Islam in Austrian Law

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The Counter-Radicalisation Task Force is an expert group of the European Values Think-tank which focuses on the issue of radicalisation among European Muslims. Its overarching objective is to create a series of political and legislative measures which will ensure an effective prevention of radicalisation of European Muslims.
Summary

- Islam has been one of the religions recognised by the Austrian state since 1912. The act which recognised this religion was the first of its kind in the Western world.

- The Muslim population in Austria rose from 8,000 to more than 500,000 between 1964 and 2014. The Muslim population in Austria is also far more heterogeneous than in 1912, which has resulted in the need to reform the Islam Act.

- The principal aim of the new act is to create "Austrian Islam", meaning Islam that is compatible with Austrian values.

- The new Islam Act is far more complex and goes into far more detail in many of the aspects it considers, aspects which the original act did not consider at all or which were formulated only vaguely.

- The process of ratifying the Islam Act went fairly smoothly, but quickly found its opponents. Among the most vocal are Turkey, certain Muslim organisations in Austria and the far-right FPÖ Party.

1. Introduction

The relation between state and church, or more specifically religious organisations, is primarily determined in Austria by the Austrian Federal Constitution, constitutional laws, the case law of the Constitutional Court of Justice, the constitutions of individual federal states, acts and other regulations and by contract law.

The March Constitution of Austria of 4 March 1849 guaranteed religious equality for all churches and religious organisations within the territory of Austria. Indeed it is laid down in para. 1 of the Charter of Fundamental Civil Rights that: “Absolute freedom of faith and the right of all persons to practice religion at home is ensured. The enjoyment of civil and political rights is not dependent on religious denomination; however, religious denomination may not be of harm to the performance of civil duties.” It is further laid down in para. 2 that, “each legally recognised church and religious organisation has the right to the collective public practice of its religion, it organises and administers its matters independently, it upholds and enjoys the institutions, foundations and funds intended for its religious worship, educational and charitable purposes; it is, however, subject to general state laws, just as with every society.”

Although the March Constitution was largely abolished by the "Silvesterpatent", the right to religious freedom (as well as other privileges, such as the abolition of corvée, equality before the law, etc.) was expressly referred to in the October Diploma of Franz Joseph I in 1860 and confirmed in Fundamental Act on the General Rights of State
Citizens No. 142 of the Imperial Code of 21 December 1867, specifically in articles 14-17.[1]

This fundamental state act was later declared a constitutional act of the Federation in Article 149(1) of the Austrian Federal Constitution (i.e. Federal Constitutional Act BGBl. Nr. 1/1920).

In addition to this, Article 16 expressly states that, “followers of a religious denomination that is not recognised by the law are allowed to practise their religious at home (i.e. not in public) if such practice is not unlawful or in conflict with morals.” Consequently, the Austrian constitution did not prohibit private practice of even such a religion that was not recognised by the state, on the condition, of course, that this religious practice was not in conflict with the law.

Among those religions that were recognised by the law were Judaism, Roman Catholicism, Evangelism, Augsburg and Helvetic Confession, the Greek Orthodox Church and the Orthodox Church.[2] Islam was not among the recognised religions at that time, mainly due to the negligible number of followers within the Austrian Empire.

This situation changed radically with the annexation of Bosnia in 1908, with more than a third of the population of Bosnia, people who became citizens of Austria-Hungary, being Muslim. Islam therefore became the third largest religion after Judaism and was as such incorporated into the legal system of Austria-Hungary as a religious organisation recognised by the state.

The objective of this analysis is to make reference to the changes that the new Islam Act brings, to explain the reasons and legal background on which it is based, to present the most common objections and positive reactions to it and to look for its possible benefit to the Czech Republic.

[1] Article 15: “Each church and religious organisation recognised by law has the right to practise religion collectively and publicly, to organise and administer its internal matters and its authority, to hold and use funding and funds for the needs of religious, education and charity; it is, however, as with each society, subordinate to the general laws of the state.”

