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

"Sharia Police in a German District": Cultural Sensitivity, Assessing Intimidating Behaviour, and Interpretin

Question(s) at stake:

Whether the evening walk of a group of young men in a German city centre, wearing high-visibility vests with the words "Shariah Police" printed on the back, constitutes a violation of the ban on uniforms, as stipulated in Section 3 of Germany's Assembly Act or Versammlungsgesetz.

Outcome of the ruling:

The evening walk in a German city centre by a group of young men wearing high-visibility vests with the words "Shariah Police" printed on the back constitutes a violation of the ban on uniforms (under Section 3 of the Assembly Act or *Versammlungsgesetz*) because of its potentially intimidating effect on Muslims.

Topic(s):

- Crime and Punishment under State Law

Keywords:

- Protection of (public) morals
- Public order
- Attire

Tag(s):

- Shariah Police
- Intimidation
- Uniform ban

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Country:

Germany

Official citation:

Regional Court Wuppertal, Judgment of 27 May 2019, 26 KLs 20/18 (LG Wuppertal, Urteil vom 27. Mai 2019, 26 KLs 20/18)

Link to the decision:

https://openjur.de/u/2272579.html

ECLI:

ECLI:DE:LGW:2019:0527.26KLS8209.50JS180.00

Date:

27 May 2019

Jurisdiction / Court / Chamber:

Wuppertal Regional Court

Remedy / Procedural stage:

First instance (after referral)

Previous stages:

- Federal Court of Justice, 3rd Criminal Division, Judgment of 11 January 2018, 3 StR 427/17, ECLI:DE:BGH:2018:110118U3STR427.17.0 (BGH, Urteil vom 11.01.2018 - 3 StR 427/17)
- Regional Court Wuppertal, Judgement of 21 November 2016, 22 KLs - 50 Js 180/14 - 6/16, ECLI:DE:LGW:2016:1121.22KLS8211.50JS180.00 (LG Wuppertal, Urteil vom 21.11.2016 - 22 KLs - 50 Js 180/14 - 6/16)

- Higher Regional Court Düsseldorf, Decision of 25 April 2016, III-3 Ws 52-60/16 (OLG Düsseldorf, Beschluss vom 25.04.2016 - III-3 Ws 52-60/16)
- Regional Court Wuppertal, Decision of 2 December 2015, 22 KLs-50 Js 180/14-27/15 (LG Wuppertal, Beschluss vom 02.12.2015 - 22 KLs-50 Js 180/14-27/15)

Subsequent stages:

- Federal Court of Justice, 3rd Criminal Division, Judgement of 29 April 2020, 3StR 547/19, ECLI:DE:BGH:2020:290420B3STR547.19.0 (BGH, Beschluss vom 29.04.2020 - 3 StR 547/19)

Branches / Areas of law:

Criminal law

Facts:

On the evening of 3 September 2014, a group of young men marched through the city centre of Wuppertal. Some of them wore high-visibility orange vests with the words "Shariah Police" on the back. They wanted to invite young Muslims to the mosque and encourage them to live an Islamic life and, in particular, to discourage them from visiting brothels or gambling halls and from consuming alcohol. After some time, they were stopped and searched by a police patrol. After an officer from the State Protection Service explained to the police officers that no crime had been committed, they allowed the young men to proceed. However, the officers demanded that the men remove their vests, which they did.

This event led to a total of six court decisions in the following years. In its decision of 2 December 2015, the Regional Court of Wuppertal refused to open the main proceedings on the grounds of sufficient suspicion of a violation of the ban on uniforms (Section 3 of the Assembly Act) and only allowed charges to be brought on the grounds of the failure to notify the competent authority of the assembly (Section 14 of the Assembly Act). Following an immediate appeal by the public prosecutor's office, the Düsseldorf Higher Regional Court ordered the opening of

the main proceedings on 25 April 2016 on the grounds that there was sufficient suspicion of a violation of the uniform ban. The Wuppertal Regional Court acquitted the defendants on 21 November 2016, ruling that the wearing of the vests, which constitute "similar articles of clothing as an expression of a common political conviction" according to the law, did not exhibit the suggestive militant, and thus intimidating, effect required by case law for the violation of the uniform ban to be established.

