

Religious Freedom: A Civil Liberty Thrives with and through Conflict

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Some alarming figures were presented in the 2013 Ecumenical Report on the Religious Freedom of Christians in the World. Whereas in (Western) Europe it is widely held that efforts to ensure religious freedom have long since borne fruit, the report states that people in 160 countries are currently prevented from freely practising their faith or from manifesting their adherence to a religious community of their choice.³⁶¹ According to Stephan Haering, a canon law specialist in Munich, “the right to religious freedom currently seems to be the most adversely affected and endangered human right in the world.”³⁶² Christians³⁶³ are among the world’s most persecuted religious adherents, being exposed to harassment or persecution in 111 countries.³⁶⁴ And what is the situation in Germany? The question of religious freedom here could, of course, be quickly dismissed

³⁶¹ Sekretariat der Deutschen Bischofskonferenz & Kirchenamt der Evangelischen Kirche in Deutschland (eds.), *Ökumenischer Bericht zur Religionsfreiheit von Christen weltweit 2013 – Das Recht auf Religions- und Weltanschauungsfreiheit: Bedrohungen – Einschränkungen – Verletzungen*, (author: Rathgeber, T.), Bonn & Hannover 2013, 9.

³⁶² Haering, S., *Konzil und Konzilsrecht*, in: *Klerusblatt* 83 (2013) 7, 150-154, 153.

³⁶³ To avoid the impression that we might be arguing on behalf of our own clientele it is worth pointing out that, seen globally, Christians and Muslims are the most widely affected religions, simply because of their large numbers. However, harassment and persecution are also suffered by Baha’is and Sufis in Iran, Buddhists in Tibet, Ahmadiyyah in Indonesia and Pakistan, Uighurs and Falun Gong followers in China, non-Orthodox Jews in Iran, Egypt, France and Hungary, and Jehovah’s Witnesses and Alevites in many South-East Asian countries.

³⁶⁴ It is the author’s express intention that Christianity should not be branded a “natural victim religion” confronted by “natural perpetrator religions”. Such an oversimplification would be out of place. On the one hand, it is true that religious adherents who are harassed or persecuted in one country are often perpetrators of harassment or persecution in another country. On the other hand, it should not be overlooked that violations of religious freedom often correlate with political, economic, historical and ethnic factors or are magnified by such factors. Cf. Reifeld, H., *Religionsfreiheit als Menschenrecht*, in: *Analysen und Argumente – Perspektiven deutscher Außenpolitik*, Berlin 2013, 6.

and presented rather as “an issue or problem in other countries”. The purpose of this article is to examine religious freedom in the German context, nonetheless, and, by reference to social conflict, discussions and public debate, to identify a range of encouraging indicators showing that there are processes in place which effectively guarantee and protect freedom of religion (both in Germany and in other countries).

Using the example of an ongoing, lively public debate in Germany, I aim to explain in this article how society defends the right to religious freedom and endeavours to ensure its implementation on a practical level in everyday life. In Germany, as elsewhere, conflicts occur at regular intervals over how far religious freedom should go and where limitations are placed upon it. To illustrate this I will consider three prominent cases: the *Crucifix Judgement* (1995), the debate on *Headscarves at School* (1999), and the ruling of the German Federal Constitutional Court on the issue of *Circumcision* (2012). The reason why it is so important to study the public debate on religious freedom in Germany is because such a freedom can never exist as a monolithic block within a conflict-free space. Religious freedom is considerably more fragile than might appear at first sight. The very fact that a society is sensitive to conflict over the question of religious freedom, brings such conflict out into the open and conducts a public debate about the relevant issues should be seen as strong indicators of a genuine concern to ensure that everyone can exercise their right to religious freedom.