[2] Currently among the recognised church and religious organisations are the Old Catholic Church, the Methodist Church, the Mormon Church, the Armenian Apostolic and New Apostolic Church; Islam, Buddhist and Israelite religious organisations are among the non-Christian religious organisations. The relations of Austria to the Catholic Church are regulated by a number of international treaties, commencing with the Austrian Concordat from 1933/34.
2. Anerkennungsgesetz 1912

Anerkennungsgesetz (literally the Act on Recognition) from 1912 recognises the community of Sunni Muslims pertaining to the Hanafi school\(^3\) in accordance with the Constitutional Act of 21 December 1867, which guaranteed full religious freedom within the territory of Austria-Hungary. This law provides Muslims with full autonomy in internal matters, although the state invariably has the final say\(^4\). The act also allows the establishment of religious foundations (waqf) without the need to establish a religious community.

Under para. 6(2), Islamic practices, institutions and teachings enjoy the same legal protection and the same freedoms as other religious movements, but only on the condition that the relevant practices, institutions and teachings are not in conflict with state law.

At the time, Anerkennungsgesetz was the first act of its kind and Austria-Hungary became the first country to adopt such an act. The act lost its relevance after the fall of Austria-Hungary in 1948 because the areas occupied by Muslims were not within the territory of Austria. The Islamische Kulturbund (existing until 1939) was sufficient for the needs of the few hundred Muslims that remained in Austria and that became Austrian citizens, before Islamische Gemeinschaft zu Wien was created during the Second World War and Verein der Muslims Österreichs (Association of Austrian Muslims) in 1951. There were a total of 8,000 Muslims living in Austria in 1964.

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\(^3\) Article I. The Hanafi school (al-madhhab al-hanafi) is one of the four generally recognised legal schools in Sunni Islam and indeed the largest school. It is mainly spread throughout Central Asia, the Indian subcontinent, Turkey and the Balkans. The other schools of Sunni Islam are Maliki (al-madhhab al-maliki, North Africa), Shafi’i (al-madhhab ash-shafi’i, Near East, East Africa, Indonesia) and Hanbali (al-madhhab al-hanbali, Hejaz, Saudi Arabia).

\(^4\) Para. 1: “The outward legal relations of followers of Islam are either regulated in a decretory manner based on self-government and self-determination, but with the preservation of state supervision, as soon as the establishment and continuation of at least one religious community has been ensured.”
3. The current status of Muslim communities in Austria

Muslim immigration to Austria began to rise during the 1960s and the Association of Islamic Communities in Austria (IGGiÖ, Islamischen Glaubensgemeinschaft in Österreich) was founded in 1979, meaning that Islam was again a registered religious organisation with its own mosque and spiritual services.[5] The need for a new act drew on the fact that the Muslim community had grown considerably[6] in comparison with the pre-War and post-War years and Anerkennungsgesetz was no longer considered sufficient, primarily for the following reasons:

- Restriction to the Hanafi school meant that followers of other legal schools, not only the remaining three main Sunni madhhabs, but the Shi'ite movements, which the law did not take into consideration at all and whose number rose dramatically as a result of immigration from Iran, were left entirely outwith jurisprudence.

- The old act was fixed on Bosnian-Herzegovinian reality: it counted on the fact that the Muslims living in Austria itself made up a negligible minority (around 2,000 people in 1912) and that the core of the Muslim population of Austria-Hungary remained in the Balkans. Bosnia was also to have been a place from which Muslim priests could be summoned for the needs of Islamic foundations and communities in Austria and perhaps the other countries of Cisleithania. In respect of the developments in Bosnia post-1991 and the Hanbali school, which set root in the Balkans as a result of Saudi Arabian missions and support, this assumption is no longer relevant.