The public prosecutor appealed the decision of the Regional Court to the Federal Court of Justice on points of law. On 11 January 2018, the Federal Court of Justice overturned the decision of the Regional Court together with its findings and referred the case back to another division of the Regional Court. The Federal Court of Justice criticized the Regional Court for failing to consider that the measure of a possible intimidating effect is not the perception of a general audience but the perception of the audience to which the action is addressed, in this case, young Muslims.

The Regional Court was required to reassess both factual and legal considerations. This reassessment resulted in a conviction for violating the ban on uniforms on 27 May 2019, which is described in more detail below. The appeal on points of law against this judgement was dismissed by the Federal Court of Justice on 29 April 2020.

Ruling:

The Regional Court had to hear the case again after the Federal Court of Justice had overturned the first judgement. The Regional Court first established the circumstances in great detail: how the tour had come about; how the five high-visibility vests bearing the words "Shariah Police" had been procured; how many people had taken part in the tour and how they were dressed; and how the tour had proceeded overall. Witness statements as well as a video of the tour, which appeared on *YouTube* a few days later, were used as evidence. An Islamic scholar from the State Criminal Police Office (*Landeskriminalamt*) was called forth as an expert witness to explain the meaning and function of the "Shariah Police". In its

legal assessment, the Court initially stated that the vests did not qualify as uniforms or uniform components but rather as "similar articles of clothing expressing political opinions" (Section 3 of the Assembly Act). However, as established by case law, the interpretation of "similar articles of clothing expressing political opinions" must be limited on the basis of the constitutionally guaranteed freedom of expression (Article 5 of the Basic Law) so that *only* the wearing of clothing which, in the overall circumstances, is likely to have a suggestively militant and intimidating effect on others would constitute an offence. The Federal Court of Justice had overturned the first decision of the Wuppertal Regional Court because it had only examined a possible intimidating effect on the general public but not on the target group of the action, namely Muslims. One focus of the decision was therefore to examine whether and through what means the tour with the high-visibility vest bearing the words "Shariah Police" could have had a suggestively militant, and thus intimidating, effect on Muslims.

In the eyes of the Regional Court, the term "Shariah Police" suggested that the group wanted to enforce the values and moral concepts of Islam through the use of sovereign powers comparable to those of a police force, without being open to free discussion about it. This suggestion was reinforced by the fact that in English, the term refers to the well-known "Shariah Police" in northern Nigeria, a militant group that can even impose punishments for what it considers un-Islamic behaviour. The same can be said of several other states, such as Saudi Arabia, where a morality police is supposed to ensure that behaviour conforms to Islam.

For Muslims familiar with Islamic principles, the target audience of the action, a group wearing "Sharia Police" inscriptions conveys a belief in the universality of Islamic values, enforced by force without openness to discussion. This perception could lead those approached to conform to the group's expectations in order to avoid conflict, creating a situation of suggestive or militant pressure, and thus potential intimidation. As all the elements of a criminal offence were present, the wearers of the "Shariah Police" vests were convicted of violating the ban on uniforms (Section 3 of the Assembly Act) while other participants were convicted

of aiding and abetting this violation.