In Germany, religious freedom is guaranteed as a fundamental human right. Everyone has the right, enshrined in the German Constitution, to exercise their religion or belief, to promote their faith or world view, to belong to a religious community and to convert from one religious or philosophical community to another. The German Constitution specifies in Article 4: “Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.”³⁶⁵ And the next sentence says: “The undisturbed practice of religion shall be guaranteed.”³⁶⁶ The fathers of the German Constitution drawn up in 1949 thus incorporated a fundamental right which had been proclaimed a year previously in Article 18 of the

³⁶⁵ German Constitution, Article 4.1.

³⁶⁶ German Constitution, Article 4.2.

Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in Paris.³⁶⁷ In constitutional terms at least the question of religious freedom in Germany would thus appear to have been settled, with freedom of faith, belief, conscience and worship as its four pillars.³⁶⁸ This applies to any individual and collective exercise of this legal claim and covers not only churches and Christian communities, but also philosophical communities whose adherents may not necessarily regard their beliefs as a religion.³⁶⁹

A survey among the German population would probably come to the conclusion that religious freedom is fully guaranteed. However, it would be overstating the case to say that the issue of religious freedom has been “resolved” in Germany and no longer merits attention. First of all, large parts of Germany’s population are likely to consider religious freedom as meaning that, in a secular state, the social sphere should be non-religious in character. They would say that religious questions belong in the private sphere and are not a matter for the wider community. Superficially, it might indeed appear that upholding the secular nature of the state and limiting religion to the private sphere reflects a liberal attitude, the purpose of which is to grant religious freedom to the individual. However, this attitude sometimes also serves to camouflage the views of those who regard any form of religion as a fundamental risk to the secular state and therefore wish to have religion banned from the public arena. Excluding religion from public life is a negative interpretation of religious freedom which is not supported by international law or, indeed, by the German Constitution. What is called for rather, when determining the relationship between the state and religion, is a positive interpretation of religious freedom, i.e. one that also encompasses the public sphere, which should then be made the criterion for efforts to safeguard religious freedom. The state, therefore, needs to engage with different religious and philosophical views while not

³⁶⁷ Article 18 of the Universal Declaration of Human Rights says: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

³⁶⁸ Cf. Hilpert, K., entry on “Religionsfreiheit”, in: *Lexikon für Theologie und Kirch* (vol. 8), Freiburg 1999, 1048ff.

³⁶⁹ Cf. Liedhegener, A., Religionsfreiheit als individuelles, kollektives und korporatives Grundrecht im liberalen Verfassungsstaat – für alle! Eine Erwiderung, in: *Salzkörner* 18 (2012) 1, 10-12, 10.

renouncing its own religious and philosophical neutrality. This implies that the relationship between the state and religious communities should be marked by “respectful non-identification”³⁷⁰.

The International Covenant on Civil and Political Rights

To avoid examining the issue from a purely domestic perspective, the question of what exactly constitutes religious freedom should be guided by the wording of the International Covenant on Civil and Political Rights. This covenant came into force on 23 May 1976, having been drafted ten years earlier. Article 18 contains a binding definition under international law: “(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. (3) Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. (4) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”³⁷¹

Prior to the adoption of this formulation of religious freedom in 1966 various different social groups had been involved in the debate on the issue. A year earlier the Roman Catholic Church had issued a declaration on religious freedom, entitled *Dignitatis Humanae*, in which it clearly and solemnly formulated its principle: “This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits. The council further declares

³⁷⁰ Bielefeldt, H., *Muslimen im säkularen Rechtsstaat – Integrationschancen durch Religionsfreiheit*, Bielefeld 2003, 15ff.

³⁷¹ International Covenant of 16 December 1966.

that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. This right of the human person to religious freedom is to be recognised in the constitutional law whereby society is governed and thus it is to become a civil right.³⁷² The Church's commitment to religious freedom and its classification of religious freedom as a human right are all the more significant in that the Church thus does justice to its own tradition and, in particular, its own origins.³⁷³ Numerous passages in the New Testament show very clearly that this fundamental document of the Christian faith was written at a time when both its authors and readership were being persecuted for their faith and their beliefs (Mt 5:1-12; Mt 10:17-22; Mt 10:26-33; John 15:18-21, John 15:26-16:4; John 17:6a, John 11b-19; Acts 4:1-5, Acts 4:18b-21; Acts 4:23-31; Acts 5:27b-32, Acts 40b-42; Acts 12:5; Hebr 12:2-13; Phil 1:27-30; 1 Pe 1:3-9; 1 Pe 4:14; Rev 7:9-10, Rev 13:14b-17).

