

## THE PLACE OF RELIGION IN EDUCATION IN GERMANY

### Introduction by Hermann Avenarius on the constitutional and political context

1. According to article 7, section 3 of the Basic Law of the Federal Republic of Germany religious instruction shall form part of the regular curriculum in state schools, excepting secular schools (which are a rare exception). Without prejudice to the state's right of supervision, it shall be given in accordance with the tenets of the religious community concerned.

Religious instruction is therefore a regular teaching subject. As such it is compulsory. Parents and guardians, however, have the right to decide whether children shall receive religious instruction (article 7, section 2 of the Basic Law). The still valid Law on Religious Education of Children ("Gesetz über die religiöse Kindererziehung") from 1921 regulates that even minor students have their own rights in this matter. After the age of 11 a child may not be educated in another than his or her previous denomination against his or her will; therefore the child without his or her consent may neither be exempted from any religious instruction nor sent to religious instruction in another denomination. After the age of 13 students are self-responsible. They decide themselves whether to receive religious instruction or not. For those students who are exempted from religious instruction most Länder have introduced ethics as an obligatory teaching subject.

As regular part of the state school curriculum religious instruction is as any other subject in the responsibility of the state and subordinate to the state supervisory school authority. On the other hand, religious instruction has to be taught "in accordance with the tenets of the religious community concerned". Therefore it is not a neutral presentation of religion(s), not a lecture in morals and ethics, but bound by a specific denominational creed. Its content is determined by the preaching of the respective religious community. The agreement clause ("in accordance with the tenets of the religious community concerned") guarantees the religious communities the right to cooperation in designing syllabuses and in selecting textbooks. The term "religious community" traditionally has been more or less synonymous with "church". So the churches are entitled to send authorized representatives for visitations to inspect quality and compatibility of religious instruction. Above all, they have the right to collaborate with the state in selecting and appointing teachers for religious instruction. Accordingly, teachers need a specific mandate by their respective church. The state is forbidden to consign a teacher to teach religious instruction whose suitability is not or not any more approved by his or her church. On the other hand, teachers may not be obliged against their will to give religious instruction (article 7, section 3, sentence 3 of the Basic Law).

2. When the founding fathers and mothers of the Basic Law passed the constitution in 1949 they could not imagine that almost sixty years later religious instruction based on other than Christian denominations could be envisaged. But time and circumstances have changed and a vital and effective constitution has to cope with new challenges and unexpected developments.

Article 7, section 3, sentence 1 of the Basic Law („Religious instruction shall form part of the regular curriculum in state schools“), taken verbally, cannot exclude Islam. However, the already quoted second sentence of section 3 causes problems: „Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned“. The term "religious community" is not restricted to Christian churches but includes any association which comprises believers of a faith in order to fulfil jointly the tasks of that faith. Besides it must have an accepted authority which is able to state the conformity of religious instruction with the tenets of the association. While in Austria e.g. the Islam Community (islamische Glaubensgemeinschaft) is even recognised by the state as a corporation under public law which does serve as the state's counterpart, the existing Muslim associations and their umbrella organisations in Germany appear to be not so much religious communities but rather national and/or political organisations which are not in a position to determine what contents should be taught in Islam religious instruction. In some cases the aims of such associations may even contradict fundamental principles of the Basic Law.

What can be done in this situation? Facing the great number of children and youth with Islam religious origin it appears of utmost importance, particularly under the aspect of a successful integration policy, to give them the chance of receiving religious instruction corresponding to their faith. It is quite clear that Koran schools where students usually merely recite passages from the Koran without any critical

comments do not fulfil this function. Under these circumstances – as long as there are no competent Islam religious communities with binding authority for the tenets of their respective creed – it may be acceptable to look for interim solutions, e.g. in the form of project groups initiated and coordinated by the respective Education Ministry which prepare curricula in cooperation with interested Muslim associations and Islam scientists. Islam religious instruction based on such preliminary approaches may not entirely correspond to the constitutional prerequisites but could approximate the rulings of the Basic Law more than a complete absence of religious instruction. Accordingly, most Länder of the Federal Republic have started trial programmes where curricula are being developed by teams of experts and Muslim associations under the responsibility of the respective Education Ministry. The biggest problem appears to be the lack of a sufficient number of qualified teachers.

