

IIRF Reports

International Institute for Religious Freedom
Internationales Institut für Religionsfreiheit
Institut International pour la Liberté Religieuse



Prof. Dr. phil. Dr. theol. Thomas Schirrmacher

“Freedom of Religion and European Identity”

*Collective list of questions for the public
hearing by the German Parliament's*

Bonn – Cape Town – Colombo

**A monthly journal with special reports,
research projects, reprints and documentation**

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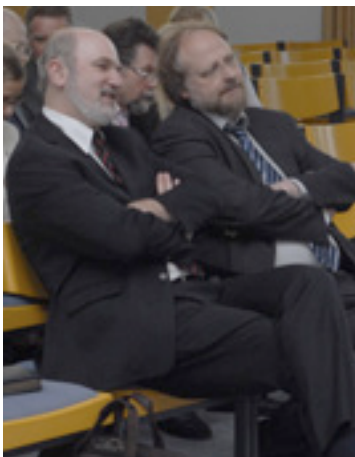
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Prof. Dr. phil. Dr. theol. Thomas Schirrmacher

“Freedom of Religion and European Identity”

*Collective list of questions for the public
hearing by the German Parliament’s*

Commission for Human Rights and Humanitarian Aid
on October 27, 2010 on the topic of “Freedom of Religion
and European Identity”



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Collective list of questions for the public hearing by the German Parliament's Commission for Human Rights and Humanitarian Aid on October 27, 2010 on the topic of "Freedom of Religion and European Identity"

Prof. Dr. phil. Dr. theol. Thomas Schirrmacher, October 22, 2010 (corrected on November 29, 2010)

1) Is the right to religious freedom as it relates to the individual an identifying concept for Europe? How in practice could life be breathed into such a concept?

The right to religious freedom is very suitable as an identifying concept for Europe. This is not just the case because it applies to Europe, for what we are dealing with is a universal human right. It is also not the case just because these rights are, on average, better achieved in Europe (see below in this connection). Rather, it is above all due to the fact that the fundamental values that hold Europe together were essentially achieved in the face of what used to be the lack of religious freedom and its devastating consequences. That every person may have his own religion or worldview, and may choose and change it, indeed openly and not secretly, and that such is neither prescribed by the state nor imposed by other societal forces counts as one of the central prerequisites of being free.

In the process it should be clearly stated that the German *Religions- und Glaubensfreiheit* (see question 2) refers to the English wording "freedom of religion and belief," and that 'belief' generally means worldviews as well as non-religious convictions, which with the German word *Glauben* is not expressed quite so unambiguously. If in what follows I render the English "freedom of religion or belief" as in the questions with a shortened "religious freedom," what is meant is not solely the freedom of religious individuals, but rather the freedom of people with other worldview systems or of atheists or non-religious people as well. In the notable decision of the European Court of Human Rights (ECHR) dated May 25, 1993, one reads: "freedom of thought, conscience and religion is one of the foundations of a democratic society" and indeed for religious people as well as for "atheists, agnostics, and skeptics."

It should be briefly pointed out that international studies conducted independently of one another have demonstrated that in most cases the level of protection of human rights, democratic institutions, and religious freedom are approximately equally high (for instance Marshall, p. 8, for 87 of the 101 freest countries).

Additionally, Brian J. Grim and Roger Finke statistically demonstrate in a study released in December 2010 that religious freedom contributes to the peace of a society and likewise to its democratization. They doubt the arguments made by states that restrictions on religious minorities or the protection of a majority religion can be justified because that is the only way to maintain social peace. They achieve precisely the opposite result. And when they exclude these minorities, they miss what is globally a relatively large contribution that religious minorities have made everywhere to commerce, culture, and science.¹

2) What is the significance of freedom of religion or belief within the European canon of values, and how can this human right bring about a European identity which stands open to all European citizens – independent of the belief convictions they hold?

Freedom of religion has historically and actually been of real significance for European identity. There plain and simply would not be the Europe of today if there were no religious freedom. This, however, is an observation measured by the mood of the general population for the larger portion of countries in the Council of Europe. For certain countries it is unfortunately more of an outstanding requirement.

A modern democracy without religious freedom is not conceivable. Religious freedom is, namely, profoundly tied to other fundamental rights such as the freedom of conscience, the freedom of opinion, the freedom to assemble, and the freedom of the press. On the other hand, a secular democratic constitutional state which presupposes the separation of 'church' and state can only be tied to religious freedom.

Failing this, the state either has to be a missionary atheistic state which suppresses religion (e.g., the former Soviet Union), or a religious state in which either the religious dignitaries of a religion possess the power (e.g., Iran), or a state which itself prescribes the religion (e.g., Saudi Arabia or Sri Lanka), or alternatively a state where the national religion is made useful for its own purposes and thus so promoted, although the religious institutions themselves are not granted any freedom by the state (e.g., Turkey or Serbia).

¹ Paul A. Marshall. *Religious Freedom in the World*. Lanham (MD): Rowman & Littlefield, 2008. Brian J. Grim, Roger Finke. *The Price of Freedom Denied: Religious Persecution and Conflict in the 21st Century*. Cambridge: Cambridge University Press, 2010.

Religious freedom is not only the complementary match to a secular democratic constitutional state, but rather it is also the prerequisite for religious peace, that is, for the absence of civil war or war which is religiously motivated, or worldview-motivated, or is conducted against other religious communities. This is due to the fact that religious freedom does not emerge when religious communities or non-religious people give up their truth claims or come to agree to the extent that the differences almost disappear (since, as is generally known, denominations of a religion which stand quite close to each other have frequently conducted religious wars against each other), but rather through the willingness to demonstrate religious freedom which includes publicly displaying one's own religion peacefully and in coexistence with adherents of other religions and worldviews. Furthermore, this means relaying such religion through discourse, not through the aid of state power, or by violence, or coercion against those who think differently.

Europe should also not behave too self-assuredly and pretentiously. In light of the perspective of the United States, which is that religious freedom in Europe has not always appeared to be at its best, irrespective of whether this has to do with official reports by German federal authorities or research reports such as those produced by the Hudson Institute or the Pew Forum on Religion and Public Life, one might attempt to offer the explanation that we are talking about completely different religious histories and a divergent estimation of the role of national churches. However, the fact that *Latin America* might be said on the overall average to stand in better stead than the Europe of the Council of Europe, in spite of what is in part an historical burden, for instance where there has been a state religion of the majority or bloody conflicts of secular regimes with the same, it urges self-criticism and renewed and strengthened efforts to win over those in Europe who are partially or completely skeptical of the idea of religious and worldview freedom.

Religious freedom benefits religions²

In my opinion, the decisive question to also ask with respect to Islam is whether one can be successful in anchoring the conviction among the vast range of Muslims that religious freedom does not harm religions

and actively religious individuals but rather benefits them. For instance, my personal experience in Turkey has shown me how important it is that religiously oriented people like myself make it clear to religious leaders in countries who fear unrest as a result of religious freedom, or who confuse religious freedom with coercive secularization, that religious freedom is not against religion or directed against certain religions, but rather that productive coexistence with non-religious people is of significant value to us.

For a long time the Roman Catholic Church viewed religious freedom as a child of the religious criticism of the Enlightenment and as something directed against religion, unlike the Protestants in Great Britain and the USA who found religious freedom to be liberating and beneficial. It was precisely the Catholic bishops from the USA who, on the basis of their positive experiences, initiated the development toward the Declaration on Religious Freedom issued by the Second Vatican Council. At least at this point one sees an aspect of the Enlightenment where an enemy turned into a friend.

Now this is not to say that an experience in one religion is simply, and in no way necessarily, transferrable to another religion. Additionally, we are speaking about a lengthy, centuries-long process, but it is at least worth the attempt to take Orthodox churches and Muslims along on the way of seeing that secularization of the state does not automatically mean the suppression of various religions. Rather, their 'retreat' from political leadership could precisely be what leads religions to reflect on their particular features and see voluntary membership as something that strengthens and not weakens faith.

*3) Although in Europe the right to religious freedom is largely ensured, national governments differ greatly as far as, for example, the equal treatment of religions and the question of religious symbols are concerned. In what way does this inconsistency influence the idea of a European identity on the basis of religious freedom?*³

The freedom of religion as a universal right can apparently be implemented in a variety of ways from culture to culture, and one should not prematurely conclude that there is a lack of religious freedom on the basis of certain factors. Thus *Norway* has a state church anchored in the constitution, and that includes the

²Jörg Winter. "Religionsfreiheit als Menschenrecht." *Kirche & Recht* 15 (2009): 65–71. Thomas Schirrmacher. "Demokratie und christliche Ethik." *From Politik und Zeitgeschichte* (Supplement to *Das Parlament*) 14/2009 (March 30, 2009): 21–26, also available at http://www1.bpb.de/publikationen/N6VK9L,0,Demokratie_und_christliche_Ethik.html.