Principles of Universalism, Freedom, Equality and Indivisibility

The International Covenant on Civil and Political Rights provides a definition under international law which is not about religion (i.e. a religious identity or religious feelings) but specifically about human beings and the need to respect their dignity and civil liberties.³⁷⁴ This means that both in international law and in the Roman Catholic Council publication *Dignitatis Humanae* the focus of religious freedom is essentially anthropocentric.³⁷⁵ The right to religious freedom, therefore,

³⁷² DH 2. With this declaration and its emphatic recognition of religious freedom as a human right the Roman Catholic Church sought to promote an acknowledgement of religious freedom which had already been given some initial expression by John XXIII in his encyclical letter *Pacem in Terris* (1963), after the Church had expressed reservations against the granting of religious freedom well into the 19th century (see the encyclical letter *Mirari vos*, 1832, by Gregory XVI).

³⁷³ Cf. Heimbach-Steins, M., *Religionsfreiheit – Ein Menschenrecht unter Druck*, Paderborn 2012.

³⁷⁴ Cf. Bielefeldt, H., *Philosophie der Menschenrechte*, Darmstadt 1998.

³⁷⁵ Even though, in the past, certain resolutions gave the impression that religions as such should be protected, the right to religious freedom nevertheless centres around the individual. This was made very clear in Resolution 16/18 of the UN Human Rights Council entitled "Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence against persons based on religion or belief" (Human Rights Council Resolution 16/18 of 24 March 2011), which states unequivocally that it is individuals who are to be protected. Cf. Bielefeldt, H., *Streit um Religionsfreiheit – Aktuelle Facetten der internationalen Debatte*, in: *Erlanger Universitätsreden 77/2012*, Part 3, 19.

does not relate primarily to religious organisations, institutions, beliefs or practices, but to individuals whose dignity and freedom are to be protected.³⁷⁶ Over and above this, religious freedom is seen as being applicable to everyone and not just the members of certain established religions (or beliefs) – a point which is seen differently in many regions of the world.³⁷⁷ This universal claim to religious freedom was unequivocally emphasised in the General Comment of the UN Human Rights Committee responsible for monitoring the International Covenant on Civil and Political Rights in 1993.³⁷⁸ At the same time, however, the definition of religious freedom also includes a dimension of equality. Religious freedom is seen as a common entitlement. Each individual is considered to be endowed with an inalienable dignity and must not be reduced to membership of certain social groups, specific religions, certain states, etc. Finally, religious freedom as formulated in international law must be understood as a civil liberty. It is thus the right of individuals which they can claim for themselves. Alongside freedom of faith, belief, conscience and worship this claim also covers freedom of education, freedom of assembly, etc.

An understanding of religious freedom hinges on the fact that it is a human right and, therefore, indivisible. The human right to religious freedom has been formulated as a legal claim against the state, thus limiting the power of the state by rejecting unwarranted state intervention and imposing on the state the obligation to take measures to protect people against potential violations of their religious freedom by third parties. However, the very fact that religious freedom is a civil liberty highlights the problem that no civil liberty can be granted to an unlimited extent but only in such a way that, when given to one person, it does not unduly diminish the freedom of another. Conflict

³⁷⁶ Cf. Tempermann, J., *Blasphemy, Defamation of Religion and Human Rights Law*, in: *Netherlands Quarterly of Human Rights* 26 (2008) 4, 485-516.

