were part of the working group and had the possibility to table their interest in this group.⁶ The interim report thus recommended to draft the Islam-law. The main author of the draft, belonging to the Kultusamt, has been part of this group from the beginning, while the official group manager was not involved in the last editorial work. The IGGiÖ only sent one person to represent their interests. This means that only a minority of the Muslim civic landscape was involved in the negotiations of a draft for a new Islam-law, which seems to have been a major asymmetrical structural failure from the beginning on. Accordingly, the draft sees a number of disadvantages for the future of the IGGiÖ.

The main paradigm shift introduced is the changing recipient of the law. While the Islam-law from 1912 was addressing Muslims of the Hanafi school of then-Bosnia and Hercegovina, it was widened to the four Sunni and three Shi’a schools after the establishment of the IGGiÖ. But the new draft is designed for all Muslim legal religious bodies; the already existing ones (IGGiÖ and since 2013 the ‘Islamic Alevi Council

2. Richard Potz, ‘State and Church in Austria’, Robbers, Gerhard (ed.), *State and Church in the European Union*, Baden, Baden, 1996, 235.

3. Interview with Anas Schakfeh, October 13 2014.

4. Matthias Koenig, ‘Incorporating Muslim Migrants in Western Nation-States: A Comparison of the United Kingdom, France, and Germany’, *Journal of International Migration and Integration* 6/2 (2005), 224–5.

5. Interview with Amani Abuzahra, member of the national board of the IGGiÖ, October 8 2014.

6. Interview with Michael Lugger, negotiator of the IGGiÖ on July 2014 14.

of Austria') and the future ones to come. This is discriminatory because 1. There is no such thing as a Christianity-law, but rather different laws referring to Catholics, Protestants, etc. 2. This implies that all rights provided in the draft (like the installation of six lecturers for Islamic Theology at the University of Vienna) have to be divided between the various legal religious bodies. In addition, it seems that the lawmaker was intending to have much more than only two Islamic legal religious bodies, as §§3-5 of the draft are mainly copies of a law called 'Bekennnisgemeinschaftengesetz', which even makes it much easier for Muslim legal religious bodies to become legally recognized.

Another important issue that hits especially the larger organized groups among Muslims in Austria, who are of Austro-Turkish origin, is the prohibition of Muslim associations. Within six months, says the draft, Muslim associations have to be dissolved and legally turned into bodies called 'Kultusgemeinden' of the IGGiÖ (draft, § 23 (2)). On one side this means a strengthening of the IGGiÖ and its control over all Muslim associations, who would become part and parcel of the IGGiÖ. But what looks like strengthening former Muslim associations by incorporating them into the IGGiÖ and hence giving them a status of public corporate body is actually a dangerous mistake in the mid- to long-term perspective. First of all, these Kultusgemeinden are not equipped with the same rights⁷ as are the Kultusgemeinden in the Jewish Community, where they have the right to influence the landscape of education i.e. concerning private confessional schools.⁸ Secondly, it would be unconstitutional to exclude Muslims from their right as citizens to establish religious associations. In Austrian law, associations are established according to the law of associations. This law allows every two persons to establish an association based on various kinds of commonalities. A prohibition thus would be unconstitutional and against the very core values of the rule of law. Such a prohibition of any Mus-

lim associations according to the law of associations would also destroy civic Muslim engagement. That means that the state will not only be able to create a state-Islam, but also that every possible opposition to this Austrian state-version of Islam is doomed to be organizationally annihilated. Also, the the financial independence of these Kultusgemeinden has gone, as they have to act in mutual agreement with the IGGiÖ.⁹ Another aspect is that the draft forbids Muslim organizations to get money from outside of the country for funding religious activities.¹⁰ The political aim behind it is clear. The Austrian Republic is trying to create its own Austrian Islam, a state-driven Islam; it attempts to eliminate any possible influence coming from the outside. This article seems to aim toward turning against the Turkish Republic and Saudi Arabia's 'Wahhabism'. ATIB (Avusturya Türk İslam Kültür ve Sosyal Yardımlaşma Birliği), which is connected to Diyanet, would be one of the losers of such an amendment. Their Imams would not be able to receive pay from Turkey. Although this article is also unconstitutional, political aims seem to be more of a priority. But what does that mean for everyday Muslim life? From where will mosques, whose Imams are funded by Turkey and cannot be paid in future according to the draft, get their religious leadership? Also, the draft does not provide any financial support for Muslim religious leadership from the Austrian government. In addition to being unconstitutional, this article also manifests unequal treatment. Never would the state forbid the Protestant or Orthodox Church or the Jewish Community getting funds from outside of Austria. As a matter of fact, the Russian-Orthodox Church gets money directly from Moscow, the Union of Free Pentecostal Churches gets money from the USA, etc.¹¹ Hence, this draft law reveals not only interference in internal

9. Islam-law draft: §8 (6)

10. Islam-law draft: § 6 (2)

11. APA/OTS, 'profil: Neues Islamgesetz könnte auch andere Religionsgemeinschaften in Schwierigkeiten bringen', ots.at, 18.10.2014, http://www.ots.at/presseaussendung/OTS_20141018_OTS0005/profil-neues-islamgesetz-koennte-auch-andere-religionsgemeinschaften-in-schwierigkeiten-bringen, [19.10.2014]

7. Islam-law draft: §8 (1)

8. Israelitengesetz §5 (1)

affairs, which is against Art. 15 of the Austrian constitution (Staatsgrundgesetz), but also unequal treatment in comparison to other churches and legal religious bodies.