³Willy Fautre. "European Trends." pp. 28–32 in Paul A. Marshall. *Religious Freedom in the World*. Lanham (MD): Rowman & Littlefield, 2008; additional articles on Europe pp. 33–41.

major part of its population. Yet it is one of the European countries with the least impairment of religious freedom vis-à-vis religious minorities. In *Ireland* the constitution names the Christian, triune God as the point of all reference. The Catholic convictions of the majority of the population exercise great influence upon legislation, and the blasphemy law sounds dramatic. Despite this, the degree of freedom granted to religious minorities is very high.

A vivid example of how a situation that has grown up in history in Europe can be determinative is France, which with its *laïcité* maintains a very strict separation between religions and the state. Freedom of religion is at most at risk in the way religion is pushed out of the public sphere and is threatened by the battle against 'sects' and 'cults.' At the same time, the *Départements Moselle, Bas-Rhin* and *Haut-Rhin* (the prior *Alsace-Moselle*, that is, *Alsace-Lothringen*) comprise a region in France where the clergy of the acknowledged religious community are all paid by the state and from everyone's tax money. Religion is also very present in the public sphere there. This is the only place where ironically the former state church of Germany survived.

Another example: There are 375 mosques in Thrace in Greece, which thanks to the 1923 Lausanne Peace Treaty enjoy a comparatively high degree of freedom. Their imams are partly financed by the state. Outside of Thrace, Muslims are very strongly restricted and exclusively the Orthodox clergy is paid by everyone's tax money. Here again is an example where historical roots account for contrasts within the same country.

Admittedly the diversity found in Europe also leads to a situation where there are predominantly certain violations of religious freedom in certain countries. *France* and *Belgium* lead both chronologically and as regards content with prohibitions against religious clothing in public. Whether this could be enforceable in such intensity in other European countries is doubtful.

Also, the state classification of religious communities as dangerous cults is not known in most European countries, or attempts in this direction are thwarted by their courts. In individual countries such as *Belgium* and *France*, and in a weaker form in *Austria* or outside of the European Union in *Russia* and *Turkey*, one finds that this sort of action belongs to everyday political life, with all the problems that derive from it.

In *Belgium*, to name just one example, the battle against sects and cults rather indiscriminately affects Sikh temples, African Pentecostal churches, commu-

nities that practice yoga, or the Anthroposophic Society. The court of appeals in Brussels has repeatedly rejected the work of the Belgian Parliamentary Commission on Cults in Brussels, as it has also done with the description of the Anthroposophic Society as a 'dangerous sect' by state officials.

The diversity of Europe can thus also have a negative side, which one quickly recognizes when one investigates the unequal treatment of certain minorities across all of Europe – and as is generally known, religious freedom has to stand the test precisely when dealing with minorities that have joined the culture. If for instance one chooses the perspective of the Bahá'í, a religion that has the identical alignment in all European countries and itself propagates religious freedom and acts peacefully, the range in European countries spans from complete freedom to difficult situations all the way up to registration refusal in *Romania* and acts of violence involving temples in *Armenia*.

This leads to a situation where the same religious association can in one country be monitored by state authorities or may not be able to be registered, while in the next country it is welcome and enjoys full rights. Thus in *Germany* the Anthroposophic Society enjoys enormous breadth in its opportunities to develop and has won rulings that have for instance gained immense rights for its Waldorf schools. In neighboring *Belgium*, on the other hand, it is largely restricted by the state as a 'dangerous sect.' Jehovah's Witnesses have of all places in *Turkey* a better legal status than in *Austria*, even if the *European Court of Human Rights* recently gave *Austria* a lecture in this connection.

On the state of religious freedom in Europe⁴

I would doubt to some extent that religious freedom can actually be taken to have already arrived in grand style among all 'Europeans.' In the case of most countries of Eastern Europe, there is still a long way to go. This becomes clear when one takes a look at which countries have lost cases at the European Court of Human Rights, or when one reads the reports of the Office for Democratic Institutions and Human Rights

⁴Paul A. Marshall. *Religious Freedom in the World*. Lanham (MD): Rowman & Littlefield, 2008. Pew Forum, Brian J. Grim. *Global Restrictions on Religion* Washington: Pew Forum on Religion & Public Life, Dezember 2009, <http://pewresearch.org/pubs/1443/global-restrictions-on-religion>. German abridged version: Brian J. Grim. "Beeinträchtigung von Religion im weltweiten Vergleich: Eine Einführung in aktuelle Forschungsergebnisse." pp. 47–59 in Max Klingberg et al. *Märtyrer 2010: Das Jahrbuch zur Christenverfolgung heute*. Bonn: VKW, 2010.

(ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) (see in this connection the answer to question 14).

The Hudson Institute for instance assigns rankings using a scale from 1 (free) to 7 (completely unfree) and gives all Western European countries rankings of 1 to 3. All of the Orthodox-related countries of Eastern Europe (with the exception of Belarus) receive a 4, while Azerbaijan and Belarus receive a 6.

The evaluation of the Pew Forum on Religion and Public Life renders a high (“high”) index for restrictions on religion by the state (Government Restrictions Index or “GRI” – 4.5 – 6.6 on a scale of 0/free to 10/completely unfree) in the following countries: Turkey, Belarus, Russia, Azerbaijan, Bulgaria, Moldova, Greece.

On a corresponding scale for limitations on religions by other social groups, the following are ranked as ‘high’ (Social Hostilities Index, or “SHI” = 3.3 – 6.7): Turkey, Romania, Georgia, Russia, Moldova, Greece, Serbia.

The entire region of the former Yugoslavia is still far from expressing religious freedom and demonstrating mutual acceptance of religions in the political sphere.

In the European Union, the approval rating of the population with respect to religious freedom (in particular of others’ religious beliefs) in the acceding countries following 2004 is significantly lower than in the European Union countries prior to 2003 (with the exception of Greece).

Religious freedom is anchored more clearly and broadly in the constitutions and legal systems of European countries as well as in supra-regional structures (European Union, Council of Europe, Organization for Security and Co-operation in Europe) than it is in the consciences of their inhabitants. Next to countries in which the population almost consummately approves of this human right and advocates the protection of those who hold other beliefs, there are countries in which religious freedom is present in theory but it is ensured more from without and from above than resting on the will of the great majority of residents.

Stated alternatively: In ‘today’s Europe,’ in particular when one understands with this term the Europe of the Council of Europe, there are too many people who want to make use of religious freedom for their own religious community and enjoy that, but they do not wish it for others.

As a result of this there is, in my opinion, a particular task a state such as Germany has. Germany is a country where the majority of the population actually views religious freedom as meaningful for their own country, and the task is to do everything to achieve this status in other countries. This should occur on all intergovernmental levels (e.g., in dialog regarding the rule of law, parliamentary interaction, meetings of parties with similar orientations) as well as through the support of European institutions that particularly advance the cause of religious freedom, such as the European Court of Human Rights (ECHR), together with the Council of Ministers or the Office for Democratic Institutions and Human Rights (ODIHR) from within the Organization for Security and Co-operation in Europe (OSCE).

However, religious organizations in Germany, especially the churches, should utilize and foster every way available to communicate to the above named European countries in this connection that religious freedom is a value to be welcomed for and by everyone.

4) In your opinion, how does the debate on religious freedom affect the self-image of Europe and what influence does the delimitation to Islam have on European Identity?

For many countries, the arrival of Islam in western European countries has meant a third player on the stage in addition to Christian denominations and a secularized segment of the population that is not to be compared with the numerically much smaller religious and worldview minorities.

In my opinion, ‘old Europe’ is basically torn back and forth. On the one hand, religious freedom is so fundamental and taken for granted that one wants to maintain it for such Islamic groups which themselves do not defend it or legitimize violence for the propagation of their ideas. On the other hand, there is deep concern in the face of religiously based violence, in the face of the sharia, and, finally, in the face of the shocking picture of Iran since 1979 when religious leaders took over the power in a pro-Western country and since then has built a classical hierarchy (rule by clerics) – the perfect antithesis to religious freedom.

By the way, it should be pointed out that questions with respect to Islam can only conditionally be given sweeping answers for the entirety of Europe. The number of Islamic movements, nationalities, and religious orientations are not less varied than is the case with other world religions.

Let us stay with the example of *Germany*: Very generally stated, over a long process Christianity and the Enlightenment in Germany have entered into a historical 'deal' and have agreed upon a sustainable compromise with which both are able to live quite comfortably. Islam now brings, still deliberately speaking generally, a traditional indisposition against Christianity as well as an even stronger repugnance against secularism and atheism. The fascinating question now is whether Christianity and secularism can mutually endeavor to win Muslims for the partnership that has been achieved. Alternatively, will Christianity and secularism mutually endeavor to show them the dividing lines? Or, as it appears to be visible everywhere at the moment, will Christianity and secularism in the process divide and use the need for revised solutions to finally recover some land from the historic partner? When one sees how the rulings of the highest courts in cases involving questions of religion are in part celebrated by the winners, one can be happy that the courts, if not the parties involved in the suits, mostly seek to achieve a balanced ruling.

