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

A Nail in the Coffin of the Representation Monopoly of a Single Community: The Quest for Recognition of Intra-religious Pluralism

Question(s) at stake:

Whether the rejection of the application of the Cultural Association of Alevis for legal personality as a state-registered religious community, which was based on the assumption of the exclusion of the existence of a further Islamic religious community in the Islam Act 1912, violated the right to freedom of religion as enshrined in the Constitution and in Art. 9 ECHR.

Outcome of the ruling:

The rejection of the application of the Cultural Association of Alevis for the acquisition of legal personality as a state-registered religious community violated their right to freedom of religion, as it was based on the unconstitutional assumption of the exclusion of the existence of a further Islamic religious community by the Islam Act 1912. However, the denial of recognition as a legally recognized religious society did not violate constitutionally guaranteed rights.

Topic(s):

- State recognition of Groups and Their Practices

Keywords:

- Autonomy of religious communities
- Cultural diversity
- Recognition and registration of groups
- State neutrality
- Legal status
- Right to self-identification

Tag(s):

- Alevi
- Islam
- Recognition criteria
- Intra-religious diversity

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Country:

Austria

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ECLI:

ECLI:AT:VFGH:2010:B1214.2009

Date:

01 December 2010

Jurisdiction / Court / Chamber:

Constitutional Court Austria

Remedy / Procedural stage:

Final Decision

Previous stages:

- Decision of the Federal Minister for Education, Art, and Culture of 25 August 2009

Subsequent stages:

None

Branches / Areas of law:

Constitutional Law, Human Rights Law

Facts:

With the decision of the Federal Minister for Education, Art, and Culture (hereinafter: the Ministry, or the authority) of 25 August 2009, the applications of the Cultural Association of Alevis (hereinafter: the complainant) of 19 March 2009 for recognition as an Islamic-Alevi religious society in Austria, and possibly for recognition as a state-registered Islamic-Alevi religious community, were rejected.

The Ministry based the dismissal of the application for recognition as a religious society according to § 2 of the Law on Legal Recognition of Religious Societies 1874 (hereinafter: AnerkennungsG) on the assumption that neither the Act on the Recognition of the Adherents of Islam as a Religious Community 1912 (hereinafter: IslamG) nor the Islam Ordinance 1988 provides for the possibility to found another Islamic religious community. Due to the decision of the Constitutional Court (VfSlg. 11.574/1987), which repealed the phrase “according to the Hanefite rite” in the IslamG, the Ministry considered all followers of Islam to fall within the scope of the Islam Law 1912. Therefore, the Ministry considered the application for recognition as an interference in the internal affairs of the Islamic Community in Austria (hereinafter: the IGGÖ). Prior to this, the Ministry had invited the IGGÖ, a legally recognized religious society that sets out to represent all Muslims in Austria, as a party involved, to comment on the applications. In its statement of 21 August 2009, the IGGÖ rejected the recognition of the complainant as a religious society and the acquisition of legal personality as a confessional community on the grounds that it saw the application as an

inadmissible, gross interference in its internal affairs. According to the IGGÖ, Alevism was a syncretic denomination which had nothing whatsoever to do with the religious practices of the global Muslim community of Sunnis and Shiites but rather represented a doctrine that was diametrically opposed to Islam. The IGGÖ further stated that Alevism stood outside the Islamic world community (*Ummah*) and suggested that any designation as Islamic or any reference to Islam be deleted from this application or future applications.

Furthermore, the Ministry stated that the application did not fulfil the requirements for recognition as enshrined in § 11 (1) line 1 of the Law on the Legal Status of Religious Denominational Communities 1998 (hereinafter: BekGG), since there was no Islamic-Alevi religious community that would fulfil the minimum term of existence of 20 years and no state-registered Islamic-Alevi confessional community that could meet the requirement of 10 years of existence in Austria.

With regard to the (contingent) application for the acquisition of legal personality as a religious confessional community according to § 2 of the BekGG, the Ministry based its dismissal thereof particularly on the lack of a religious doctrine corresponding to § 4 (1)(2) of the BekGG. According to the authorities, the doctrine of the complainant contained elements that are present in Sunni and Shiite Islam as well as contents that are absent from any other religion; therefore, the complainant’s self-assignment to Islam was ultimately decisive. However, since a legally recognized religious society representing followers of Islam already existed, namely the IGGÖ, and since a recognition of the complaint would first require registration as a state-registered confessional community according to § 11 BekGG, there would ultimately be two religious societies considering themselves Islamic. Therefore, the Ministry held that such a situation was contrary to the IslamG.