Main quotations on cultural or religious diversity:

- "Accordingly, the term sharia, as the totality of Islamic laws, is associated in particular with the religious values and moral concepts laid down therein. The concept of the police, in turn, stands for a state body that exercises sovereign powers to prevent threats to public safety and order. In summary, it seems obvious to understand the term 'Shariah police' as meaning that an organization ascribes comparable powers to itself in order to enforce the values and moral concepts of Islam." (para. 146)
- "Incidentally, the group's language refers to well-known militant groups that operate as 'Shariah Police', for example in northern Nigeria, where they enforce compliance with sharia law by force as parapolice units. In terms of content, there is also a proximity to the religious police units that exist in some countries characterized by a conservative understanding of Islam, such as Iran and Saudi Arabia, or in regions such as Indonesia, or the former territory of the so-called Islamic State. The expert Dr T provided the chamber with an overview of this. The expert also explained convincingly and comprehensibly that the competencies of these parapolice units would differ from country to country. The task of the religious police is always to enforce the commandments of Islam, such as the avoidance of alcohol, in the sense of a moral police. In Saudi Arabia, the religious police would first point out misconduct and then bring the concerned person to the regular police for subsequent criminal proceedings. In the territory of the so-called Islamic State, the religious police themselves had been able to impose punishments and enforce them directly. The 'Shariah Police' in northern Nigeria can also issue punishments for alleged misconduct." (para. 147)
- "The stronger such a conceptual similarity to a known militant group is, the more likely it is to assume that the articles of clothing are factually similar within the meaning of Section 3 of the Assembly Act [Higher Regional Court

of Hamburg, Order of 10 May 2016, 1 Rev 70/15, with further references]. The [walking] tour on the evening of 3 September 2014 was aimed precisely at contact with people to whom the group attributed a Muslim background and from whom it could assume that they would be familiar with the [principles] of sharia. In view of all these circumstances, however, it was obvious that the interlocutor would perceive the wearers of the high-visibility vests with the inscription 'Shariah Police' in such a way that they would regard the moral concepts laid down in sharia as universally valid and would also want to enforce them through the use of sovereign means of coercion, without being open to a free exchange of opinions in this respect. In this respect, there was a danger that an open discussion would not have taken place, but that the possible interlocutors would have withheld their own opinions and based their behaviour on the supposed expectations of the opposite group in order to avoid disputes." (para. 148)

Main legal texts quoted in the decision:

- Sections 3 and 28 of the Assembly Act or *Gesetz über Versammlungen und Aufzüge (Versammlungsgesetz)*

Cases cited in the decision:

- Federal Court of Justice, 3rd Criminal Division, Judgment of 11 January 2018, 3 StR 427/17 (BGH, Urteil vom 11.01.2018 - 3 StR 427/17)
- Regional Court Wuppertal, Judgement of 21 November 2016, 22 KLs - 50 Js 180/14 - 6/16 (LG Wuppertal, Urteil vom 21.11.2016 - 22 KLs - 50 Js 180/14 - 6/16)
- Higher Regional Court Hamburg, Judgement of 10 May 2016, Az. 1 Rev 70/15 (OLG Hamburg, Beschluss vom 10.05.2016, Az. 1 Rev 70/15)

Commentary

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Although the report of the police patrol that had checked the group did not assume a criminal offence, the public prosecutor's office in Wuppertal initiated a preliminary investigation.

If the group that marched through the centre of Wuppertal on a September evening in 2014 wearing warning jackets with the words "Shariah Police" on them had not filmed the action and posted it on *YouTube*, we would not have heard much about it. However, it caused a media storm and was noticed across the country, probably because the leader of the group was a certain Sven Lau, who was considered one of the most famous Salafists in Germany at the time and who was later sentenced to five and a half years in prison by the Düsseldorf Higher Regional Court in 2017 for supporting a foreign terrorist organization.

The public prosecutor's office conducted a preliminary investigation upon receiving the police report. The Wuppertal Regional Court initially refused to commence the main proceedings on the grounds of a violation of the uniform ban. When compelled to proceed with the main proceedings by the Higher Regional Court's directive, the Wuppertal Regional Court acquitted the accused of the charge of violating the uniform ban.