It is precisely the arrival of Islam that has again made religious freedom a public topic, above all in Western Europe. Up until about the turn of the millennium, the human right to religious freedom was greatly underexposed and almost always had to yield to the discussion of other human rights (one only has to look for instance for *Bundestag* debates on the topic prior to 1999). Due to this, there was little that was advanced in its practice and adapted to real life situations. A new participant, which with about 3.2 million adherents can hardly be deemed a minority religion, calls for responses to completely new issues and calls for completely new self-assurance and defense of a value that all too often has been taken for granted.

Whether the presence of Islam will finally lead to a strengthening of religious freedom as part of European identity or rather to limitations on religious freedom (be it because certain Muslim currents are threatening other Muslim groups, other religions, or non-religious people with violence, or be it by cutting back the religious freedom of Muslims – see the prohibition on minarets in Switzerland) will significantly depend on whether the historical partners can agree on a common stance, or whether they will want to use the opportunity to move against secularism or vice versa, or – following France's model – whether all religions will be more forcefully pushed out of the public eye.

It is really no wonder that the massive number of cases dealing with limitations on the religious freedom of Muslims takes place primarily in two groups of coun-

tries. On the one hand, there are countries with the concept of *laïcité*, France and Belgium, who in dealing with Muslims come upon a religion which only unwillingly allows itself to be pushed into the private sphere. On the other hand, there are the Orthodox countries. There one sees centuries-long disputes between Islamic and Orthodox rulers and times of alternating foreign rule continuing to have an effect, and after the imposition of 70 years of Soviet communism one sees these disputes again reappearing.

In France and Belgium, but also in Greece and Bulgaria, the governments have for instance become directly involved in awarding the highest posts of Muslim leadership (or in determining how they are awarded) or have placed others in those positions as chosen representatives. This has repeatedly been denounced by the European Court of Human Rights, and several cases are pending.

That important currents within Islam (since one can speak of *the one form of* Islam just as little as one can speak of *the one form of* Christianity) want an altogether different political system or legal system is what makes the challenge all the more urgent. And that challenge involves not continuing to hawk historical compromises but rather coming up with something new from the inside out.

There have always naturally been small, individual religious and non-religious groups in Germany which sought a change in the secular democratic legal system or at least gave that impression. They have had several possible origins, be they within the great world religions, be they at the margins of political ideologies, be they independently (e. g., scientology). However, these groups have neither brought with them an appreciable number of adherents, nor did they come along with the weight of a world religion such as Islam, with its political outworking as a state religion in about 50 countries in the world.

The role of the media⁵

In my opinion much too little consideration has been given to the idea that it is above all the media, in the broadest sense of the word, which will determine whether the discussion about the integration of Islamic

⁵Thomas Schirrmacher. *Feindbild Islam*. VTR: Nürnberg, 2003. Marcel Maussen. *The Governance of Islam in Western Europe: A State of the Art Report*. IMISCOE Working Paper 16. Amsterdam: University of Amsterdam Institute for Migration and Ethnic Studies, 2007, www.imiscoe.org. Paul Marshall. *Radical Islam's Rules: The Worldwide Spread of Extreme Shari'a Law*. Oxford: Rowmann & Littlefield Publishers, 2005.

communities of faith in Europe will lead to a meaningful result or not. The media discussion surrounding the book by Thilo Sarrazin or one sentence in a speech by the President of the Federal Republic of Germany has just recently been proof of this.

An example is the role of the international (including German) media in the handling of a sole flaky and isolated preacher in the USA who announced the burning of a Koran. In a world with 2.5 billion Muslims and Christians this would have been a fully meaningless gesture were it not for the media. What was desired was to finally see peaceful Evangelicals in a culture war with Muslims under any conditions - fundamentalists against fundamentalists. This would ensure positive ratings figures. (My principal witness in this is an in-depth commentary in the weekly news magazine *Spiegel* that looked back on the reporting done in the media.) That in the process the danger of murder and manslaughter was simply taken for granted was not of interest. The 420 million members strong World Evangelical Alliance had long since spoken out stridently and loudly against Koran burning (and concretely prevented such action). And none of them burned a Koran. (That at the same time around the world bibles and churches, and even at times Christians, or Bahá'í scriptures in Iran and Korans in India are regularly burned is, by the way, hardly worth a report by anyone in the media.)

In this way the media does not contribute to social peace between religions. Rather, it has a cheap effect on ratings numbers and readership, and in the process adds an emotional charge to the relationship between religious groups. The role of the media in Belgium, Orthodox countries, or Turkey offer many examples of how the media willingly fuels or exploits religious conflict, only to thereafter play the moral judge.

The media will play a significant role in whether religious tensions between the great religions or towards religious minorities grow or diminish. Encroachments against other religions often presuppose that beforehand malicious misrepresentations or generalizations are spread. The result is that people become accustomed to lumping everyone together and throwing the enormously differentiated and spread out world of Islam (or of Christianity or of Evangelicals) together in one pot, thus bringing the whole issue down to a common denominator that can be thrown about in comments at the pub. Germany of all places should study the history of harassing Jews that preceded the extermination of the Jews.

Think of presenting Evangelicals as violent, the Yezidis as 'devil worshipers,' Catholic clergy as child molesters because of celibacy and Muslims as thinking they are justified in lying to non-believers. Think of the effect of showing pictures of September 11, 2001 every time the word 'Islam' is used on television, or superimposing a picture of George W. Bush and the war in Iraq when the word 'Evangelical' is used, which takes in the population against them and in effect declares open season on religious groups by the regular repetition of disinformation.

Please, let no one misunderstand my call as one for a limitation on the freedom of the press or as a rejection of the diversity of the press, as if all media only always report the same thing. However, the media is not an ethically neutral entity. Rather, like every other social institution, it also has to let itself be measured for the extent to which it contributes to peace and justice or to their opposites.

5) In all EU member states the negative right to religious freedom is guaranteed, i. e., the individual has the right to not belong to any religion and the right to change religions. To which extent is this right actually put into practice socio-politically, in public facilities such as schools or otherwise? Or do you see negative religious freedom endangered, e.g., through an emphasis on religion in everyday life?

There are tendencies to reinterpret religious freedom as a freedom to be spared from all types of contact with religion. This does not correspond, however, to the European tradition. Rather, the opposite is the case, if one disregards exceptions such as France. There is no 'right to be left alone' in Europe as is found in approaches in the USA. Religious freedom also does not mean that the state cannot work together with religious communities and worldview communities or may not encounter them in public sphere.

A very strictly implemented negative religious freedom would largely push religions out of public life. One could for instance no longer transmit a religious event on public (or perhaps private) television. If, however, one views non-religious worldviews as being on the same level as religions, this leads in reality to a preference for non-religious worldviews and discrimination against, and unequal treatment of, religions. (This is in my opinion the case in Berlin where there is mandatory instruction in ethics over against voluntary religious instruction, particularly since the state becomes a theologian declaring what is good and bad

about the individual religions. While there may be every desire to facilitate the integration of Muslim children, in the process one enters upon a problematic ‘slippery slope.’)

The public presence of religious symbols is, in my opinion, not an unreasonable thing, whether it is the crescent moon on a mosque, which is seen from a long distance, the Christmas tree in front of the city hall, Christmas carols at the Christmas market, counting years according to Christ’s birth, crosses on mountain summits, the Swiss flag with a cross, or the Turkish flag with a crescent moon. Especially something like the renaming that took place during the time of the German Democratic Republic (e.g., calling a Christmas angel a *Jahresendfigur*, or ‘year-end figure’), which takes a religious tradition and makes it secularly usable, also transmits a worldview signal.

Then again, negative religious freedom has to repeatedly be propagated and implemented as an independent entity. Thus, in a number of Orthodox and Islamic countries within the Council of Europe, there are too many children who are forced to attend religious instruction of another religion. Freedom must also naturally exist to even deregister children from religious instruction of their own religion without consequences. Along these lines, the European Court of Human Rights most recently judged against Turkey because it was forcing an Alevi pupil to participate in normal Islamic school instruction. Incidentally, this was also being required of all children of other forms of Islam that differed from Sunni Islam prescribed by the state.

By the way, negative religious freedom also means *not having to reveal one’s religious affiliation*, a reason why the European Court of Human Rights previously judged against Greece and most recently against Turkey and ordered that religious affiliation be removed from identity papers (case “Isik/Tur” in Februar 2010). Not having to reveal religious affiliation in secularized Europe plays a particular role, since many people cannot at all precisely say who or what they are from a religious or worldview standpoint: There are church members who no longer believe in God, youth who grew up in homes where the parents were religious and who would prefer to keep it to themselves that they have long since given up the faith they grew up with, adherents of yoga who do not know whether they see yoga as a religion or not, and anthroposophists who firmly do not believe themselves to be religious, even if religious studies scholars hold them to be so.