- Some formulations of the act from 1912 are too vague for contemporary purposes, for example Section 3: “Should the Government discover that the organisation of worship as the organisers wish to organise it opposes public scruples, the Government may prohibit it.” The law does not specify the type, date, place and manner of holding permitted and state-recognised religious ceremonies.

These shortcomings and the growing Muslim population were contributary factors in the proposal of the new Islam Act in 2013, the main objectives of the new Islamgesetz (i.e. Islam Act) being:

- to create “Austrian Islam”, meaning Islam that corresponds to the Austrian character;

- to respond to the rising number of Muslim priests coming from Turkey, whose relationship to Austria had never been fully clear;

- to focus on the financing of Islamic associations and mosques, which had mainly been supported by Turkey and Saudi Arabia.

[5] The construction of the first IGGiÖ mosque in Floridsdorf was in large part financed by Saudi Arabian King Faisal.
[6] Whereas Muslims made up 0.3% of the population of Austria in 1971, this figure had risen to 2% in 1991 and 6% in 2009. More than 500,000 Muslims live in Austria. 696,000 of them have Austrian citizenship. Turks make up the largest group, followed by Bosnian Muslims and then, considerably less numerous, Arabs and Persians.
Security fears and risks played a relatively large part in the entire process after 14 people were arrested in November 2014, suspected of organising recruitment for the Islamic State, one of those arrested having worked as a preacher in one of the mosques of Vienna.[7] These factors contributed to the relatively smooth ratification of the new act, which Minister of Foreign Affairs Sebastian Kurz characterised as “legal security for Muslims”. [8] The secondary aim for the parties of the ruling coalition was to weaken the position of parties such as FPÖ, which built much of its campaign around anti-Islamic rhetoric.

4. Islamgesetz 2015

Islamgesetz is structured in a similar way to Israelitengesetz[9] (the law regarding Jewish communities, adopted in 1890, updated in 2007[10] and amended in 2012). The final amendment guaranteed greater autonomy to Jewish communities, specified more clearly rights regarding religious feasts, eating customs and the establishment of their own schools. This principle was also used in formulating Islamgesetz. Both fundamental premises of Anerkennungsgesetz, i.e. 1) subordination of Islamic traditions and laws to Austrian law, and 2) the state having the final say,[11] were maintained, but elaborated in more detail. Islamgesetz 2015 also amends or specifies the status of Muslim communities in the following points:

- In contrast to Anerkennungsgesetz 1912, Islamgesetz 2015 does not expressly refer to the legal school (madhhab) to which a Muslim community in Austria should profess.
- Religious practices cannot be in conflict with state legal rules (unless an exception is granted).[12]
- It expressly declares that one of the fundamental suppositions for the award of legal personality is “having a positive attitude to society and the state”. [13]

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[12] Section 1, para. 2.2. Among such exceptions are male circumcision and the ritual halal of animals.
[13] Section 1, para. 4.3.
[14] Section 3, para. 11. The act does not refer to only eating; consideration of faith also concerns, for example, school holidays (Muslim pupils have the right to take holidays on Muslim feasts etc.).
• When members of the Islamic religious community spend time in the army, in custody, in hospital, in care institutions and in public schools, their religion must be taken into consideration.[14]

• It requires "appropriate consideration of Islamic traditions"[15]

• Obtaining funds for routine activity or satisfying the religious needs of their members must proceed in Austria alone through the religious organisations of iconic communities and therefore their members. [16] With this provision, the act aims to restrict foreign influence on the form of Islam in the country.