The Cultural Association of Alevis filed a complaint against this decision with the Constitutional Court, alleging a violation of their constitutionally guaranteed rights to equality of all citizens before the law and to freedom of religion, as well as a violation of rights due to the application of unlawful general standards.

In particular, the complainant argued that followers of Alevi Islam had no official religious society in Austria to represent their religious interests, as the IGGÖ still only represented the Hanefite rite and kept denying that Alevis were followers of Islam at all. As concerns the stated differences between the Alevi religious doctrine and that followed and represented by the members of the IGGÖ, the complainant stated that there was not only a gradual difference in piety and zeal for the faith but also in their beliefs, and listed numerous differences between the followers of Islam represented by the IGGÖ and the followers of Alevi Islam (no five pillars of Islam; no mosques; no Sharia; the Koran was a book of faith for the Alevis but not a code of law; equality of women; equality of all religions, etc.). Moreover, according to the complainant, there exists an unbridgeable gap between the IGGÖ and the followers of Alevi Islam. Religious independence, the development of the Islamic-Alevi religious doctrine and identity, as well as the desire to satisfy the religious needs of the followers of Alevi Islam living in Austria would only be possible, in the complainant's view, through organizational independence.

As concerns the alleged monopoly of representation of the IGGÖ, the complainant held that the provisions of §§ 1 ff. IslamG and the Islam Ordinance 1988 unconstitutionally established a compulsory community for followers of Islam, to which people were forced to belong even against their religious convictions. The complainant argued that the 60,000 followers of Alevi Islam and their spiritual leaders, whose religious interests were represented solely by the complainant party, would therefore automatically be subsumed under the IGGÖ. However, according to the complainant, the IGGÖ did not want to fulfil the mandate of the legislator and of the Constitutional Court (VfSlg. 11.574/1987) to represent all followers of Islam in Austria. The claim to sole representation was therefore not being exercised by the IGGÖ at all, and the recognition of an Islamic-Alevi religious community would not constitute an interference in the internal affairs of the IGGÖ. It was not justified, according to the complainant, that the followers of Alevi Islam were not entitled to the same rights as the IGGÖ; this unequal treatment was unobjective and violated the principle of equality. Moreover, the

unequal treatment of the followers of Alevi Islam also resulted from the fact that Christians could choose between the different confessions or even renounce them and remain Christians, whereas the Muslim Alevi had no such possibility. Even if a follower of Alevi Islam were to declare his withdrawal from the existing legal religious community in order to join a new Islamic-Alevi religious community, he would still be bound to the IGGÖ with all its obligations as a follower of Islam and member of the unified community. The followers of Alevi Islam were thus denied the opportunities open to Christians.

Finally, the complaining party expressed its reservations about the constitutionality of § 11 (1)(1) of the BekGG: while the (waiting) period of ten years stipulated therein was applied to other applicants for recognition, the legislature had made it possible to recognize the Coptic Orthodox Church in 2003 by means of the Oriental Orthodox Church Act. Thus, in the latter case, it was apparently not necessary to comply with the legal requirements for recognition.

On 18 January 2010, the Ministry submitted a rebuttal in which it contested the merits, but not the admissibility, of the complaint. In its rebuttal, the authority pointed out, among other things, that the decision, contrary to the statements in the complaint, did not state that all followers of Alevi Islam belong to Islam. Rather, it had to be stated that, due to the self-assignment of the applicants, they were followers of Islam, but were not recognized as such by the IGGÖ. The Ministry stated that the classification of the followers of Alevism as Muslims had not been called into question by the authority, and that the self-assignment had been a decisive factor in the legal assessment. The classification of Alevism as part of Islam had only been established in the course of the case. Moreover, the Ministry stated that the IGGÖ represented not only the Hanefite rite, even if the majority of Muslims in Austria adhered to this rite, but all rites, currents, and schools of Islam, as was particularly evident from the decision of the Constitutional Court (VfSlg. 11.574/1987).

With regard to the contested affiliation with the IGGÖ, the Ministry stated that the complainant claimed that they were Muslims and did not belong to any other legally recognized church or religious society, and at the same time their doctrine

stated that they belonged to Islam. As followers of Islam, they had to be represented by the organs of the IGGÖ. For this reason alone, according to the Ministry, the legal sphere of the IGGÖ would be affected.