The muezzin’s call to prayer

A still unresolved question with respect to negative religious freedom is the *muezzin’s call to prayer*. Can it reasonably be compared with vague, religious tones such as the sound of ringing church bells (even if this is often limited, stopped, or banned for reasons of excessive noise and not for reasons of negative religious freedom) or not? The problematic nature is associated with the fact that the muezzin’s call to prayer contains an Islamic confession of faith.

If one assumes that a European non-Muslim does not understand Arabic anyway, and even less so when sung, the muezzin’s call to prayer presents nothing more than a unusual cultural soundscape. If, in contrast, one assumes that the meaning is significant and additionally that many know what the call to prayer contains, one could understand the muezzin’s call to prayer as something where non-Muslims are coerced to participate in the worship service of another religion and at this point are being consciously proselytized (somewhat as if the Christian ‘Lord’s prayer’ were sung and broadcast throughout a city instead of church bells being rung).

If one further accepts that the possibility exists that the confession of faith called out by the muezzin is consciously distanced from Christianity – which is the way many historians view it – the set of problems of negative religious freedom would be amplified for Christians having to listen. At some point the question would certainly be brought before the European Court of Human Rights, and one can only wonder how a judge would decide on the issue against the backdrop of the development of the legal canon of the Council of Europe.

I have introduced this only as an example because I have observed how unwillingly such problems as the design of religious freedom (in this case the religious freedom of Muslims with respect to a mosque and the religious freedom of their non-Muslim neighbors) are basically approached and discussed. If one does not do this, however, they are abandoned to the imponderabilia of political trends or the situation on the spot, where very quickly other viewpoints can determine the discussion.

Changing one's religion⁶

Since changing one's religion is specifically mentioned in the question, let it be said that the freedom to change one's religion, as The Universal Declaration of Human Rights clearly calls it, is a central component of religious freedom. This is due to the fact that religious freedom is first of all the right of the individual to freely decide what he wants to believe and what he wants to reveal about that to others. That most Muslim states have had a problem with this from the very beginning and over the course of decades has led to a situation where the formulations of later human rights texts have become increasingly attenuated. This changes nothing about the fact that European human rights standards (which historically were needless to say never influenced by Muslim states) are completely unambiguous at this point.

A religious conversion was the point of origin for religious freedom, for it had to do with what happened when a Catholic in a Catholic area became a Protestant or vice versa. Out of persecution the right to emigrate to the area of one's own confessional stance, etc. developed. The final component of religious freedom involved an individual's being able to formally secede from the church! That, however, from the point of view of religious freedom, is a religious conversion. Strictly Islamic states view Muslims who convert to Christianity, to Bahá'í, or to atheism as those who in equal measure change their religious affiliation and are apostate.

In light of the negative press which 'proselytizing' and religious conversion have of late experienced, Europe has to renew the thinking that belongs to the basic character of Europe, namely that one is free to express his opinion, may call upon others to change theirs (and to accept that the same thing can be done with oneself), and can change his religious affiliation or end religious affiliation without civil consequences. For that reason, the countries of Europe within the UN should work against limitations on the right to change one's religion and work with the European Court of Human Rights (see Ottenberg, pp. 77–87), the previous UN Special Rapporteur on freedom of religion

or belief, and the current officeholder against what is in my opinion unnecessary laws against missionary work and proselytization, which are mostly in place to simply protect the majority religions from losses.

6) At its center, the debate on religious freedom in Europe is directed at the relationship between Europe and Islam. One of the central questions of the future is whether Muslim immigrants will integrate into the existing secularized European community of values – as based on a Judeo-Christian tradition – or whether European identity will change under the influence of a growing Muslim share of the population. Are there signs for a prognosis of which direction the development is taking? And what are the repercussions for religious freedom which you see against this backdrop?

It is worth stating the following at the outset: In my opinion, the answer to this question will quite significantly depend on whether there are additional large terror attacks in Europe or not. A terrorist bombing with many deaths would for instance have the effect of aggravating the mood in Germany, destroy things in common that have grown over time, destroy the successes of dialogue, and damage what are already often only half-hearted differentiations made between peace-loving Muslims and Muslims ready to use violence. I know many Muslim leaders in Germany whose greatest worry is that a successful terror attack takes place for which they will then be made responsible. (In the process one should not forget that when looked at globally, more Muslims die as a result of Islamic fundamentalist violence than non-Muslims, and violent Islamic fundamentalist criminals or undemocratic Islamic regimes threaten many more Muslims than others.)

It is imperative to note: Religious freedom applies to every religion and worldview, and included in that, naturally, is the second largest world religion, Islam. Religious freedom should not only prove itself with 'easy to handle' religions, but rather repeatedly with difficult partners and under difficult circumstances.

However, the following is also to be noted: If Europe is not prepared, within Europe and outside of Europe, to actively propagate and defend the right to religious freedom against fundamentalist elements in the great world religions, the character of Europe will surely change.

In my opinion, a particular challenge is presented by the fact that the German state does not have any theological expertise, does not want to have any, and

⁶Martin Kriele. "Ein Menschenrecht auf Säkularisierung?" Frankfurter Allgemeine Zeitung dated February 25, 2011 (on the Internet). Paul M. Taylor, Freedom of Religion: UN and European Human Rights Law and Practice, Cambridge, Cambridge University Press 2005. pp. 24–114 (a history of the topic of religious conversion in the UN). Marianne Heimbach-Steins, Heiner Bielefeldt (eds.). Religionen und Religionsfreiheit: Menschenrechtliche Perspektiven im Spannungsfeld von Mission und Konversion. Würzburg: Ergon Verlag, 2010.

should not have any. Within the religions, it cannot actually differentiate between better and worse believers and religious persuasions, and it is not allowed to do so nor does it want to do so. Actually, the state is not allowed to think about which orientation within Islam is more welcome.

In the case of Islam, there is actually almost nothing else left for the German state to consider. It is a central task of the state to differentiate between Muslims and Islamic organizations who are ready to use violence and are anti-constitutional and reject religious freedom, and those Muslims and Islamic organizations who, on the other hand, are peaceful, loyal to the constitution, and promote religious freedom. The state has to do this for the sole fact that it has to perform its task of protecting its citizens as well as ensuring the protection of religious freedom to other religions. And along with this belongs the task of protecting peaceful Muslims from those who are not.

In the case of Christian churches, and this also applies to the Bahá'í or Jews, such a necessity does not exist. At this point the state can assume that internal religious discussions eventually could identify problematic developments, although it theoretically would have to move against such elements in a 'religion-blind' manner if they preached the use of violence or would actually practice it. The fact is, however, that at the present time weapons, writings that are able to be seized, and evidence for moving money illegally to terrorist organizations, have only been found in fundamentalist mosques. There are no converts in terrorist camps from the three other religions mentioned as examples, but there are such Muslim converts. Therefore, the state has to suddenly exclusively monitor the converts of a certain religion if they travel to certain regions. The state also has to decide which contacts to which organizations in foreign countries principally make an individual suspicious.

In other words, those who protect the constitution (to name just one example) must have specialist theological knowledge at their disposal in order to avert the danger of an unavoidable and legally undesirable development.

The situation is made more complicated by the fact that many Islamic organizations themselves do not hold to this boundary. While Christian and Jewish groups which reject religious freedom (as until recently in Ireland or presently among settlers in Palestinian areas) or maintain that violence against adherents of other religious convictions is justified are rejected and condemned by the large majority of members of their own

religion, and make this palpable in speech and writing, this does not happen in the Islamic sphere. The result is that the state has to abruptly urge that this occurs.

If countries belonging to the Organization of Islamic States, which regularly achieves approval of their resolution against the defamation of religions in the UN Human Rights Council, etc. (against the votes of, among others, the EU states), would employ this attitude, coexistence between religious and non-religious people in Europe would change! One can already notice among journalists that they know exactly from which religions and religious organizations threatening and violent reactions or legal suits are to be expected and from which this is not the case. This leads to a situation where in comparably negative cases the link to, or responsibility of, a religion is clearly emphasized, and that of another, in contrast, is downplayed.

In the case of Islam, we also have to consider that we are not dealing with a monolithic bloc. In Germany for instance, we are dealing with offshoots from many parties, ideologies, theologies, and movements from Islamic countries of origin, pacifistic mystics as well as those prepared to use violence as followers of Osama bin Laden, secularized Turks, and very religious German Muslims, etc.