A general problem that seemed to have been supported by the discourse on the 'Islamic State' in Iraq/Syria is a general suspicion towards the Muslim community. §2 says that state-law is above religious law. First of all, this is clear from Art. 15 of the Austrian constitution and secondly, no other law concerning the recognition of a church or legal religious body features a similar paragraph.

While the Israelitengesetz §9 (1) - (3) provides a must for religious education in public schools if three pupils would visit it, the draft for the Islam-law does not mention such a regulation, although it is an accepted rule in school-law. Another aspect of unequal treatment is that §15 (1) of the Protestant Law defines a number of tenure track professors for a Protestant Faculty at the University of Vienna, while the draft for the Islam-law (§15) only speaks of six teaching persons and no Faculty and does not even define the necessity for professors to be Muslims as in the case of Protestants.

The future discussion and parliamentary action towards this draft law will show us if Austria wants to stick to its constitutional values, rule of law, practice of religious freedom, equal treatment of all legally recognized religious churches and legal religious bodies, or if the current government will turn against the values of the Second Republic of Austria and become a manifestation of institutionalized Islamophobia.

POLICY ALTERNATIVES AND RECOMMENDATIONS

The IGGiÖ has to completely reject this draft and renegotiate it from the very beginning. Most actors of the IGGiÖ were not included in these talks--this has to be changed. Already a number of Muslim civic organizations have revolted against this draft and one has even presented its own draft.¹² If the IGGiÖ comes out with a clear rejection, it will also be helpful for other legally recognized churches and legal religious

12. Draft for a new Islam-law written by the Muslim Youth of Austria, http://www.mjoe.at/uploads/media/IslamG-Neuentwurf_-_Dokument.pdf

bodies to present a clear rejection of this draft. This will be of utmost strategic importance for them, as the rest of the 16 legally recognized churches and legal religious bodies are just as vulnerable when considering the Islam-law draft as a precedent. And it is clear that in the history of the Second Republic of Austria, there has never been an accepting of a law by the government against the interests of a church or religious public corporation body.

A political reason for why a government of Social Democrats and Conservatives supports such an openly unconstitutional draft may lie in the reality that elections are coming up next year. The draft initially was planned to be issued on January 1, 2015. As the two parties who are currently in power and are afraid of a third party, the populist far right, they can present themselves with such a law as parties of law and order, who set bounds to the imagined Muslim enemy. If this really is their strategy, it must be countered by strengthening the liberal camps within the two parties in power. But this does not seem realistic with the backdrop of a long history of center parties co-opting right wing positions.¹³

As such, the role of civil society seems to be crucial. Civil society and especially the Muslim organizations have to issue a statement of rejection as corporate bodies as well as individuals. The lawmaker has to feel a wave of protest coming from all kinds of civic engagement by the masses as well as from leading befriended organizations to Muslims, which care about the Austrian constitution and do not want to see the democratic values of Austria being treated with contempt.

Austria has been a country with a liberal tradition towards its Muslims since the Habsburg times. This card has been played as a soft power means (Joseph

13. See the following works: Oliver Geden, 'Identitätsdiskurs und politische Macht: Die rechtspopulistische Mobilisierung von Ethnozentrismus im Spannungsfeld von Opposition und Regierung am Beispiel von FPÖ und SVP', in: Susanne Frölich-Steffen & Lars Rensmann, 'Populisten an der Macht. Populistische Regierungsparteien in West- und Osteuropa', Vienna: Braumüller Verlag, 2005, pp. 69–83, A. Van Dijk, 'Rassismus und die Medien in Spanien', in: Siegfried Jäger & Dirk Halm, 'Mediale Barrieren. Rassismus als Integrationshindernis, Edition Diss, 2007 (106-7), pp. 105–149, Ruth Wodak & Teun A. Van Dijk, 'Racism at the Top. Parliamentary Discourses on Ethnic Issues in six European States, Klagenfurt, Drava-Verlag, 2000, pp.162-4, Farid Hafez, 'Islamophober Populismus, Wiesbaden, VS, 2010.

Nye) by the Austrian Department of Foreign Affairs. The current shift would mean a loss of this soft power. As a consequence, Austria could not only lose its reputation in many Muslim countries, but – in the case of a global discourse on this Islam-law draft – may also economically suffer from less Muslim tourists, who have been traveling to Austrian cities in bigger numbers since the 7/7 bombings in London. Trade bodies and others will naturally be more interested in saving these income streams. Hence cooperation with these economic players in the lobbying against the discussed draft is of importance. These allies could have an impact on decision makers from the business wing of the two ruling political parties in government.

The evaluation process ends on November 7. Until this date, a number of formal organizations have the ability to publish a review for the government, which has to take these statements into consideration. In addition to that, every single person as well as organization that is not mentioned as part of the formal review process has the possibility to give a statement to the government. The main goal of Muslim organizations at this point should be on one side to give a statement themselves. Secondly, they should win as many allies as possible from the rest of the society – especially from the religious and the economic field – to publish a statement, which defends the rights of Muslims as equal citizens.



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