On the alleged violation of the constitutionally guaranteed right to equality before the law, the authority concerned held that this was based on the premise that there cannot be several denominations among the followers of Islam, in contrast to the situation of Christian churches. The idea behind this was that the recognition system of the IslamG is based on the Recognition Act 1874 and the Israelite Act 1890. Accordingly, the basic requirement for recognition would be the formation of a religious community. This is an element present in the aforementioned legislation but not in the IslamG. Thus, according to the Ministry, there would be a deliberate deviation from the regulation in the Recognition Act 1874 or the Israelite Act 1890 and thus a *lex specialis* in relation to these norms. Moreover, the Islam Ordinance 1988 provided for the admission of several religious communities; however, the ordinance only stipulates the internal organization insofar as it is necessary for external representation. The consideration of individual rites, currents, and “denominations” of Islam is not a question of external representation. The Ministry acknowledged that the complainant’s self-assignment to Islam on the one hand and the refusal to be accepted into and represented by the IGGÖ on the other hand created a contradictory situation. However, this did not change the fact that it was not up to the state and its organs to change the creed of people against their will, or to integrate persons or groups of persons into recognized churches or religious societies as members against the will of the respective religious institution in question. Finally, according to the Ministry, the framework conditions for the constitution of the IGGÖ stipulated in the Islam Ordinance 1988 allowed for the inclusion of religious communities oriented towards different rites with the same or overlapping local sphere of activity.

On 10 March 2010, the complainant submitted a statement to counter the explanations of the Ministry, in which it accused the Ministry of not having examined decisive legal questions and therefore not having given sufficient

reasons for the rejection. With regard to the party status of the IGGÖ in the proceedings before the Ministry, the complainant argued that the question of whether several denominations within the religion of Islam could be admitted as independent religious societies was a purely legal question and that it was therefore not necessary to grant the IGGÖ party status. In addition, the IGGÖ did not have had any organs authorized to represent it, which was why the request for an opinion had been inadmissible.

Ruling:

In its decision, the Constitutional Court held that by rejecting the complainant's application for legal personality as a religious denomination, the authority in question imputed to the provisions of the IslamG and the Islam Ordinance 1988 unconstitutional content that contradicted the constitutionally guaranteed right to freedom of religion, and thus applied the IslamG, the Islam Ordinance 1988, and Article 4 (1)(2) of the BekGG in a manner that contradicted Article 9 ECHR. Therefore, the complainant's constitutionally guaranteed right to freedom of religion was violated by the contested decision – insofar as it was directed against the acceptance of the complainant's application under § 2 BekGG. The contested decision was therefore to be annulled.

In its assessment the Court firstly determined that the complaint against the rejection of the application for recognition as a legally recognized religious society within the meaning of the Recognition Act was unfounded in this respect, as the provision of § 11 (1) no. 1 BekGG, on which the contested decision was based, in any case requires the pre-existence of a state-registered confessional community. This prerequisite, which was not even alleged by the complaining party, was not fulfilled in the present case. The proceedings also did not show that the complainant's constitutionally guaranteed rights were violated in this respect. In view of the unobjectionable nature of the legal bases applied, according to the Court, it was also excluded that rights were violated due to the application of an unlawful general norm.

As concerns the complaint against the rejection of the application for the acquisition of legal personality as a state-registered confessional community, the Court considered it to be well-founded. In this context, the Court referred to Art. 9 ECHR as incorporated into domestic legislation, and emphasized that the scope of protection of this right also includes the practice of religion by a church or religious body (VfSlg. 17.021/2003).

With reference to previous case law (beginning with VfSlg. 9185/1981 and the ECtHR judgment *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* , App. no. 40825/98, 31 July 2008), the Court assumed that in principle there were no constitutional objections to the differentiation between recognized, state-registered, and non-recognized religious communities, and that this differentiation was constitutionally provided for in Art. 15 of the Constitutional Act on the Fundamental Rights of Citizens 1867 (StGG) (e.g. VfSlg. 17.021/2003). However, legal provisions that link different legal consequences to this distinction were only constitutionally unobjectionable if the different treatment could be objectively justified; if, furthermore, the recognition was based on factual aspects; and if the prerequisites outlined in the law were met and would be also enforceable (cf. in particular VfSlg. 11.931/1988; VfGH 2.7.2009, B1397/08).