There are five countries, or regions, in the Council of Europe where there are Islamic majorities and at the same time limited religious freedom. These are, namely, Albania, Kosovo, Bosnia-Herzegovina, Turkey and Azerbaijan, whereby the countries in themselves are very different and in certain of them Islam is under the strict supervision of the government. In all five countries there is actually no right protecting individuals who have religious conversions. Interfaith marriages are almost impossible there: A non-Muslim man cannot marry a Muslim woman, but a non-Muslim woman converted through social pressure practically always can, if she marries a Muslim man.

Azerbaijan maintains strict control over all religions. All Muslims have to toe the line with respect to state-decreed Islam. All forms of Islam and foreign forms of Islam as well are combated with great severity. In the process, Azerbaijan has continually tightened its legislation and practice over the course of the last two decades. Question 14 will address *Turkey* in more detail.

One more word about integration of Muslim immigrants among us: Germany actually has better prerequisites than many neighboring countries, for there is no historical burden in relationship to the Turks who live in Germany (and to the German citizens who are of Turkish descent). We have neither a colonial past

in the Islamic world (as do France with Algeria and Tunisia, Great Britain with Pakistan, Bangladesh, and the Muslims in India, and the Netherlands with Suriname or Indonesia, whereby to be academically correct the brief period of German rule on Islamic Zanzibar should be listed as the exception. We have also never conducted war against a Muslim nation, with the exception of formal declarations of war at the end of World War II. If there ever were a European country with good chances, then it is Germany!

7) Do we need a Euro-Islam and if so, how would it look?

Without knowing what is meant by the term 'Euro-Islam,' the question cannot be answered.

If one means what the person who coined the term, Bassam Tibi, meant by it, namely in a nutshell a regulation for a European Enlightenment of Islam without thereby attacking Islam in itself, then such an undertaking would be a welcomed thing. However, at the present time, this is not a direction Islam is taking; rather, it is a demand placed on Islam.

If, however, one means how Tariq Ramadan coined the term Euro-Islam, then that means roughly the opposite: Muslims should societally establish their faith in Europe as a sort of counterculture.

What in my opinion is difficult for many Europeans to understand is the central role which theology and theologians play in the Islamic world. Since in our environment theology hardly plays a role in the development of political policy (even if for instance a connection between the theology of the Second Vatican Council and the subsequent wave of democratization within Catholic countries is not to be denied), it is difficult for us to believe that the actual political tone is still set by theologians in Islam.

What is grasped immediately with respect to Iran is namely that theologians and clerics put their ideas into political practice. Likewise, as regards Pakistan, one can easily trace a relationship between Islam and the state in present day Pakistan as anticipated in the theological writings of Sayyid Abul Ala Maudoudi (1903–1979) a half a century earlier. And the same applies in less obvious cases.

A Euro-Islam has to be an Islam which originates with European Islamic theologians, is theologically argued, reaches lecturers, and has as a result their warming to it. What is rather the case is that at the moment there is precisely no rapprochement with the Enlightenment and human rights – with laudable exceptions – from Islamic *Theologians* and preachers of European

extraction who have converted. There is instead a conscious dissociation from European values. European values are mostly defended by Muslim intellectuals in Europe and more rarely by Islamic theologians, preachers, or religious representatives.

A theological separation of 'church' and state and a complete dismissal of the threat to 'apostates' with death or social ostracization is, as my friend Abdullah Saeed, the Maldivian and conservative commentator on the Koran who teaches in Australia defends in his book *Freedom of Religion, Apostasy and Islam*, nowhere to be seen in Europe in Islamic theology. A conception of Islam that is reconcilable with European human rights standards, as far as I have been able to survey, and primarily along the lines defended by scholars such as Bassam Tibi, do not have any influence on the development of Islamic *theology*. There is currently no writing by a European Islamic theologian or preacher known to me which welcomes the secular constitutional state and sees it as reconcilable with the Koran and hadith. All European Muslims who adopt this position (unfortunately) have to my knowledge no influence on theology or on the imams in the mosques.⁷

It is important to remember that what has been said does not apply to Islamic minorities or groups that have split off, such as Alevis, Ahmadis, or mystics.

8) Where do the borders lie for the free exercise of religion and belief in Europe and how in this connection do you assess the current discussion as well as measures regarding the limitations on religious freedom (prohibition against the building of minarets in Switzerland), prohibition against burkas in Belgium, the September 14, 2010 approval of a prohibition against burkas by the French Senate, etc.)?

There is no human right which applies in an unlimited manner. The dignity of an individual is expressed in many aspects, which are to be collectively appreciated and put into practice. Thus there is no religious justification that can allow for child slavery or that can circumvent the prohibition against torture.

'Limitations' or 'encroachments' on fundamental human rights are only permissible within international and European human rights standards on the basis of law. (That was for instance the basis for the

⁷ Abdullah Saeed; Hassan Saeed. *Freedom of Religion, Apostasy and Islam*. Ashgate: Aldershot, 2004. Bassam Tibi. *Euro-Islam*. Darmstadt: Primus, 2009. Tariq Ramadan. *Western Muslims and the Future of Islam*. New York: Oxford University Press, 2005.

ruling of the German Federal Constitutional Court on the question of whether Muslim teachers may wear a headscarf.)

In questions of a limitation on religious freedom due to cases of conflict with other rights, the European Court of Human Rights has often and on the whole ruled favorably and in a nuanced manner (all rulings are discussed in Ottenberg, pp. 138–182). In the process, one was dealing with a limitation on the basis of public security, maintenance of public order and health, and the protection of rights and freedoms of others. Next to that there is the special issue of the limitation on individuals who represent the state (e.g., school or police).

In the case of Islam, the same balance between religious freedom and other rights has to occur for reasons of equal treatment. The only thing is that large swaths of historically induced preconditions are not present and have to do with organizational form and the support of democratic order. Equal treatment at this point has to not only formally occur. Rather, all content-related and other preconditions have to be included which the churches likewise have to fulfill.

One may also not forget that in our environment there are many laws touching on moral questions and structures that were either established against the will of Christian religious communities or that go back to situations where they were achieved by arduous compromise. Why should it be any different for Islamic religious communities, where without any diminution they would receive in express fashion what the churches have sacrificed so much for?

That also applies for building measures religions undertake. This should also involve equal treatment, whereby Islamic communities with mosques may not just be compared with large churches, which practically as a whole lot built large church building in much earlier times. Rather, they are to be compared with Christian free churches, which are also not allowed to build on every street corner. Rather, on account of administrative conditions and red tape, Christian free churches have to take a long time to find a suitable location. Planning and building laws and their realization by democratically legitimate municipalities may also be applied to religious buildings. With this in mind, Muslims have to understand that precisely when it comes to constructing mosques, approvals could involve prolonged periods of time. This would also be the case with every other religion and with

every building of this size. Thus a Swiss village might protect its historic panoramic character and prohibit a high, conspicuous structure.

However, to fundamentally prohibit certain religious communities from using specific, conspicuous building structures, and that at a constitutional level, is something that is against religious freedom – and is by the way only possible in the Swiss model where an attitude of protest among the population can break new ground with such laws. It is telling that the Swiss minaret initiative was neither backed by the government nor by any organized religious community, and the representative association of Evangelical free churches, the Swiss Evangelical Alliance, spoke out against the *Minaret-Initiative* (minaret initiative) and against a prohibition on minarets. (By the way, the European Court of Human Rights will one of these days supposedly ‘annul’ this law.)

Clothing regulations and dietary laws

The European Court of Human Rights has often had to occupy itself with questions of dress or dietary laws (Ottenberg, pp. 97–100). In connection with its 2006 ruling on headscarves, the European Court of Human Rights investigated the situation in 17 countries and commented on 10 of them in more detail. Alone the spectrum of the specific ways this is handled in the 17 countries is enormous.

It is not by chance that steps were taken with respect to the prohibition against burkas in France and Belgium. Since 2004 the wearing of headscarves has been forbidden in schools. The attempt to achieve this same result in Belgium via national legislation failed, but all schools received the right to decide for themselves. Currently the wearing of a headscarf is forbidden in 70% of schools.

In France and above all in Belgium there are Sikhs who are also affected, as they are not allowed to wear their turbans. I somehow doubt that this line will become popular in other states that do not have *laïcité* – presumably in Germany, for instance, it would not be able to withstand the highest German court’s examination.

9) From time to time the right to religious freedom comes into conflict with European concepts of value and law. Therefore, the German Federal Administrative Court in Leipzig approved halal and kosher slaughter of animals in spite of an applicable prohibition under animal protection laws. Similar conflicts are, for example, demonst-

rated in the questions regarding the circumcision of the young in Judaism and Islam with a view to Germany's Grundgesetz (constitution), Art. 2, Par. 2. How do you assess these conflicts against the background of religious freedom, on the one hand, and European (legal) identity, on the other hand?