• Muslim priests must have the corresponding education (in accordance with Section 24, see below) and must speak and understand German.[17]

• It is forbidden to conduct activity in proximity to Islamic communities and places of worship during Friday worship and feasts (Ramadan, Eid al-Fitr, Ashura) which could lead to increased noise or that could lead to the disruption of worship. Public gatherings or marches are also prohibited.[18]

• The new law incorporates Alawites and recognises them as a separate religious community.[19]

• For the internal statutes and administrative codes of individual religious communities (and amendments to them) to be valid, they must be approved by the Federal Chancellor.[20]

• The law also imposes on Austria itself the obligation to provide Islamic theological studies at the university in Vienna as of 1 January 2016 in order to, among other, educate the Muslim priest community in Austria. [21]

• If there is a threat to the safety, order, health, national security or rights and freedoms of other citizens, the authority has the right to prohibit the organisation of religious events.[22]

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[14] Section 3, para. 11. The act does not refer to only eating; consideration of faith also concerns, for example, school holidays (Muslim pupils have the right to take holidays on Muslim feasts etc.).

[15] Section 2, para. 6.1.7. This term, not specified in any further detail, means the reasonable adaptation of Islamic traditions to the cultural conditions prevalent in Austria.

[16] Section 2, para. 6.2.

[17] Section 3, para. 11.2.

[18] Section 3., para. 13.3, Section 4., para. 20.3.

[19] Section 4. The Alawites are one of the sub-groups of the Shi’ite branch of Islam and as such were not represented in the predominantly Sunni Islamischen Glaubensgemeinschaft. The act also specifies Alawite holidays. Alawites must also present the principles of their faith and translations of the Qu’ran that they will use without inclination to violence.

[20] Section 5., para. 23.


[22] Section 5., para. 27.
In general, the act guarantees extensive religious freedoms. However, the paragraphs which concern financing and the education of priests have attracted controversy, mainly in Turkey. Austrian representatives have of course rejected this criticism – in their view, the wording of the act was discussed with Muslim institutions (supported also by representatives of the Alawite community). The accusation made by President Erdoğan, that the act negatively affects the lives of Austrian Muslims, was strongly rejected by the Austrian Ministry of Foreign Affairs: “The new act is not intended to place restrictions on Austrian Muslims, but by contrast to provide them with a number of rights”. It went on to say that “Nobody asked for any advice or orders” from the Turkish president. The purpose of these two sections is on the one hand to cut off radical groups from financial resources and, on the other, to educate the sort of Islamic spiritual authorities that will respect the Austrian constitution and laws just as they do their own. It is an approach that Austria has been practising in relation to non-Christian faiths since the end of the 19th century (in the case of the Jewish community) and which was expressed by Minister Kurz: “We want an Austrian form of Islam. Each and every Muslim in Austria has the right to duly practise his or her religious, but we do not want any control or influence from outside.”


5. Reaction to Islamgesetz 2015

IGGiÖ took issue with the act after its very proposal. It claims that the act could lead to a priori a suspicious approach to Muslims. This primarily relates to the ban on financing from abroad, which the Muslim community understands to be at odds with the principle of equality, particularly in light of the fact that neither the Christian nor the Jewish community is subject to such restriction. Whilst the Austrian government rejects accusations of employing double standards,[26] Minster Kurz has said that, “There are no fears of influence from abroad relating to any religion [excepting Islam] and consequently no reason to be stricter as far as financing is concerned.”[27]

Further reservations were voiced by certain Muslim organisations (for example, Muslimischen Jugend Österreich, MJÖ, the Austrian Muslim Youth organisation, and the ATIB association[28]), but in their case these were not directed at the act itself, but at IGGiÖ. According to these organisations, IGGiÖ does not represent all Muslims in Austria. They see the ban on financing communities from abroad as unfair and are generally against the “churching” (Verkirchlichung) of Islam in Austria.[29]

Werner Kogler (Green) also voiced his reservations. In addition to the suspicious tone used against Muslims, he has reservations about the prohibition of financing, which in his view could be easily circumvented. He characterised the law overall as “well intended, but poorly executed”. [30]