With reference to case law of the ECtHR on Art. 9 ECHR, the Court held that a different treatment of distinct religious groups in order to compensate for factual differences under Art. 14 ECHR would not be prohibited. Neither from the wording of Art. I IslamG, according to which the followers of Islam (of the Hanefite rite only) were granted recognition as a religious society, nor from that of § 1 IslamG, which links the regulation of the external legal relationships of the followers of Islam to the time of the formal establishment of at least one religious community, could the conclusion be drawn that there may only be one legally permissible Islamic religious society or state-registered confessional community. Nor did such a restriction necessarily result from § 1 Islam Ordinance 1988, according to which the adherents of Islam used the designation “Islamic religious community in Austria” (IGGÖ). Contrary to the complaint, it could not be inferred from the decision of the Constitutional Court (VfSlg. 11.574/1987) that all followers of Islam

may only be represented by one religious society. In reference to the latter decision, the Court held that the question of membership of the recognized religious society belonged to the internal affairs of a religious community. By virtue of Art. 15 StGG, the legislature was obliged, when recognizing a religious society, to delimit its membership in such a way that it does not violate the self-image and self-understanding of the religious community in question. With the decision VfSlg. 11.574/1987, the Constitutional Court in 1987 annulled the wording “according to the Hanefite rite” in Article I as well as in §§ 5 and 6 IslamG, as this restriction of recognition, which was caused by the special historical situation in 1912, was no longer justified and interfered with the right of self-administration of the legally recognized religious society of Islam.

However, according to the Court, the decision VfSlg. 11.574/1987 did not allow all followers of the religious community of Islam to be unified in one recognized religious community in an unconstitutional way, and could in no way lead to the opposite conclusion that all followers of Islam would now have to be united in one single religious community. The provisions of Art. I and § 1 IslamG in conjunction with the Islam Ordinance 1988 did not exceed the limit of what is permissible under the Convention as marked by the case law of the ECtHR, and in particular did not require that there be only one legally constituted Islamic religious community. On the contrary, if understood in conformity with the Constitution, the provisions were to be interpreted to the effect that a representation of all followers of Islam by an (Islamic) “unitary community” was not prescribed and thus did not stand in the way of the existence of a further Islamic religious community, which depended on the requirements of the BekGG and the AnerkennungsG. According to the Court, thus, if the preconditions laid down in the AnerkennungsG and the BekGG are fulfilled, another religious community that considers itself to be Islamic can also be legally recognized or registered as a religious denomination, in accordance with the basic position underlying the decision VfSlg. 11.574/1987.

By rejecting the complainant’s application to acquire legal personality as a state-registered confessional community on the grounds described above, the Ministry

imputed to the provisions of the IslamG and the Islam Ordinance 1988 unconstitutional content that contradicted the constitutionally guaranteed right to freedom of religion, and thus applied the IslamG, the Islam Ordinance 1988, and the provision of § 4 para. 1 no. 2 of the BekGG in a manner that contradicted Article 9 of the ECHR.

The Court held therefore that the complainant's constitutionally guaranteed right to freedom of religion was violated by the contested decision – insofar as it was directed against the acceptance of the complainant's application under section 2 of the BekGG.

Main quotations on cultural or religious diversity:

- "The different treatment of various religious groups to compensate for actual differences is in principle not prohibited under Art 14 ECHR. However, Art. 9 ECHR requires, because of the essential advantages granted to religious communities, that the state remains neutral in the exercise of powers and that – in a system of granting legal personality as well as a certain status to religious groups – all religious communities must have a fair opportunity to obtain this status; the criteria established are to be applied in a non-discriminatory manner. If there is no objective and reasonable justification for different treatment, it is discriminatory". (para. IV.1)
- "The interpretation made by the authority leads to a disproportionate encroachment on the fundamental right of freedom of religion: While the authority affirmed the non-existence of grounds for prohibition under § 5 (1) BekGG and the existence of the requirements of § 4 (1) (1) and (3) to (8) BekGG, it denied the requirement of the existence of a religious doctrine that differs from the doctrine of other denominations or legally recognized churches and religious societies, essentially on the grounds that there was already a legally recognized religious society that also considered itself to be Islamic and that granting the status of a confessional community would constitute interference in the affairs of a legally recognized religious

society”. (para. IV.4)

