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

Freedom to Practice One's Religion Undisturbed (Art. 4 para. 2 of the Basic Law) and Its Limitation in Prison II: No Prayer Rug in the Workroom

Question(s) at stake:

Whether prison authorities must allow a prayer rug to be kept in the workroom.

Outcome of the ruling:

Prison authorities need not allow a prayer rug to be kept in the workroom insofar as the interest in security and order in the prison outweighs the plaintiff's interest in practising his religion by keeping a prayer rug in the workroom.

Topic(s):

- Deprivation of Liberty and Detention Centres

Keywords:

- Prisoners
- Prisons
- Static symbols
- Freedom of thought, conscience and religion

Tag(s):

- Prayer rug
- Undisturbed practice of religion

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Official citation:

Regional Court Aachen, Criminal Division with Jurisdiction over Execution of Sentences, Order of 25 June 2014, 33 I StVK 924/13 (LG Aachen, Strafvollstreckungskammer, Beschluss vom 25. Juni 2014, 33 I StVK 924/13)

Link to the decision:

https://openjur.de/u/2148868.html

ECLI:

ECLI:DE:LGAC:2014:0625.33I.STVK924.13.00

Date:

25 June 2014

Jurisdiction / Court / Chamber:

Regional Court Aachen, Criminal Division with Jurisdiction over Execution of Sentences

Remedy / Procedural stage:

First instance

Previous stages:

None

Subsequent stages:

- Higher Regional Court Hamm, Order of 27 November 2014, - 1 Vollz (Ws) 425/14 (OLG Hamm, Beschluss vom 27.11.2014 -- 1 Vollz (Ws) 425/14) ECLI:DE:OLGHAM:2014:1127.1VOLLZ.WS425.14.00

Branches / Areas of law:

Criminal Law, Prison Law

Facts:

The applicant, a Muslim prisoner, was working in a workroom of the prison. He had got into the habit of storing his prayer rug in the workroom in order to be able to keep his prayer times regularly. After the staff forbade him to do so, he applied to the prison administration to allow him to take and store the prayer rug in the workroom. However, the prison administration rejected this application because taking the prayer rug into the workroom would cause a considerable increase in control efforts, as a prayer rug makes it possible to hide prohibited objects. The prisoner applied for a court ruling against this refusal.

Ruling:

The request was dismissed by the Prison Enforcement Chamber. The Prison Enforcement Chamber found that the fundamental right of freedom of faith and conscience as well as the undisturbed exercise of religion pursuant to Article 4 of the Basic Law also applied in prison. The performance of prayers cannot be generally prohibited. A prisoner has the right to perform prayers during break times. Furthermore, the respondent has to accept the applicant's possession of a prayer rug if he feels that he needs it to perform his obligatory prayers. However, freedom of belief is not without limits. The sense and purpose of the penal system justifies measures restricting fundamental rights. The need for security and order in the prison justifies at least random searches of objects brought into the prison. To include the prayer rug in such searches would be too labour-intensive, as a check by metal detectors would not be sufficient. Furthermore, allowing a prayer rug in the workroom would also, within the framework of equal treatment, establish the right for other prisoners to bring in numerous other religious objects. This would be an unreasonable burden of control, regardless of how many of the entitled persons actually wanted to bring in religious objects.

Main quotations on cultural or religious diversity:

- "With its contested decision, the respondent has sufficiently taken into account the special situation in which the applicant finds himself for religious

reasons. This is also required, because the fundamental right of freedom of belief and confession from Article 4 (1) of the Basic Law and the undisturbed exercise of religion (Article 4 (2) of the Basic Law) also applies in the penal system [...], which is also expressed in sections 53, 54 of the Prison Law, which concretize the exercise of the fundamental right of freedom of religion in prison. However, the free exercise of religion also means the believer's right to orientate his external behaviour according to the commandments of his faith [...]. If he is of the opinion -- for religious reasons -- that he needs a prayer rug to perform his obligatory prayers, the respondent must accept this. This does not mean, however, that it would be obliged for this reason alone to (continue to) allow the prayer rug to be taken into/stored in the factory. This would fail to recognize that freedom of belief is not guaranteed without limits [...] and that the meaning and purpose of the execution of sentences justify measures that restrict fundamental rights (BVerfG NJW 1972, 811; 1976, 37)." (para. 22)

Main legal texts quoted in the decision:

- Section 53, 54, 109 et seqq. of the Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung -- Strafvollzugsgesetz (Act on the Execution of Prison Sentences and Measures of Reform and Prevention Involving Deprivation of Liberty -- Prison Act)
- Art. 4 para. 1, 2 of the Basic Law

Cases cited in the decision:

- BVerfG NJW 1969, 31
- BVerfG NJW 1972, 327
- BVerfG NJW 1972, 811
- BVerfG NJW 1976, 37

Commentary

Freedom to Practice One's Religion Undisturbed (Art. 4 para. 2 of the Basic Law) and Its Limitation in Prison II: No Prayer Rug in the Workroom

The constitutionally protected right to freedom of faith and conscience and to the undisturbed practice of religion (Article 4 (1) and (2) of the Basic Law) also applies in the prison system. Although this right is not expressly subject to limits, it is recognized that it may be limited, namely if it conflicts with constitutional rights of third parties or another right of constitutional status not expressly mentioned in the Basic Law. This consideration is reflected in the prison laws at the federal and state levels. These laws stipulate, among other things, that prisoners must be allowed to keep a reasonable number of articles for religious use (Art. 53 para. 3 of the Prison Act). It is undisputed that a prayer rug is an object of religious use, and the issue in this case is not whether the prisoner should be deprived of the rug but how he is allowed to use it. However, there are no explicit regulations on this. A balance must be struck here between the right to practise religion and conflicting interests with constitutional status, in this case the functioning of the prison system. The court is not making a broad theoretical balancing exercise here, but instead follows the example of a provision in the Prison Act that regulates a similar constellation. A prisoner may furnish his cell with his own objects to a reasonable extent, but the limits of this right are expressly defined (Art. 19 para. 2 Prison Act). Devices and articles which make it impossible to keep the cell under supervision or which jeopardize security or order in the institution in any other way can be excluded. To a certain extent, the court referred back to these formulated grounds for restriction in Art. 19 para. 2 of the Prison Act and came to the conclusion that taking the carpet into the workroom would jeopardize the security and order of the prison due to the considerably increased control effort. The prisoner lodged an appeal against the dismissal with the Higher Regional Court. This was rejected as inadmissible. It is noteworthy, however, that the court commented that the increased control effort required to check a prayer rug due to its manufacturing and structure could be reduced by allowing the prisoner to take a cloth or piece of fabric into the workroom that has no seams and is very thin and smooth. This comment indicates that the Higher Regional Court might have made the necessary balancing decision differently from the

prison administration and the court of first instance. It focuses the balancing on the specifics of the particular case and clears the way for an accommodation of interests.

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

- Arloth, Frank and Horst Kräh. 2021. *Strafvollzugsgesetze von Bund und Ländern: Kommentar*, 5th ed. München: C.H. Beck.
- Feest, Johannes, Wolfgang Lesting and Michael Lindemann. 2022. *Strafvollzugsgesetze Bundes- und Landesrecht: Kommentar*, 8th ed. Köln: Carl Heymanns Verlag.

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Suggested citation of this case-law comment:

Tellenbach, Silvia (2024): Freedom to Practice One's Religion Undisturbed (Art. 4 para. 2 of the Basic Law) and Its Limitation in Prison II: No Prayer Rug in the Workroom, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI033DE027, https://doi.org/10.48509/CUREDI033DE027.