³⁷⁷ The People's Republic of China, for instance, officially recognises five religions – Buddhism, Islam, Catholicism, Protestantism and Taoism – while persecuting other movements such as Falun Gong. Eritrea recognises membership of the Catholic, Lutheran and Coptic-Orthodox churches and also membership of Islam. Indonesia defines Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism as its officially recognised religions. Russia has religious laws that describe Russian Orthodoxy, Islam, Judaism and Buddhism as the country's four traditional religions.

³⁷⁸ UN Human Rights Committee, General Comment No. 22, section 2. Quoted from Deutsches Institut für Menschenrechte (ed.), *die "General Comments" zu den UN-Menschenrechtsverträgen*. Deutsche Übersetzung und Kurzeinführungen, Baden-Baden 2005, 92.

is therefore inevitable. Even reference to the indivisibility of human rights (which includes the right to religious freedom) cannot preclude or solve the dilemmas that go hand in hand with civil liberties. As human rights they can clearly be in conflict with each other. This necessitates weighing up different legal claims and establishing a balance between them that is as reasonable as possible.

The fact that a society makes every effort to arrive at a reasonable understanding of religious freedom should not be interpreted as meaning that it has a poor record in the matter. On the contrary, the very fact that issues of religious freedom are taken very seriously should make it abundantly clear that such a society is seeking to foster observance of this human right. Advocacy of religious freedom – and particularly freedom of religious practice for minorities in society – is not just based on an ethical system motivated by specific values and principles. It also has practical political consequences. A de facto guarantee of religious freedom also pays dividends in terms of stability and the quality of life in society. It has been shown, for instance, that by limiting religious freedom a society reaps social conflict, whereas fostering religious freedom has a positive impact and promotes peaceful coexistence within that society.³⁷⁹ But before looking at examples of these endeavours in Germany we first need to ask what religious freedom means exactly.

We will now examine three instances of conflict which triggered intense public debate in German society. The examples will serve to illustrate the efforts being made to strike a reasonable balance while also showing that the debate helped progress towards the goal. In each instance the process started with a debate on religious freedom and eventually led to such freedom being granted.

The Crucifix Debate

On 10 August 1995 the German Federal Constitutional Court in Karlsruhe ruled that Bavarian State School Regulations³⁸⁰ were anti-constitutional in stipulating that each classroom must have a crucifix. The Bavarian regulation, it said, was incompatible with Germany's

³⁷⁹ Cf. Grim, B. J. and Finke, R., *The Price of Freedom Denied – Religious Persecution and Conflict in the Twenty-First Century*, Cambridge 2010.

³⁸⁰ Schulordnung für die Volksschulen in Bayern (School Regulations for Bavarian State Schools), section 13.1, sentence 3.

Federal Constitution, article 4, paragraph 1. The judges thus allowed an action for unconstitutionality that had been brought by parents from the Upper Palatinate region. The couple had argued that the presence of a crucifix in their child's classroom encroached unduly on their right to religious freedom. The constitutional judges (three of whom voted against the ruling, incidentally) presented a detailed argument based on the "level of inescapability" of a crucifix in the classroom, the "inevitability of encountering the crucifix on school premises", and the duration and intensity of the pupils' exposure to the crucifix. The judges reasoned as follows: "The cross is a symbol of a specific religious conviction and not just an expression of Western culture influenced to a certain extent by Christianity [...]. A state commitment to the tenets of this faith – to which third parties are then also exposed upon contact with the state – has an impact on religious freedom [...]. The cross continues to be one of the specific symbols of the Christian faith. In fact, it is a symbol of faith par excellence [...]. Because of the significance that has been given to the cross, and which it has had in history, it has become a symbolic expression of specific beliefs and a symbol of their propagation through missionary activities – especially to non-Christians and atheists. It would be turning the cross into something mundane and thus running counter to the self-image of Christianity and the Christian Church if, as in the decisions under dispute, it were to be regarded as a mere expression of Western tradition or as a cultic symbol without any specific religious significance."³⁸¹

Roman Catholics rooted in their religion may deplore such a decision since it results in the removal from the public space of a symbol which is very important to them. However, the ruling of the Constitutional Court can also be seen in a far more positive light in respect of the treatment of religious freedom in Germany. The verdict of the Constitutional Court judges dominated the headlines and commentaries of regional and national newspapers for days on end and it was interesting to follow the very lively, heated discussion, especially on the opinion pages of newspapers. A number of people who had always taken exception to the cross welcomed the ruling, among them Rudolf Augstein, who wrote: "Henceforth crosses and crucifixes should no longer be installed on the premises of state schools, and certainly not in schools providing compulsory education."³⁸² Axel

³⁸¹ http://www.sadaba.de/Rsp/RST_BfG_95_01_30.html.

