CHAPTER 4

Germany (Also Taking into Account Other European Countries)

1 Introduction

Germany, like other European countries, now has a stable Muslim population. They number ca. 3.8–4.3 million, around half of whom have German citizenship.1 Among them we find every hue of religious affiliation, Sunni, Shi‘ite, Alevi and Ahmadi, more and less devout believers, some focussed on scripture, others adhering to mysticism or strong popular beliefs, people of very diverse levels of education, cultural background and individual convictions. Their views and living environments are usually influenced more by non-religious factors such as immigrant background, linguistic competence and education or employment than by religious attitudes. This variety is occasionally in contrast with the uniform image of public perception which tends to focus overall on the more traditionally inclined Islam professed by many Arab or Turkish immigrants, or those with Turkish roots. The secular attitude of many Muslims, and the Alevi in particular, is often overlooked precisely because it is comparatively inconspicuous in normal everyday life.

The question that arises is whether and to what extent Islamic norms could be applied in Germany and other European countries. While there are many differences in details,2 it is possible to observe shared principles; the situation in Germany is consequently typical of Europe as a whole in many respects.

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1 Bundesamt für Migration und Flüchtlinge/Deutsche Islamkonferenz, Muslimisches Leben, 59ff., St.
Every legal system with territorial applicability requires absolute precedence within its territory and has the autonomous determining power of whether, and to what extent, ‘foreign’ norms can be allowed. As regards validity, there is thus no plurality of norms along the lines of legal multiculturalism. Someone who tries to establish a parallel or opposing legal system would be, in Heiner Bielefeldt’s words, be pursuing an anti-constitutional project, which cannot be permitted by the secular rule of law.

The legal system in a democratic state committed to human rights must offer a stable and fundamentally constant framework for profitable coexistence and, if necessary, must enforce this with official sanctions. On the other hand, being a liberal system it cannot be employed to simply prohibit everything some or many citizens disapprove of or reject on moral or socio-political grounds, as such matters ought to be subject to a societal debate. Furthermore it must always be taken into account to what extent the ‘non-legal’ – for instance religious – basis for norms is contrary to applicable law, or whether it is situated within the established legal context and thus is not in opposition to it. This also applies to large numbers of Islamic norms.

There is a fundamental difference between the implementation of religious norms on the one hand and legal ones on the other. From the Muslim point of view both are instances of applying Islamic rules. From the point of view of the state, however, religious norms come under the freedom to practise religion as guaranteed by the constitution. Legal norms, being foreign law, may be applied to some extent on the basis of the respective German laws. In my view, however, they do not enjoy the same protection of the freedom of religion, as under a secular rule of law the delimitation of competences between law and religion is the preserve of the legislative authority rather than the religious communities. Consequently there is a fundamental separation of law and religion.

In spite of differing specific forms concerning some details, the rule of law limits the implementation of religious as well as legal norms. Neither is the freedom to practise religion above other fundamental rights that might be in conflict with it, nor would permitting foreign legal norms without restriction be compatible with the principle of European rule of law. Here we can determine shared principles under an ordre public that comprises all areas of the law, unifies fundamental substance and ensures its equal application to all citizens and others present within the territory.

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3 For different models of organising normative pluralism in Europe cf. Rohe, Family, 49 ff.
4 Bielefeldt, Muslime im säkularen Rechtsstaat, 96.
5 Cf. only op. cit., 97 ff.