3. Catholic schools as any other denominational schools usually are private schools<sup>1</sup>. One has to add that private schools in Germany, compared to most other European countries, do not play an important role in the education system since only 7.3% of the students attend them.

According to article 7, section 4 of the Basic Law private schools, as a substitute for state schools, shall require the approval of the state. Such approval shall be given where private schools are not inferior to the state schools in their educational aims, their facilities and the professional training of their teaching staff, and where segregation of students according to the means of the parents is not encouraged thereby. Approval shall be withheld where the economic and legal position of the teaching staff is not sufficiently assured. Article 7, section 5 states that a private elementary school shall be permitted only where the state school authority finds that it serves a special pedagogic interest, or where, on the application of parents, it is to be established as an interdenominational school (Gemeinschaftsschule) or as a denominational school or as a Weltanschauungsschule and a state elementary school of this type does not exist in the commune (Gemeinde).

Questionnaire by Hans-Peter Füssel<sup>2</sup>

### ***I. Religious instruction organised during the school hours (in lower and in secondary education) in state funded schools***

**I.1 Question: Religious instruction organised during the school hours (in lower and in secondary education) in state funded schools. Is – and if affirmative please refer to the provisions in the law (add the text separately) – the teaching of religion in your country organised during school time in public educational institutions: in primary education, in secondary education.**

**Answer:**

In Germany religious instruction is part of the regular curriculum of the state-schools, Art.7 Para 3 of the German Basic Law ( see Appendix ); this includes that the religious instruction-lessons are included in the ordinary school hours.

Religious instruction is, in the words of the Federal Constitutional Court ( 1987 ), a “common matter” of state and churches where “the areas of responsibilities of both institutions are closely interlinked”

An exception is set in the Federal Constitution also, Art.141 of the German Basic Law: where on 1 January 1949 a different legal rule was already in function the general rule of Art.7 Para3 will not apply. This exception is of relevance for the *Land* Bremen (that is the reason why that exception is called “Bremen-Clause”) and the *Land* Berlin; if it also would apply for the *Land* Brandenburg had not been decided by the Federal Constitutional Court.

**I.2 Question: What choices amongst the religious education possibilities are offered in public educational institutions , e.g. catholic religion, Islamic teaching, ....**

**Answer:**

In general all religious institution may offer religious instruction but in practice only these churches and religious organisations who have an adequate organisational structure are accepted as “partners” of the state for organising religious instruction.

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<sup>1</sup> There are exceptions in Northrhine-Westphalia and Lower Saxony. In Northrhine-Westphalia primary schools and so-called Hauptschulen may be erected on the application of parents under specific conditions as denominational schools. In Lower Saxony this alternative applies to primary schools.

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Not only the Christian Churches may offer religious instruction in schools but also other Christian ( f.e. (Greek-)Orthodox Religious Instruction in the *Land Northrhine-Westfalia*) or Islamic communities ( including religious instruction f.e. for the Alevit Community in primary schools in the *Länder Bavaria, Hesse, Northrhine-Westfalia* ).

Also an instruction based on a particular philosophical conviction may be offered in state-schools; some very few offers in the big cities can be observed.

The State has the right to offer a compulsory ethical ( non-religious ) education in schools.

## **II. State funded denominational schools and state supervision**

**II.1. Question: Are there state funded denominational schools in your country? If affirmative, what is the numeric importance of state funded schools. If affirmative, what is the numeric importance of Islamic state funded schools. Please refer to statistical information on-line**

**Answer:**

In general the type of state-schools in the *Länder* is the Christian Community Schools, not orientated to a single Christian conviction.

Only in the *Länder* of *Lower Saxonia* and *Northrhine-Westfalia* some denominational primary schools still exist.