³⁸² Augstein, R., in: *Der Spiegel*, 14 August 1995.

Baron von Campenhausen replied: “The Crucifix Judgement points in the wrong direction. In a state with religious neutrality and a pluralist society it is not the dissidents alone who are entitled to assert their views.”³⁸³ Konrad Adam struck a conciliatory tone: “Whatever one may think of the Constitutional Court ruling, it can be given credit for one thing: it shows the incompatibility of the objectives proclaimed in all innocence by the advocates of modernisation who had no inkling of their underlying inconsistency. But you can’t have it both ways – strict religious adherence and pluralism, a multicultural Nirvana and the Christian West, not even in a highly traditional region like Bavaria.”³⁸⁴

The public debate spawned a wide range of diverging arguments. The keen interest shown in the issue was reflected in the German news magazine *Der Spiegel* on 28 August 1995, which devoted its opinion page exclusively to letters on the Crucifix Judgement – in an age supposedly “tired of religion”. One newspaper, *Passauer Neue Presse*, published a 16-page special supplement entitled “Leave the crucifixes alone”. The positive aspect of this public debate was highlighted at the time by Peter Pappert who wrote: “It’s astonishing really that none of the German bishops has so far expressed any gratitude to the Federal Constitutional Court. If the Court had dismissed the complaint and come to the opposite conclusion, the outcome would have been accepted, filed away and forgotten. Now, however, the meaning of the cross is being debated with an intensity and a level of detail that most Germans have never experienced. What more can the Church want?”³⁸⁵

The Crucifix Judgement certainly served to highlight the issue of religious symbols and the significance of faith for the individual, putting it right at the heart of the public debate. But there was more to it than that. The discussion was also an important indicator of the way religious freedom is treated in Germany. First of all, on the positive side, it is worth noting that in a state whose constitution makes reference to God in its preamble and where religious education in schools is a constitutional fixture, the guardians of the Constitution are actually questioning whether this symbol of Christianity is legitimate in schools.

³⁸³ Campenhausen, A. Freiherr von, Karlsruhe fördert die Intoleranz, in: Rheinischer Merkur, 18 August 1995.

³⁸⁴ Adam, K., Kreuz ohne Tränen, in: *Frankfurter Allgemeine Zeitung*, 15 August 1995.

³⁸⁵ Pappert, P., Den Nerv getroffen – Engagierte Stimmen zum Kruzifix-Urteil von Karlsruhe, Aachen 1995, 9.

By questioning it, they are showing that the German Constitution is not misconstrued as a lobbying tool for a certain clientele and that the Constitutional Court is not just concerned with the interests and (religious) civil liberties of the majority but also those of religious minorities.

There was often a note of fierce intensity in the public debate on whether, in this instance, the right to religious freedom should be interpreted as meaning that crucifixes must be removed from a school. A number of politicians urged the public to see the ruling as a vote for a complete separation between the state and the church and to effect this separation with all due rigour. Such demands probably arose more because the relevant individuals had a problem with religion as a part of public life and less because of the actual ruling itself, which had been argued in much greater detail by the Federal Constitutional Court. After all, the principle of state neutrality on religions and beliefs does not justify turning the state into a "religion-free zone". Neither does it mean that religion should be banned from state schools. While it is true that the state has a special duty of care towards schools, attended as they are by children and young people,³⁸⁶ this duty must be interpreted as an obligation to ensure that students are not subjected to one-sided religious or philosophical indoctrination. Rather, they must be enabled to come into contact with the religious dimension and with different religions of their own free will. Based on this principle of state neutrality in relation to religious symbols such as the cross, it is of course possible to arrive at different assessments and conclusions, as is evidenced by the three Constitutional Court judges who disagreed. Yet quite apart from the essence of the ruling at the material level, it is worth looking at the modal dimension of the public debate, which clearly made a valuable contribution to creating public awareness of the sensitive nature of religious freedom in German society.