For a start, it should be noted that a collision of obligations and the balancing of legally protected interests between various individual foundational rights or between foundational rights and normal legislation are normal as part of the state's mandate to maintain public order and arise with every basic human right. International human rights legislation presupposes that such limitations or balancing can only occur through the passage of laws.

In the case of religious freedom, such problems naturally tend to some extent to strongly and viscerally mobilize people and receive a certain level of publicity.

In Europe the balancing is predominantly performed by the highest national courts and the European Court of Human Rights. They have overwhelmingly reached sensitive and good decisions. Specifically the European Court of Human Rights has reached groundbreaking verdicts which did justice to thinking on human rights, but at the same time took distinctive national features into account and wanted to help prevent culture wars.

As a general rule, there is as little chance of having a solution that makes everyone happy as there is of finding the one absolutely correct answer. The careful weighing of thoughts and the search for legally comprehensible compromises of the European Court of Human Rights has significantly contributed to the acceptance of human rights standards of the European Council. Thus the European Court of Human Rights has for instance held halal slaughter to be acceptable, but at the same time has confirmed the governmental position of obligatory supervision. This means that private halal slaughter can be forbidden, and at the same time it can be expected that kosher or halal butchers comply with the same requirements a normal butcher shop has to fulfill.

The European Court of Human Rights has likewise repeatedly made it clear that religious freedom is a highly valuable good that only may be limited in cases where other very highly valued human rights are affected. (§ 4a under German animal protection law expressly allows for exceptions for religious reasons.)

I find it worrying when pending or reached court decisions lead to a type of culture war and in the process the complicated legal issues fall by the wayside. In

such cases Judges are only understood as executors of their own wishes. A typical example is the question of crosses in Italian schools, where all across Europe an unpleasant contest is taking place between Catholics and members of historic Christian churches against atheists, Muslims, and religious minorities, including some Christian minorities. Here it would be desirable for all parties involved to be jointly interested to see positive and negative religious freedom remain in place across the board instead of coming away with a 'victory' for one's own group, which on the whole makes it more difficult to reach a permanent balance.

By the way, the following can be supplemented with respect to Italy, because it demonstrates the complexity of the problems: It is wrong to see this as a case of the European Court of Human Rights against Italy, since Italian courts judged similarly to the European Court of Human Rights. In 2001 the chairman of the Union of Italian Muslims litigated against a cross in his son's classroom and an Italian court ruled in his favor. Several Evangelical minorities in Italy have welcomed the judgment of the European Court of Human Rights. This is due to the fact that they do not see a Christian symbol in the ubiquitous crucifix but rather a Catholic symbol that symbolizes the favoritism the Catholic Church enjoys in Italy.⁸

10) Are there similar paragraphs in the law books of other European countries such as § 166 in the German criminal code, which makes slandering denominations or confessions, religious communities, and worldview associations punishable when the public peace is thereby disturbed? To which degree do such laws limit religious freedom in Europe?

There are similar paragraphs in almost all countries where a majority of the population is Catholic, such as Austria, Ireland, and Spain, as well as in our neighboring countries Switzerland and the Netherlands. Their use is very seldom, above all having to do with rulings as they relate to freedom of the press and artistic freedom. This mostly has to do with the use of religious topics and symbols.

In one of the very few cases heard by a German court, a 61 year-old for instance was sentenced in February 2006 to a one-year period of probation and 300 hours

⁸Paul M. Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice*, Cambridge, Cambridge University Press 2005. pp. 203–338 limitations. Rex Ahdar, Ian Leigh. *Religious Freedom in the Liberal State*. Oxford: Oxford University Press, 2005. pp. 155–192 on restrictions.

of community service for printing the word “Koran” on toilet paper and offering the rolls for sale on the Internet.

Since 2009, blasphemy has again been punishable in Ireland (€25,000). No cases have been known to be tried. However, what applies here is the following: Criminal prosecution can only be initiated if it is demonstrated that disturbance of the public peace was intended by causing indignation in the insulted party.

Historically, paragraphs on blasphemy were in the past directed at protecting the faith of the majority religion. One can observe this very clearly in Greece, where in a manner of speaking the blasphemy paragraph protects ‘God’s honor.’ However, in actuality it is targeted at resisting criticism directed at the Greek Orthodox faith.

§ 166 and similar laws are a consequence of no longer wanting to protect the majority religion and ultimately also not only authorities established under public law (“Körperschaften des öffentlichen Rechts”). For instance, in § 135 the 1851 Prussian criminal code protected the recognized Christian churches from derision, not the so-called free churches and not other religious communities. In 1872 this addressed all religious communities possessing public body rights, that is, the Jewish community, but it continued to not affect all Christian churches.

An issue which for instance emerges in *Germany* or *Ireland* given the present formulation of the ‘blasphemy paragraphs’ is that a peaceful protest with peaceful consequences does not result in protection. Thus, does one have to initiate measures that so provoke the respective opponent or another religious group that they take up non-peaceful means in order to be able to obtain protection under § 166? Or stated another way, peacefully meeting in protest is in a sense discriminated against, while in contrast a non-peaceful manner, could lead to protection. I say ‘could,’ because the paragraph is practically never applied.

‘Defamation of religion’⁹

As is generally known, the Organization of Islamic States has repeatedly sought to implement passed resolutions against defamation of religions in the UN

Human Rights Council, where fortunately the annual passage of which (the next vote is in November 2010) currently does not have any legal effect.

In the texts that have been passed, and in the form as presented by the countries comprising the Organization of Islamic States, primarily Islam and then Christianity and Judaism are mentioned by name and no individual rights are addressed. This demonstrates that what is at issue here is not religious freedom, but rather a limitation on the freedom of religion and belief for other religions and non-religious people. Islamic thinking, which sees Islam as the last and final revelation, is behind this. It provides Christianity and Judaism a special status, while all other religions along with atheism are viewed as idolatry or rejection of God. Just how serious this situation is can be demonstrated by the renewed attempt Qatar made through the use of a supplementary protocol to the anti-discrimination provisions to raise the resolution above the level of a pure declaration and make it a component of obligatory human rights standards. The logic is that it injures the human rights of a religion when it is criticized. Why should this not apply to all forms of criticism, and how would freedom of thought, freedom of conscience, or freedom of the press then be possible at all?

It is gratifying that all the EU states are united in their rejection of this development.

11) With reference to Islamic religious instruction, a formal loyalty to the constitution is not sufficient. Rather, the values of the secular democratic state have to be expressly affirmed in religious instruction. How far does this obligation extend?

Question 6 already addressed the difficulty the state has when it must become a theologian and wants to decide to which streams and organizations it will grant the right to conduct religious instruction. If one looks at who has received this right in individual federal German states, one would have to come to the conclusion that these are precisely not the Islamic groups which stand closest to upholding basic democratic order.

An exception is naturally the religious instruction that occurs with the aid of religion teachers who are provided by the Turkish state. At this point, the decision of what is good Islamic theology and what is not is merely and simply transferred by the German government (and the federal states, respectively) to Turkey. This task is self-consciously assumed since in Turkey the content of Islam is subject to the ministry of religion. The ministry also prescribes the weekly preach-

⁹Arnold Angenendt, Michael Pawlik, Andreas von Arnould de la Perrière. Religionsbeschimpfung: Der rechtliche Schutz des Heiligen. Wissenschaftliche Abhandlungen und Reden zur Philosophie, Politik und Geistesgeschichte 42. Berlin: Duncker & Humblot, 2007.

ing topic. Since Turkish Islam on the whole is admittedly better 'suited' than for instance the Pakistani or Saudi form, one can understand this approach.

A good example is the training that is developing for teachers of religion on German state universities. If the government wishes to treat religions equally, then the same standards have to be placed upon teachers of the Muslim religion as on teachers of Christianity, and the latter are required to have a governmentally recognized education. I am afraid that in the end there will neither be the courage for this, since the entire process will be accompanied by an intense media discussion, nor will the responsible state officials have the necessary knowledge at their disposal in order to recognize who within the diversity of Islam is defending what.

This is the problem: There are currently no Islamic theologians at all who have conducted theological studies alongside educational science and who have then received doctoral degrees and been promoted to professor. As a result, one will revert to all sorts of Islamic scholars, scholars of cultural studies, philologists, even merely educated Muslims. The situation would be likened to having sociologists of religion or historians as teachers on the Christian religion department faculty. In addition to this, there is the problem of scholarly freedom. If certain Muslim professors hold academic state positions, one cannot simply prescribe what they are to research, defend, and teach.

In the first instance, what has to happen is that an altogether thought out and long-term plan has to be presented. Yet the circumstances in which we find ourselves, namely that we are dealing with a hotly discussed chapter in today's politics, makes this almost impossible. Additionally, a detailed canon has to be produced of what actually 'the values of a secular democratic state' are, even if there is a politically partisan cacophony resounding from Muslim associations (apart from the nonpartisan work done by the Federal Agency for Civic Education that altogether earns very high marks).