Section 3 of the Assembly Act (or *Versammlungsgesetz*) makes it a punishable offence to wear uniforms, parts of uniforms, or comparable items of clothing at assemblies if they are intended to express a common political opinion. However, this wording of the law is interpreted restrictively by case law in relation to Article 5 (freedom of opinion) and Article 8 (freedom of assembly): The case law states that this element of the offence (*Tatbestandsmerkmal*) is only fulfilled if the wearing of such clothing can create a suggestively militant impression and thus intimidates others (see, for instance, Federal Constitutional Court, Order of 27 April 1982, 1 BvR 1138/81, NJW 1982, 1803). This means that everyone is allowed to express his or her opinion through his or her clothing, but the impression must not be given that the wearers of such clothing do not want to allow others to express their opinions and are prepared to impose their views by force if necessary.

In its first two decisions, the Wuppertal Regional Court took the view that the action did not have a threatening character. The 2018 decision of the Federal Court of Justice, on the other hand, stated that it was not the general public's perception of the action in question that mattered, but the group of people targeted by the action, in this case Muslims.

Consequently, in reopening the case, the Regional Court, had to consider how a group belonging to a religious and ethnic minority would perceive the accused's behaviour, and in particular, whether it could be deemed intimidating.

While German law generally applies in legal assessments, at times, factors such as the psychological impact of behaviour, particularly in a cultural context, are to be taken into account. In other words, the legal consequences follow German law, but understanding what constitutes intimidating behaviour may involve considering the perceptions of individuals from different cultural or religious backgrounds.

The question of whether there is a limit to such considerations, e.g., whether an act could only intimidate superstitious people, was not addressed here. Similarly, all circumstances, including the perceptions of the victim from a different culture, are taken into account in determining what is deemed insulting. However, there may be limits to the weight given to perceptions. For instance, in case of homicide following an insult, the weight of the insult is to be assessed according to German law, not according to the feelings of the insulted person if he or she is rooted in a value system that allows such a reaction (see, e.g., CUREDI033DE024).

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

Literature addressing the case

- Diehl, Jörg. 2014. "Scharia-Polizei in Wuppertal: Salafist Sven Lau und seine neue Taktik". *Der Spiegel*, available at <https://www.spiegel.de/politik/deutschland/scharia-polizei-in-wuppertal-

salafist-sven-lau-und-seine-neue-taktik-a-990191.html> accessed 27 January 2024.

- Fickenscher, Guido. 2018. "Anmerkung zu einer Entscheidung des BGH, Urteil vom 11.01.2018 (3 StR 427/17) - Auslegung und Anwendung des versammlungsrechtlichen Uniformverbots -- Sharia Police". *Neue Juristische Wochenschrift* 71 (26): 1895.
- Paul, Carsten. 2018. "Anmerkung zu einer Entscheidung des BGH, Urteil vom 11.01.2018 (3 StR 427/17) - Zum Verstoß gegen das Uniformverbot des § 3 I VersammlG durch das öffentliche Tragen von Warnwesten mit der Aufschrift 'Sharia Police'". *Zeitschrift für das Gesamte Sicherheitsrecht* 1 (3): 123--124.
- Roggan, Fredrik. 2019. "Gelbwesten-Proteste und das deutsche Strafrecht - Zur Strafbarkeit des Tragens gleichartiger Kleidungsstücke als Ausdruck einer gemeinsamen politischen Gesinnung". *Neue Zeitschrift für Strafrecht* 39 (7): 369--373.

General legal literature on the topic

- Breitbach, Michael, Dieter Deiseroth and Helmut Ridder (eds). 2020. *Versammlungsrecht des Bundes und der Länder: Völker- und Europarecht, GG, VersammlG StGB, Landesrecht, Geschichte*. 2nd ed. Baden-Baden: Nomos.
- Rösing, Jenny. 2004. *Kleidung als Gefahr? Das Uniformverbot im Versammlungsrecht.* Baden-Baden: Nomos-.

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