The headscarf debate

In a different case in 1999, four years after the Crucifix Judgement, there was another agitated public debate in Germany, this time over a Muslim teacher, Fereshta Ludin. Ludin had insisted on wearing a

³⁸⁶ Cf. Bielefeld, H., Streit um Religionsfreiheit – Aktuelle Facetten der internationalen Debatte, in: Erlangener Universitätsreden 77/2012, Part 3, 27.

headscarf during lessons and therefore been refused acceptance by the state of Baden-Württemberg as a newly qualified probationary teacher. A woman's duty to cover her head can be directly derived from the Qur'an (Sura 24:31, 33:53 and 33:59), which is understood to stipulate that a Muslim woman must cover the upper part of her body with a garment so that she is identified as a believer and also to protect her from being "molested". Referring to her guaranteed right to religious freedom, Ludin argued that she could not be banned from wearing a headscarf. The educational authority in Stuttgart, on the other hand, opined that the headscarf was a symbol of cultural separation and, therefore, not merely religious but also political. This case, too, was eventually taken to the Federal Constitutional Court. In its Headscarf Judgement of 24 September 2003 the Court ruled that Fereshta Ludin's constitutional rights would, indeed, be violated if she were banned from wearing this garment: "The wearing of a headscarf within the context at issue serves to demonstrate the complainant's membership of the Islamic religious community and her personal identification as a Muslim. Qualifying such behaviour as lack of suitability for the teaching profession in a primary or secondary school violates the complainant's right to equal access to any public office [...], and it does so in a way that currently lacks the required legal basis, which would need to be sufficiently specific." Again, the ruling of the Federal Constitutional Court was not unanimous, three out of the eight judges voting against the decision. Nevertheless, the ruling did resolve one issue. A Muslim teacher can only be banned from wearing a headscarf if this is clearly specified in the law of the relevant federal state. Since then eight federal states have implemented such a ban.³⁸⁷

This case, too, can of course be assessed in different ways. Heide Oestreich, for instance, takes a gender-sensitive approach by pointing out that the headscarf ban is in fact discriminatory towards women, as it stops them from gaining emancipation from their parents and husbands.³⁸⁸ Interestingly, a completely opposite position was taken by the former President of the Turkish Community in Germany, Hakkı Keskin, who pointed out that teachers wearing headscarves

³⁸⁷ Bavaria, Berlin, Bremen, Hesse, Lower Saxony, North Rhine-Westphalia, Thuringia and Saarland have adopted a headscarf ban for their teachers.

³⁸⁸ Oestreich, H., *Der Kopftuch-Streit: Das Abendland und ein Quadratmeter Islam*, Frankfurt 2005.

and the separation of boys and girls during swimming and sports lessons had nothing to do with the “essentially very tolerant nature of Islam”.³⁸⁹ He regarded these as attempts by some relatively small groups within the Islamic population to turn religion into a tool with which to propagate a particular political and ideological attitude, and he argued that such attempts should be resisted. Again, quite apart from the issue at stake here, the intensity of the headscarf debate showed that Germany still has a long way to go in resolving the question of religious freedom. Conflict clearly does occur in everyday life, and each time that happens a new balanced approach must be pursued with due account being taken of people’s legitimate right to religious freedom.