In general it had to be mentioned that also private schools based a particular philosophical conviction ( and not only based on religious convictions ) may be founded.

There are only very few schools of that type, they are of no importance any more for the general structure of the school-system.

There are only some very few Islamic Private ( Primary ) Schools; they will be funded like any other school ( see a )

No statistical data are available.

## **II. State funded denominational schools and state supervision**

**II.1. Question: Are there state funded denominational schools in your country? If affirmative, what is the numeric importance of state funded schools. If affirmative, what is the numeric importance of Islamic state funded schools. Please refer to statistical information on-line**

**II.2. Question: Are there non-state funded denominational schools in your country (private)? If affirmative, what is the numeric importance of private schools. If affirmative, what is the numeric importance of Islamic private schools. Please refer to statistical information on-line**

**Answer:**

92,4 % of all pupils had been in 2008/2007 in state schools, 91,1 % of all schools are state-schools.

The most of the private schools are organised by the ( Christian ) Churches or other religious institutions (like Foundations or Fraternities ).

Nevertheless also private schools may receive state-subsidies as long as they offer education instead of state-schools.

**II.3. Question: How do the authorities control the teaching in state funded denominational schools and are there any special questions about the control of the content of teaching in state-funded denominational schools? Please refer to the provisions in the law.**

**Answer:**

The “common matter” of religious instruction ( see I 2 ) includes that there are two different systems of controlling : the more general, especially didactic-orientated control of the religious instruction and the teachers by the state-authorities and the controlling of the accordance of religious instruction with the beliefs of the religious institutions by these institutions – see Art.7 Para.3 Sent.2 of the German basic Law ( in annex).

In advance teachers of religious instruction in state-schools need a double competence and authorisation : as teachers given by the state-run teachers-training institutions and for the religious aspects the acceptance by the religious institutions, called “vocatio” ( by the Evangelical Church ) or “missio canonica” ( by the Catholic Church ).

## **III. Refusal or limitations on the number of pupils of another conviction/belief by the governing**

***board of a confessional (catholic) school***

**III.1. Question: Does the head of a state funded denominational (e.g. Catholic) school has the right to refuse pupils from other religious beliefs? Please refer to the provisions in the law.**

**Answer:**

The admission of pupils of another religious conviction to religious instruction-lessons belongs to this part of responsibilities the religious institutions may decide on – the Federal Constitutional Court ruled in 1987.

This rule applies also to these very few still existing denominational schools

**III.2. Question: Does the head of a state funded denominational (e.g. Catholic) school the authority to limit the number of pupils from other religious beliefs (e.g. Muslim pupils) in order to support the specificity of the project?**

**Answer:**

For the *Land of Lower Saxonia* f.e. the Ministry of Education has allowed no more than 20 % of pupils of other beliefs to the denominational schools, in exceptional cases this percentage may reach 25 % ( see § 1 of the Verordnung über die Aufnahme bekenntnisfremder Schülerinnen und Schüler in Grundschulen für Schülerinnen und Schüler des gleichen Bekenntnisses, vom 19.Februar 1999 - Nds.GVBl. S.51 - und vom 6.6.2009 - Nds.GVBl. Nr.14/2009 S.242- ).

***IV. Point of views of the authorities concerning the teaching of Islam in denominational (Catholic) education, Islam instruction or instruction on other convictions/beliefs in denominational (catholic) schools for (a number of pupils requesting it) and alternative ethical course***

**IV.1. Question. Is there a legal obligation to organise, if parents ask for, classes of Islamic religion in denominational (Catholic) education funded by public authorities? a. for any pupil for whom a request has been made? b. from a minimum number of pupils for whom a request has been made?**

**IV.2. Question. Does the same obligation exist for the offer of (a) other religions and/or philosophical convictions, (b) an alternative class of conception of life, philosophy, ethics**

**IV.3. Question. Can you shortly mention the pro and contra standpoints that have been expressed concerning the respect of fundamental rights (among others, freedom of education and right to education) in relation with this obligation?**

**IV.4. Question. Reference to the legal basis, with Website address, and also if possible to the parliamentary preparation of texts.**

**Answer:**

That question has not been discussed.