[28] ATIB (Avusturya Türkiye İslam Birliği) is the largest of the associations (Moscheenvereine) operating outwith the framework of IGGiÖ. These associations are mainly based on national/ethnic bases, IGGiÖ participates in arranging visas for priests.
Heinz Christian Strache (FPÖ) also expressed his doubts as to whether it would be possible to enforce certain elements of the act at all – according to him, most of the Muslims in Austria are not members of IGGiÖ and it is therefore nonsensical for the act to relate to IGGiÖ alone. He also considers it nonsensical to prohibit financing IGGiÖ from outside, in that individual Muslim cultural associations and foundations outwith IGGiÖ can still be financed from abroad and the law does not concern them. Finally, it is, in his opinion, dangerous to guarantee Muslims the freedom to practise their customs and needs, which he considers one of the ways in which the customs of radical Islamists could spread among Austrian Muslims. [31]

By contrast, Islamgesetz was welcomed by Muslim theologian Mouhanad Khorchid from the University in Münster. According to Khorchid, it is reasonable to prevent financing from outside because “whoever sends money also dictates the agenda”. [32] President of the Central Council of Muslims in Germany, Aiman Mazyek, said that the act could be a “positive and fruitful stimulus for debate in Germany”, adding that it is important to clarify what sources will be used to pay Imams. To this, Khorchid said he could imagine a certain type of church tax. [33]


This is a similar phenomenon as in France, for example, where the Act on Secret Services, aimed at strengthening their fight against radical elements and adopted after the attacks on Charlie Hebdo, was criticised most by the Front National Party, which bases a considerable part of its popularity on anti-Islamic rhetoric.

It is worth noting that whereas Strache is worried that individual Moscheevereine would easily circumvent adherence to the act, the representatives of these Muslim associations fear that the associations existing to some extent outside IGGiÖ will be disbanded. [32] http://www.sueddeutsche.de/politik/umgang-mit-muslimen-oesterreichisches-islamgesetz-befruchtet-deutsche-debatte-1.2367827.

[33] It must be pointed out that the question of financing is not considered key in Germany since the Muslim communities there are already predominantly funded from within Germany. By contrast, para. 24, which lays down the education of Muslim priests, could be a considerable obstacle for the German legal system, because in such case it would be a violation of the right to freedom of education and choice of education institution laid down by law.
6. Is the Islam Act applicable to the Czech Republic?

The situation in the Czech Republic is somewhat different to that in Austria, mainly because it is home to a very small Muslim community. This community is not nearly as integrated in all spheres of society as is the case with Austrian Muslims, who serve in the armed forces, in the police and in public administration. The efforts made by the Centre of Muslim Communities for official registration as a religious organisation have thus far failed, most recently as a result of the inability of the CMC to publish an annual report since 2004, one of the obligations placed on applicants for the status of religious organisation. Had it met the conditions, it would have been provided with the rights pertaining to churches and religious organisations as defined in the law on freedom of religious denomination and the status of churches and religious organisations.[34] The act itself defines clearly the rights and obligations of religious organisations, mainly in its para. 5, which lays down that, “A church or religious organisation whose teachings or activities pursue violation of law or the achievement of an objective in an unlawful way may not be established and develop activity”.[35]

Given the small number and relative centralisation of Muslim communities, it is debatable whether there is any need for special measures for Muslim communities in the Czech Republic, particularly in the area of financing or educating Muslim priests, the most controversial passages of Islamgesetz. The idea of a separate educational institute to educate Muslim priests that would accept Western values as their own is only possible in Austria. Expert authorities in the Czech Republic are not currently at such a level as to be able to take the necessary steps and protect the education of Muslim priests. Paradoxically, these circumstances result in the fact that most Muslim priests or authorities on religious law active in the Czech Republic are graduates of foreign institutions or come directly from abroad. This offers up the question of whether it would be possible to use the planned Austrian institute to educate Muslim priests for the Czech Republic and Central Europe as well. This is a model that worked in Austria-Hungary in the past, for example in educating Jewish religious authorities.

[34] 3/2002 Sb.
[35] The act also recites particularly serious wrongdoing, for example propagating hate, concealing certain teachings which are in conflict with the act, restricting personal freedom etc.
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