As a demonstration of how difficult the entire question of theological departments is for Christianity in the changed situation in which we find ourselves, consider the following: The umbrella organization for Evangelical teaching department faculties most recently decided that state recognized degrees or achievements relating thereto that originate from the Evangelical and free church sector are basically not to be recognized. This issue did not used to be present, since Christian free churches and Evangelicals mostly offered and required a lower level of theological edu-

cation. In recent years, however, they have increasingly required university degrees from their staff and on the basis of more successful accreditation have had their educational institutions approved or acknowledged by the state in larger numbers. Can it truly be that their graduates are not able to conduct doctoral studies until private universities have received the right to award doctorates? Or should they, as they currently are in greater and greater numbers, vanish to foreign countries which in large part willingly open their doctoral programs to graduates of private universities? The question, then, is whether the state would have to officially open these departments and move against such compartmentalization, in particular if it is simultaneously demanding openness for Islamic educational trajectories. And will Islamic departments soon likewise practically refuse access to other groups within the realms of Islam?

12) The separation of church and state is constitutionally anchored in Germany. State and church legal experts, however, describe the separation as a "limping separation." How do you assess religious freedom in Germany under the aspect of the separation of church and state?

The term "limping separation" is a rather unfortunate one. There are, namely, two basic issues that are not reflected by this term.

1. One issue is as follows: How much public space should be made possible for religions and how much room does the state want to give religions in the public sphere, which is actually under the state's oversight? Germany has simply decided to take a path that is opposite to that of France. Germany gives religion public space within the state media, schools, the German Federal Armed Forces, etc., which guarantees the respective state oversight and at the same time guarantees the religions their independence as regards content. Whether one wants to use the negatively loaded term "limping separation" as a connotation or not for this largely successful course surely primarily depends on whether one finds this route to be a good one or not.

2. The other question reads as follows: Does a state church or a state religion which has shaped the history of a country and to which the majority of the population belongs (or at least belonged to it at one time in the past) have to be treated absolutely equally? That would be the French model (by driving the religion back into the private sphere) or the US model (with simultaneously the largest amount of public space for religions within society). Or is there the possibility of producing

a special status for the old historic religious communities – as is done by the large majority of European countries without placing the religious freedom for the individual or for the religious minorities into question?

The answer is that there are countries in which this has been a success from the point of view of religious minorities (e.g., Great Britain or Norway), those where it is problematic from the viewpoint of religious minorities and the European Court of Human Rights (e.g., Austria), and those where from the viewpoint of religious minorities and the European Court of Human Rights this does not work at all (e.g., Greece, Moldova, or Turkey).

The best example of a very far-reaching religious freedom in spite of the presence of a state church recognized by the government is *Norway*. (The main arguments for such a position have been compiled by Ahdar, Leigh, pp. 127–154).

Let us briefly return to the *German* situation. It should be obvious that there is a need for catching up due to the necessity of involving Islam. Before one abruptly gives up something that is tried and tested, it should be ensured that a replacement of equal or better value has been found. The issues in this connection are fourfold:

1. The number of religious communities is continually growing: Also, globalization is leading to a situation where more and more religious communities present in other countries with no historical relationship to Germany are appearing in Germany and have to be integrated. Among them are what were once unknown variations of world religions (e. g., African Pentecostal congregations, Bahá'í, Alevis, Ahmadis). At the same time, the number of individuals who actually belong to the major churches is decreasing.

2. After the reunification of Germany, most relationship structures between the state and the churches and religious communities were carried over to the new German federal states – even if given the respective state political party composition there were quite different models. Statistically viewed, all churches and religious minorities are included here. (By the way, it is eagerly pointed out that less than two-thirds of all Germans are members of a church and for that reason the privileges such as the collection of church taxes should be abolished. Since church taxes and religious instruction in schools are issues for the individual German federal states, however, it should be established which percentage of the population of the respective federal state belongs to the large churches. This ranges from 84% of the inhabitants in the Saarland for the two large churches to 17.3% in Saxony-Anhalt.)

3. All models and provisions actually refer to typical Christian organizational forms, if a religious community does not simply choose to be organized under association law. This means that in questions of membership, representation through directors, or finance, they mirror what has evolved throughout a long Christian-secular history. In the case of Islam, what enters into the situation is a religion and its many expressions which have no knowledge of these organizational forms. For that reason, either the laws and models do not fit at all, or the state practically forces them to organize themselves like Christian churches and establish a sort of forced representation – this is what France has tried and failed to do numerous times. One has to see this rather soberly: A *registered membership*, such as almost all churches have had for practically 2,000 years and which was easy possible due to baptisms and the baptismal register, as well as *a well-trained and clearly structured clergy*, such as almost all churches have had for the past 2,000 years, are not at all familiar to most streams of Islam.

4. Many models for providing religious communities space in the public sphere, which is under state supervision, relates to the large Christian churches. Also, after the horrible experiences of the Third Reich, Judaism was also integrated. This is the case in spite of the fact that numerically it lies far behind the large churches. From these religions it could be expected that they would not use the opportunities offered them against the democratic order but would rather help in religious instruction at universities, in diaconal work, in pastoral care in hospitals, with the police and in the military, in life management instruction for soldiers, but also in the area of the preservation of historic buildings and monuments and many other less obvious realms in order to stabilize the new democracy and to teach comparable values. That was on the whole a calculation that paid off.

Registration and privileges in steps¹⁰

Europe ranges from states with a complete separation of church and state, while at the same time forcing religion back from the public sphere, to states with national churches in which clerics are paid from tax receipts.

¹⁰Rex Ahdar, Ian Leigh. *Religious Freedom in the Liberal State*. Oxford: Oxford University Press, 2005. Christian Polke. *Öffentliche Religion in der Demokratie: Eine Untersuchung zur weltanschaulichen Neutralität des Staates*. *Öffentliche Theologie* 24. Leipzig: Evangelische Verlagsanstalt, 2009. Christian Hillgruber. *Staat und Religion: Überlegungen zur Säkularität, zur Neutralität und zum religiösweltanschaulichen Fundament des modernen Staates*. Paderborn: Ferdinand Schöningh, 2007.

The most common type of interchange between European countries and religious communities is a tiered program. This is for instance completely foreign to the USA. As a result, one often finds that bad marks are given in the USA with respect to religious freedom for certain European countries such as Germany.

Most common is a program with three tiers, and occasionally there are two (as in Germany) or four (as in Portugal).

In Germany there is a difference between a statutory body (*Körperschaft des öffentlichen Rechts*, or *KdöR*) and religious communities organized according to association law. In the process the gradation is strongly watered-down. This is because religious associations basically have complete religious freedom and only have not received certain privileges that they either would not take advantage of anyway (e.g., collection of church tax) and on the basis of their small size cannot take advantage of them (e.g., departments with theological faculty at state universities). The Jehovah's Witnesses, who have filed suit in Germany from federal state to federal state in order to receive status as a statutory body, supposedly do not want to take advantage of any of the attendant privileges.

For that reason it is seldom a question of the religious freedom of the individual or religious freedom in itself when it comes to the 'limping separation' of church and state in Germany. It is rather a question of the equal treatment of religions. That is for instance the typical case for Evangelical free churches or the Bahá'í, like it most obviously is for Islamic groups. In Germany, Muslims have complete religious freedom in our midst. What is at issue is equality for organizations, whereby the Islamic organizations naturally compare themselves with large churches and never with the situations of small Evangelical free churches or the Bahá'í. These latter groups are already often worse off than Islam, for instance when it comes to theological faculties.

In many European countries the tiered structure is what constitutes the core of discrimination of religious groups, which the European Court of Human Rights as well as the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights has repeatedly determined – above all against Austria and Turkey.

Portugal for instance has four tiers for acknowledging religious communities. The Roman Catholic Church has the de facto highest level, and it is financed out of tax receipts. This status was pronounced for the Portuguese Evangelical Alliance, but the negotiations have

been protracted. The tiers underneath are tantamount to stronger and stronger discrimination, for instance insofar as real estate, the building of churches, and how they appear in public are concerned.

Does a modern democracy such as Austria really need what is still a difficult to follow three-tiered separation within religion, which only thanks to the European Court of Human Rights has been greatly improved? The fact is that the separation does not reflect the objective criteria for equal treatment, but rather the mood in politics and among the population, i.e., which groups are acknowledged and desired and which are suspect and objectionable. One could surely find a solution along the lines of what other European countries have developed, whereby a number of religious minorities who do nothing wrong are not given the impression that they are actually bothersome and objectionable. This could be achieved while maintaining the basic favoritism for the Catholic Church and other historic churches.