- “In assessing whether the complaining party has complied with the requirement to present a religious doctrine that differs from the doctrine of state-registered confessional communities as well as of legally recognized churches and religious societies, the authority concerned should have dealt in more detail with the submissions of the complaining party, in particular with the documents and expert opinions submitted. The wording of § 4 para. 1 no. 2 BekGG suggests that the authority before which the complaint is lodged is limited to assessing the question of the sufficient presentation of the difference but is not called upon to decide on the legitimacy of the religious doctrine in terms of content”. (para. IV.4)
- “The area of ‘internal affairs’ within the meaning of Article 15 StGG can therefore only be determined with regard to the ‘essence of the religious society according to its self-understanding’. […] In particular, the question of membership of the recognized religious society also belongs to the ‘internal affairs’. By virtue of Article 15 StGG, the legislature is obliged, when recognizing a religious society, to delimit its membership in such a way that it does not violate the self-image of the religious community. A legislator who excludes a part of the community from the recognition of a religious community (which is a necessary prerequisite for recognition) as a religious society within the meaning of Article 15 StGG without taking into account that, according to the self-understanding of the entire religious community, it is part of a common confession, acts unconstitutionally. This is because it prevents the independent organization and administration of the internal affairs of the entire religious community, which is constitutionally intended and guaranteed by Article 15 StGG”. (para. IV.3.1)
- “According to the case law of the ECtHR, the state is obliged to neutrality and impartiality. A violation of Art 9 ECHR is to be assumed if the recognition of a complaining religious community – which does not constitute a new movement – is made dependent on the will of an already recognized

ecclesiastical authority". (para. IV.3.2)

- "Furthermore, it would violate the guarantees of religious freedom if the legislator wanted to deny a group of persons, for whose religious conviction it is essential to profess a certain faith, the possibility of founding another legally recognized religious society of this faith in addition to the only legally recognized religious society existing in a certain area. [...] Accordingly, the legislator of a state that is obliged to neutrality in religious or religious-legal matters is precluded from decreeing, contrary to the self-conception of those concerned, a de facto non-existent entity that is not sufficiently supported by theological criteria, by way of refusing to acquire legal personality as a religious denomination". (para. IV.3.2)

Main legal texts quoted in the decision:

Domestic law

- Article 1 Act on Legal Recognition of Religious Communities 1874
- Articles 2, 4, 11 Act on the Legal Status of Religious Denominational Communities 1998
- Article I, § 1 Act on the Recognition of the Adherents of Islam as a Religious Community 1912
- Article 15 Constitutional Act on the Fundamental Rights of Citizens 1867
- Verordnung des Bundesministers für Unterricht, Kunst und Sport vom 2. August 1988 betreffend die Islamische Glaubensgemeinschaft in Österreich, BGBl. 466/1988, (IslamVO)

International law

- Article 9 of the European Convention on Human Rights

Cases cited in the decision:

Relevant European Court of Human Rights case law:

- *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, App. nos. 412/03 and 35677/04, 16 September 2010
- *Metropolitan Church of Bessarabia and others v. Moldova*, App. no. 45701/99, 13 December 2001
- *Religionsgemeinschaft der Zeugen Jehovahs and Others v. Austria*, App. no. 40825/98, 31 July 2008

Commentary

A Nail in the Coffin of the Representation Monopoly of a Single Community: The Quest for Recognition of Intra-religious Pluralism

The present decision of the Austrian Constitutional Court is a leading one, as it ended the Islamic Faith Community in Austria's (hereinafter: the IGGÖ) representation monopoly on Muslims in the country and paved the way for the recognition of Islamic diversity.

Since its establishment on 2 May 1979, the IGGÖ has enjoyed the status of a legally recognized religious society in the form of a public law corporation. The public law status entails that it is a religious community entitled to the Austrian state's offer of cooperation in the field of education and religious upbringing of children, in fulfilling diverse charitable tasks, and in pastoral care services in hospitals, prisons, and the army. Consequently, the IGGÖ is the state's negotiating partner when it comes to the religious concerns of Austrian Muslims. Thus, since 1979, all followers of Islam who reside in the Republic of Austria and who have declared their affiliation with Islam in the civil register are legally presumed to be members of the IGGÖ. There is also the possibility for individuals to withdraw their membership from a religious society. Such a withdrawal can be made in person or in writing at a local authority; this declaration of withdrawal is then forwarded to the IGGÖ. The self-understanding of the IGGÖ reflects this insofar as the organization considers itself to be entrusted with speaking for and representing all Muslims in the country, irrespective of their denominational, ethnic, or national differences and irrespective of whether they are paying members of the organization or not.