***VI. Religious symbols in public schools***

**VI.1. Question: Are religious symbols (e.g. crucifix) in public schools compulsory, allowed, or forbidden?**

**Answer:**

The Federal Constitutional Court decided in 1995 that the use of the crucifix in state-schools is not acceptable because that may come in conflict with the freedom of faith and conscience ( Art.4 Basic Law ).

Therefore the ( Bavarian ) School Act includes now an “appeal-solution” (Art.7 Para.3 Bavarian School Act )): in principle a crucifix will be installed in each class-room; if parents contradict a solution should be found in the single school. If this seems not possible the crucifix may be abolished. This rule had been accepted by the Federal Administrative Court in 1999.

**VI.2. Question: Is a teacher allowed to wear the Islamic headscarf and manifest her religion? Please explain if not allowed on which grounds.**

**Answer:**

For teachers the wearing of a headscarf as expression of religion ( Art.4 Basic Law ) must be decided by the school-ac, the Federal Constitutional Court decide in 2005. The decision in the school-act may also include the prohibition of wearing the headscarf for teachers because of their professional obligation of neutrality.

Teachers in training must be treated differently because they Right of occupational Freedom (Art.12 Basic Law ) gives them the right to fulfil the professional training and work later outside the state-system.

**VI.3. Question: Is a pupil allowed to wear the Islamic headscarf and manifest her religion? Please explain if not allowed on which grounds.**

**Answer:**

Pupils are allowed to wear a headscarf because of their religious conviction ( Art.4 Basic Law ).

**VI.4. Question: Who decides on the dress code in schools. Please refer to the law.**

**Answer:**

There is no dress-code in schools in Germany, also some single schools has discussed it.

**VI.5. Question: Can a pupil and/or a teacher be exempted from the dress code when she considers it her religious duty to wear the Islamic headscarf?**

**Answer:**

See No.18.

**VI.6. Question: Who is the regulatory authority in this sphere?**

**Answer:**

See No 18.

**VI.7. Question: What kind of disciplinary measures and proceedings are taken if the pupil or teacher fails to comply with the rules on dress codes?**

**Answer:**

See No.18.

**VI.8. Question: Please describe the case-law in your country.**

**Answer:**

There are no legal discussions or decisions by now.

**VII. After-school education in private religious institutions. Islamic instruction organised after the school hours (age 6-18)**

No available information

**VIII. Additional comments**

**XI. Bibliography**

**Appendix**

**Article 4 of the German Basic Law ( German Federal Constitution )**

**[Freedom of faith and conscience]**

(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

...

**Article 7 of the German Basic Law**

**[School system]**

(1) The entire school system shall be under the supervision of the state.

(2) Parents and guardians shall have the right to decide whether children shall receive religious instruction.

(3) Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction.

(4) The right to establish private schools shall be guaranteed. Private schools that serve as alternatives to state schools shall require the approval of the state and shall be subject to the laws of the *Länder*. Such approval shall be given when private schools are not inferior to the state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when segregation of pupils according to the means of their parents will not be encouraged thereby. Approval shall be withheld if the economic and legal position of the teaching staff is not adequately assured.

(5) A private elementary school shall be approved only if the educational authority finds that it serves a special pedagogical interest or if, on the application of parents or guardians, it is to be established as a denominational or interdenominational school or as a school based on a particular philosophy and no state elementary school of that type exists in the municipality.

(6) Preparatory schools shall remain abolished.

#### **Article 12 of the German Basic Law**

##### **[Occupational freedom]**

(1) All Germans shall have the right freely to choose their occupation or profession, their place of work and their place of training. The practice of an occupation or profession may be regulated by or pursuant to a law.

...

#### **Article 141 of the German Basic Law ( German Federal Constitution )**

##### **["Bremen Clause"]**

The first sentence of paragraph (3) of Article 7 shall not apply in any *Land* in which *Land* law otherwise provided on 1 January 1949.