Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

# Marking a Muslim Inmate's Cell Door With "M" to Signify Pork-Free Diet Does Not Constitute a Violation of His Negative Freedom of Religion

## Question(s) at stake:

Whether marking the prison cell door of a Muslim inmate with the letter M – which stands for Muslim and is meant to denote that the inmate consumes pork-free food – violates the inmate's right to negative freedom of religion.

## Outcome of the ruling:

A prison cell door marked with the letter M – which stands for Muslim and implies that the corresponding inmate's diet is restricted to pork-free food – does not constitute an infringement on the right to negative freedom of religion.

## Topic(s):

- Deprivation of Liberty and Detention Centres

## Keywords:

- Dietary regimes
- Institutional / Organizational aspects
- Legal toolbox
- Non-discrimination
- Rights and freedoms
- Freedom of thought, conscience and religion
- Detention

## Tag(s):

- Stereotyping

## Author(s):

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## Country:

Germany

## Official citation:

Higher Regional Court Karlsruhe, Decision of 15 February 2018, 2 Ws 1/18 (OLG Karlsruhe, Beschluss vom 15 Februar 2018, 2 Ws 1/18)

## Link to the decision:

http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&nr=23319

## ECLI:

ECLI:DE:OLGKARL:2018:0215.2WS1.18.00

## Date:

15 February 2018

## Jurisdiction / Court / Chamber:

Oberlandesgericht Karlsruhe, 2. Strafsenat (Higher Regional Court, 2nd criminal panel)

## Remedy / Procedural stage:

Appeal

## Previous stages:

- Landgericht Freiburg (Breisgau), Beschluss vom 24.11. 2017 – 206 AR 18/17 (Regional Court Freiburg (Breisgau), decision of 24 November 2017 – 206 AR 18/17))

## Subsequent stages:

- Unappealable judgement

## Branches / Areas of law:

Public law; Constitutional law; Criminal law

## Facts:

The Muslim plaintiff was on remand pending trial in prison Y from 1 January 2015 to 19 January 2017. Prison Y designed the labelling of its available diets on the prison cell doors as follows: M for pork-free food, corresponding to Muslim dietary restrictions; V for vegetarian food; and N for regular food. On 18 October 2015, the plaintiff requested that he receive vegetarian or vegan food. The request was granted two days later. At the beginning of his detention, he was on a pork-free diet. Therefore, his cell was for a while marked with the letter M in accordance with the labelling system of prison Y.

The plaintiff filed an application with the Freiburg Regional Court requesting judgment that marking his cell door with the letter M (for Muslim) was unlawful. The Freiburg Regional Court dismissed the application as unfounded. The plaintiff then lodged an appeal against the court's decision before the Oberlandesgericht (Higher Regional Court) Karlsruhe.

## Ruling:

The court found the appeal admissible but unfounded. It decided that marking the prison cell with the letter M to signify the inmate's pork-free diet did not constitute a violation of the plaintiff's right to negative freedom of religion.

The court stated that although the letter M was meant to symbolize the Muslim diet and that someone with access to the inmate's personal file could associate it with his religious affiliation, the sign "M" does not automatically reveal any information about the inmate's religious affiliation.

The court reasoned that there were also *non*-Muslims who had chosen a pork-free diet and whose prison cell had been marked with the letter M. Therefore, marking a cell door with the letter M to signify pork-free food, even if associated with

“Muslim food”, is not a declaration of religious affiliation if it is used independently of the religious affiliation and for anyone who demands pork-free food.

Nevertheless, the court advised the prison to use a different labelling system to avoid any possible connection between a religious group and the diet labelling.

## Main quotations on cultural or religious diversity:

- “[I]t is not possible to draw a conclusion about a prisoner’s religious affiliation based [solely] on the supply of pork-free food to him.” (para 15)
- “The fact that a prisoner does not eat pork may be based on an Islamic view, but this is by no means a given. […] there are also non-Muslim prisoners who choose a pork-free diet.” (para 15)
- “Nevertheless, to avoid possible irritations, it would be preferable for prison Y to design its labelling of the types of meals – if it has not already done so – in such a way that there is not even an indirect connection to a religious group.” (para 17)

## Main legal texts quoted in the decision:

- § 47 Justizvollzugsgesetzbuch I Baden-Württemberg (version of 10 November 2009)
- Article 4 of the Basic Law for the Federal Republic of Germany
- Article 140 of the Basic Law for the Federal Republic of Germany in conjunction with Article 136 of the Verfassung des Deutschen Reiches von 1919 (so-called “Weimar Constitution”)

## Cases cited in the decision:

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## Commentary

**Marking a Muslim Inmate’s Cell Door With “M” to Signify Pork-Free Diet Does Not Constitute a Violation of His Negative Freedom of Religion**

The plaintiff considered the marking of his cell door with the letter M to be a violation of § 47 (1) of the Justizvollzugsgesetzbuch I Baden-Württemberg (version of 10 November 2009, hereafter JVollzGB I), which inter alia protects the freedom of religion and, more specifically, the negative freedom of confession (Article 140 of the Basic Law for the Federal Republic of Germany in conjunction with Article 136 [3] of the Verfassung des Deutschen Reiches von 1919 [so called Weimar Constitution]). Hence, in the present decision, the infringement on the plaintiff's freedom of religion was discussed on the basis of § 47 (1) JVollzGB I.

The court's suggestion that the prison uses a different labelling system goes beyond its legal reasoning in the case. It simply recommends avoiding a label that had been found to stand for "Muslim" in order to respect the religious need for pork-free food, but then could be perceived as stigmatizing. Even though the court found the plaintiff's appeal to be unfounded, it still recognized the risk of a stigmatizing impact of the labelling. It showed creativity by suggesting a simple way to prevent conflicts of this kind – which are often interlaced with other detention-related conflicts – in future cases.

## Literature related to the main issue(s) at stake:

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