However, the inherent diversity of Islamic communities proved to be a challenge for the IGGÖ since its foundation, not least because its claim to the monopoly of representation of all Austrian Muslims triggered internal tensions and criticism. These tensions were mostly caused by different ethnic traditions of Muslims, by political developments in countries of origin, transnational relations with diaspora communities, and to some extent also by theological divides, especially as far as the Shia and Alevi communities are concerned. Though not itself a homogenous community, the Alevi community's application for the acquisition of legal personality triggered the present judgment of the Austrian Constitutional Court (hereinafter: the Court), which proved to be a nail in the coffin of the IGGÖ's hitherto existing representation monopoly.

In its verdict, the Court focused in detail on the legal assessment of the authority's decisions and stated that the authority in question based its rejection of the (contingent) application for legal personality as a state-registered religious community essentially on the assumption that, although the self-assignment of the applicants was decisive for the assessment of the existence of a religious doctrine corresponding to § 4 para. 1 no. 2 of the BekGG, a legally recognized religious society already existed for the followers of Islam, and the IslamG excluded the existence – ultimately brought about by a later recognition – of two religious societies that understand themselves as Islamic.

For decades, state authorities, the IGGÖ itself, as well as parts of legal scholarship argued that the two legal acts on which the IGGÖ's recognition is based, namely the IslamG and the Islam Ordinance 1988 coupled with the jurisprudence of the Constitutional Court (VfSlg. 11.574/1987), reflect this exclusive understanding of their representation claim (Hinghofer-Szalkay 2020). In addition, this legal understanding results, not least from the principle of exclusivity (*das Ausschließlichkeitsrecht*), in a dogmatic figure of the Austrian framework of the laws on religion. Normatively rooted in Arts. 14 and 15 StGG, Art. 8 Interkonfessionellengesetz, and § 4 (2) lit 1 BekGG and based on the right to self-determination of inner affairs (inner autonomy) as referred to in Art. 15 StGG, in connection with the constitutional principles of parity, state neutrality, and the

right to freedom of religion, the principle of exclusivity entrusts legally recognized churches and religious societies with state protection and provides them with the right to their individuality. Moreover, it creates a pastoral monopoly as well as the power to identify the differentiation within the community as part of its internal autonomy. In concrete terms, the principle of exclusivity of recognized religious societies extends to the name, religious doctrine, worship, constitution, the joint practice of religion, religious instruction, military and institutional chaplaincies, and, in general, the right to exercise towards their members all those rights and functions which are directly connected with the internal autonomy of recognized churches and religious societies.

Consequently, the principle of exclusivity enables states to identify religious communities and, thus, to distinguish them from each other and their areas of competence. It guarantees a certain level of protection against competition from newly established religious communities and provides a sufficient level of distinctiveness of names and religious doctrines. From a state perspective, the principle offers certain advantages: for example, a compulsion to exclusivity with regard to religious denominations inevitably leads the same or very similar denominations to form common bodies of representation; thus, in the long run, only such larger associations are able to (successfully) compete for the attainment of legal recognition. From the perspective of the religious communities, the principle of exclusivity understood in the sense of a claim to sole representation for a particular religious confession can be advantageous: it authorizes a community or an institution to speak for all adherents of a confession and thus gives this community/institution increased social relevance. Furthermore, in the absence of external competition, the danger of disputes over rival religious jurisdictional powers or claims to representation can be more easily resolved (Gartner-Müller 2012).