The Circumcision Debate

A third point of conflict arose in 2012, when the German population was challenged in its tolerance or acceptance of religious traditions. Most Jewish parents in Germany have their sons circumcised shortly after birth (with reference to Gen 17:10-14). In Islam, too, many Muslims see male genital circumcision as a religious duty. A broad public debate about the legitimacy – and legality – of the circumcision of minors in Germany followed the ruling by the Cologne Regional Court on 7 May 2012 that the circumcision of male minors must be deemed to constitute physical injury, which could not be justified by reference to the religious motivation of parents or their right to religious freedom.

The German Ethics Council was consulted on this issue and a parliamentary bill was drafted, whereupon 434 members of the German parliament (Bundestag) voted for the new act, while 100 voted against and 46 abstained. The act specifies that circumcision of male minors is only permitted for religious reasons and – reflecting the criteria put forward by the Ethics Council – after the boy’s parents or guardians have received comprehensive information and given their consent. Furthermore, circumcision can only go ahead if skilled pain management is implemented, the operation is conducted professionally and the boy is not known to have expressed any opposition to it.³⁹⁰ This judgement caused a furore far beyond Germany’s borders.

³⁸⁹ Lerch, W. G., *Symbole und Religionsfriede*, in: *Frankfurter Allgemeine Zeitung*, 19 January 2004.

³⁹⁰ Cf. <http://www.ethikrat.org/sitzungen/2012/dokumente-plenarsitzung-23-08-2012>.

The public debate that preceded the act was also conducted with great vehemence. Some of the arguments showed that the right to religious freedom was considered to be of only very minor significance. Nevertheless, quite apart from any material assessment of the case, a purely modal view of the public debate shows that, again, a major effort had to be made to ensure the right to religious freedom – an asset which does not just come about of its own accord without any effort, but which can only be secured through a debate in which the relevant issues are clarified and resolved.

Religious Freedom Thrives on Public Debate

It may come as a surprise that the conflict over religious freedom, in particular, should be presented in this article as an instance of its successful implementation. Yet it would be wrong to interpret religious freedom as the expression of inter-religious harmony or “state-protected inter-religious harmony”.³⁹¹ One might of course see religious freedom as a “concept for peace” in society. But religious freedom does not exist within a harmonious, tension-free zone. Rather, like all freedoms, it involves competition between one person’s freedom and the freedom of others. Religious freedom relates to specific people and must therefore be understood primarily in individual and not in general terms. To do justice to religious freedom and the resulting legitimate right of individuals to such freedom, any competing freedoms must be considered on a case-by-case basis and repeatedly weighed against each other.

Interestingly, the three instances of conflict over religious freedom dealt with here focused on the interests of different religious communities and the symbols and interests of their members. Whereas the crucifix judgement was about the extent to which Christians should be free to present their symbols in public life, the case of the Muslim teacher wishing to wear a headscarf was about the extent to which Muslims should be granted the right to wear their religious symbols in a public space. Finally, in the circumcision debate, the focus was on the interests of the Jewish community and its tradition. Irrespective of the people whose religious freedom was at issue, all three cases caused quite a public stir. In each case the issue at stake

³⁹¹ Cf. Bielefeld, H., Streit um Religionsfreiheit – Aktuelle Facetten der internationalen Debatte, in: Erlangener Universitätsreden 77/2012, Part 3, 52.

concerned the extent to which the state in a secular society can limit the individual's fundamental right to religious freedom. It is a good sign that all three points of conflict were discussed in Germany with such verve. It shows that there is still a feeling in German society that religious freedom is a key civil liberty worth fighting for. It is precisely this public debate – a controversy carried out in public – that provides safeguards, thus ensuring that religious freedom is exercised in an appropriate manner in society. One may of course disagree from one case to another whether the controversy over the granting of religious freedom really led to a “fair solution” which did justice to the facts of the matter and to the claims put forward by the parties concerned. It would perhaps have been desirable if a different judgement had emerged or the debate had taken a different course. Yet the very fact that there was a public controversy shows that religious freedom is seen as a great asset. It is also an essential factor which helps to ensure that, in the future, religious freedom will not just be defined as a constitutional standard, but that it can also be implemented and safeguarded as a practical legal right.