With reference to the case law of the European Court of Human Rights (hereinafter: the ECtHR) on Art. 9 ECHR, however, the Court ruled that the Federal Minister’s approach does not comply with the Constitution. Nowhere in the relevant Austrian laws does it state that there may be only one Islamic religious

or confessional community. On the contrary: such a view violates the ECHR. According to the Court, in assuming that the provisions of the IslamG and the Islam Ordinance 1988 do not permit the existence of another religious community that considers itself Islamic in addition to the IGGÖ, which is already recognized by law, the authority failed to examine whether the requirement to present a religious doctrine that differs from the doctrine of existing religious denominations and the doctrine of legally recognized churches and religious societies within the meaning of section 4(1)(2) of the BekGG was actually fulfilled. Due to the constitutional principle of religious-ideological neutrality, the state must take into account the self-understanding of the religious community in question, an issue which touches on the area of “internal affairs” of a religious community, safeguarded in Art. 15 StGG and in Art. 9 ECHR. This would imply, however, that the plausibility check of applications by state organs, to which the religious self-understanding must be subjected, must be kept within the quite narrow limits set by the Constitution and the ECHR, in particular as concerns the doctrine of faith. In doing so, the state must refrain from any evaluation of theological foundations. Rather, it may carry out the aforementioned plausibility check of the application according to secular criteria. Accordingly, Alevism could not be denied the right to understand itself as “Islamic” – regardless of the statement of the IGGÖ, which refused any affiliation of Alevism with Islam whatsoever. However, in its justification for the rejection, the authority made the relationship of the complainant to Islam the essential question of the proceedings.

In view of the clear guidelines of the ECtHR, especially its judgment in *Metropolitan Church of Bessarabia and Others v. Moldova* (App. no. 45701/99, 13 December 2001), however, the granting of party status to the IGGÖ is the actual crux in this case. A theological review of the statements of an applicant religious community or the junction of a positive decision with a positive statement on the part of the representative of the IGGÖ is in any case outside the framework of state religious-ideological neutrality permitted by the ECtHR. States have to refrain from determining what constitutes a legitimate religious belief (see *Manoussakis and Others v. Greece*, App. no. 18748/91; *Bayatyan v. Armenia*, App.

no. *23459/03; Leyla Şahin v. Turkey* [GC], App. no. 44774/98, para. 107). As part of the autonomy of religious communities, it is the task of the highest religious/spiritual authorities of a religious community to determine its content, rituals, dogmas, interpretations, and the belonging/affiliation of the community (see in this respect: Wonisch 2026). What is thus crucial, not least for the management of intra-religious pluralism, is the self-definition and self-declared affiliation of a religious community itself (see OSCE/ODIHR 2014; Wonisch forthcoming).

Consequently, the Court held that the state must exercise appropriate restraint when applying § 4 para. 2 BekGG. It is not for the authority to decide upon the doctrine or even the presentation of doctrinal differences – "according to their inner truth content". The attempt to evaluate doctrinal differences exceeds the competences of the religiously neutral state and would inevitably qualify as an arbitrary handling of affairs. Accordingly, the Court emphasized the obligation of the state to remain neutral in religious or religious-legal matters. In reference to the ECtHR judgment *Holy Synod of the Bulgarian Orthodox Church and others v. Bulgaria* (App. nos. 412/03 und 35.677/04, Z149, 5 June 2009), the Court declared that state organs are precluded from decreeing, contrary to the self-image of those concerned, a de facto non-existent unity on the basis of insufficiently fulfilled theological criteria by way of refusing to grant legal personality as a religious denomination.

What emerges from the present judgment is the need for state authorities to focus on organizational independence in connection with a distinguishable name which on the one hand does justice to the religious self-understanding of the community in question and on the other hand excludes the risk of confusion with other religious communities or institutions. If, according to the self-image of a group, the reference to Islam is essential and this can also be shown plausibly, both of which apply in the case of the Alevis, the religiously neutral state is prevented from prohibiting such a name component that expresses this self-image. Accordingly, the name must be such that it can be associated with the doctrine of the religious denomination and exclude confusion with existing state-

registered confessional communities and legally recognized churches and religious societies or their institutions. Therefore, even in the case of an identical doctrine, the possibility to apply for and achieve legal personality must be given even if this goes against a long tradition in Austrian law on religions.

In conclusion, without explicitly stating it, the Court reduced the principle of exclusivity to the requirement of sufficient distinctiveness in the designation of religious communities wishing to acquire a legal status under national law, while relegating any form of exclusivity regarding naming or the existence of a "relative compulsory cooperative" of all members of a confession to the realm of jurisprudential error (Gartner-Müller 2012).

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

General literature on the topic

- Gartner-Müller, Barbara. 2012. "Die Islamische Glaubensgemeinschaft und das Ausschließlichkeitsrecht der gesetzlich anerkannten Kirchen und Religionsgesellschaften". *Österreichisches Archiv für Recht und Religion* 2: 251–289.
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