13) Religious communities finance themselves in various ways in the EU. In Germany and Austria, there is a church tax. Owing to the pluralization of philosophical leanings on the part of the population and due to the process of secularization, a differentiation in belief orientations and a change in values have occurred within the population. Do you see concrete requirements for change on the part of the state with respect to the state's relationship to large religious communities in order to accommodate this tendency?

The range is enormous. In Portugal, Greece, and Norway the Christian churches are paid for out of the tax receipts. This still even arises in Germany to a small degree (and is difficult to understand) with respect to compensation payments for the secularization that occurred 200 years ago (and regulated by concordats and state contracts) or somewhat more indirectly by financing theological faculties at universities out of general tax revenues. These benefits only account for a fractional amount of the church taxes received from church members.

We have small religious communities, for instance Christian free churches, which can apply for statutory body status and which in most cases would be granted. However, for fundamental or practical considerations, they do not seek such status. Additionally, most Christian free churches in Germany, for instance, are organized as statutory bodies. Yet they do not avail themselves of a number of privileges arising from

this organizational structure such as the collection of church taxes – again for fundamental or practical considerations.

On the other end of the spectrum is France (whereby the great exception of Alsace-Moselle has been mentioned), where there is no financial support for religious communities, not even for the preservation of historic buildings and monuments. It is even very difficult to publicly solicit donations for decaying buildings belonging to the Catholic Church.

14) The European Council is a central forum for human rights. The affiliated European Court of Human Rights watches over the compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms. The enforcement of religious freedom is of significant importance in this connection. How is the situation of religious minorities in member states of the European Council in Eastern Europe – especially in Russia – and in Turkey portrayed against this backdrop?¹¹

Next to the 1948 General Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHR) dated November 4, 1950 is the oldest agreement on a regional level for the protection of human rights. In contrast to all other such agreements, it immediately brought with it an enforcement mechanism which primarily consists of the European Court of Human Rights and a Committee of Ministers to oversee the execution of rulings within the member states.

Daniel Ottenberg correctly writes in his examination of all the rulings of the European Court of Human Rights regarding questions of religion and religious freedom: The European Council, with 47 member states and over 800 million people, offers the largest and by far most successful framework for regional human rights protection anywhere in the world” (Ottenberg 55).

Ottenberg points out that the jurisdiction of the Council of Europe is so unique because 1. it is supra-regional, 2. it is mandatory, i.e., no state can withdraw from

membership, 3. the European Court of Human Rights not only demands that the states only avoid violation of religious freedom, but requests that states ensure that they meet their obligation to guarantee that non-governmental entities are prevented from violating the religious freedom of others, and 4. the European Court of Human Rights along with the Committee of Ministers it is in possession of an instrument of political control and implementation.

The Organization for Security and Co-operation in Europe and its human rights department, the Office for Democratic Institutions and Human Rights (ODIR), are to be mentioned as being on a par alongside the European Court of Human Rights. The ODIR plays an important role in the human rights cause and especially with respect to religious freedom in Europe.

At the same time one should not underscore the fact that both of them exercise their role in light of the fact that a large number of the members of the Council of Europe and the Organization for Security and Co-operation in Europe, while having signed all the pertinent human rights declarations and mention them in their constitutions, etc., in reality only in part or to a small degree hold to them (e.g., Azerbaijan). The Organization for Security and Co-operation in Europe was formed for this very reason. It not only has its significance for the time prior to the collapse of the Soviet empire, but rather precisely in the time thereafter when there is a completely changed but not automatically always better world.

The truly numerous rulings by the European Court of Human Rights with respect to Greece in questions of religious freedom should be noted. One can almost say that practically all individual steps in the direction of religious freedom which there have been in Greece have been exacted by the European Court of Human Rights and the ODIR and did not happen willingly.

Russia and Turkey

Even if countries such as Russia or Turkey are addressed, one could just as well add the names of Azerbaijan or Serbia. And the first thing to first point out is that the great success story of the European Court of Human Rights or the Organization for Security and Co-operation in Europe does not lie in the fact that a continent characterized by religious freedom has to be supervised and a couple of problems solved that arise from time to time. Rather, both have accompanied numerous countries with limited religious freedom on the way to religious freedom or have

¹¹Regarding the individual countries see the respective articles in: Paul A. Marshall. Religious Freedom in the World. Lanham (MD): Rowman & Littlefield, 2008, also: Daniel Ottenberg. Der Schutz der Religionsfreiheit im Internationalen Recht. Saarbrücker Studien zum internationalen Recht. Baden-Baden: Nomos, 2009. Tania Wtach-Zeitz. Ethnopolitische Konflikte und interreligiöser Dialog: Die Effektivität interreligiöser Konflikt-mediationsprojekte analysiert am Beispiel der World Conference on Religion and Peace-Initiative in Bosnien-Herzegowina. Theologie und Frieden 33. Stuttgart: Kohlhammer, 2008.

even enforced this development by mechanisms they imposed. (That naturally also applies to other human rights or democratic principles such as free elections.)

For that reason it can be clearly seen that – apart from a few exceptions such as the countries of Turkey and Greece which already by 1949 had joined the European Council – the actual problem cases are the quite new members in the EU, EC, and the Organization for Security and Co-operation in Europe. I am very optimistic that the European Court of Human Rights and the Organization for Security and Co-operation in Europe will also continue their success in these countries.

Now I turn to Russia and Turkey, however. It remains to be seen just how the role of the Russian Orthodox church will further develop in relation to the Russian state, but the development since 1990 goes from what was at first far-reaching religious freedom all the way to an amalgamation of the state and the national church, mistrust of Muslims, and repression of undesirable Christian churches and religious minorities. Above all, this has occurred by denying the registration of associations and their respective association rights and by denying visas to clerics from foreign countries. That in the process the state occasionally even limits the Catholic Church is only understandable if one looks at the fact that the Orthodox Churches can only tolerate one church per region according to their understanding of areas of jurisdiction (while the Catholic Church understands itself to be universal).

In its most recent progress report on Turkey's accession to the EU, the EU Commission thoroughly and by means of concrete examples – and in my opinion also in stronger self-awareness of the centrality of human rights in the area of religion or world view – presented the missing religious freedom in Turkey and demanded that in any case, prior to acceptance into the EU, basic changes had to be made. They made a request to give the ecumenical patriarchs in Istanbul full freedom of movement and to allow the oriental churches comprehensive legal personality, to give them their churches and land back, and to finally allow theological training of future ecclesiastical generations together with the opening of seminaries in Halki.

The list of requirements for Turkey as regards religious freedom is long. Clearing up the Malatya murders has not moved ahead – although in this case a law suit with a ruling by the European Court of Human Rights in Strasbourg is foreseeable. In some cases Protestant churches can only conduct worship under police protection, while at the same time the

government authorities are not calling for people to desist from violence. Rulings of the European Court of Human Rights are waiting until today for their implementation, for instance the 2010 “Isik/TUR” ruling. It requires that religious affiliation no longer be noted in identification papers, a basis for frequent religious discrimination in everyday life. Up until the present day, there is not even a plan for how this should be implemented, although this has actually been clear since 1999 when the UN Special Rapporteur for religious freedom pointed this out very clearly in his report on Turkey.

In light of the murders and acts of violence against Catholic, Armenian, and Protestant clergy and Christians in Turkey, it is too easily overlooked that Islam deviating from the state-ordered form of Islam, be it Islamic mystics, Alevis, or Muslims from other Islamic countries who would like to open a mosque of their particular legal school or leaning do not enjoy religious freedom.

It is also worth mentioning that Turkey has no place for confessing atheists. To be sure, there are many secularized Turks, more than in every other Islamic country, but only very few of them are public about the fact that religion means nothing more to them. The state and societal responses to them are no less intense than against undesirable religious minorities.

At this point religious and non-religious people should not be divided against each other. Viewed historically, the freedom of religion and of world views is a matter of self-understanding. Furthermore, all religious as well as non-religious people should uphold these things together, defending them and in what is a strongly changing environment also going over them letter by letter again.

Islam and Orthodoxy

To state it quite simply: In Europe religious freedom is taken for granted, is welcomed, and is a component of European identity for the large majority of Catholics, national church and free church Protestants, the non-religious, and religious minorities (e.g., Bahá'í), including special Islamic groups (e.g., Ahmadis, Alevis).

For the large majority of Muslims and Orthodox, religious freedom – for completely different historical reasons – is not tied to many years of background experience. It is also not something that is welcomed. Rather, national or group awareness is still tied to a priority for one's own religion in the sphere of public politics.

Up until now, there has been no large scale success in winning religious opinion leaders from the Muslim or Orthodox worlds over to the idea of religious freedom. This is due to the fact that there is a difference between calling for religious freedom only for oneself or only accepting it because one happens to be living in a democratic country. Furthermore, there is also a difference if it is justified on the basis of one's own theological tradition and its underlying thoughts on human rights that transcend world views and at the same time is suggested to its adherents as the correct one.

In both religious worlds, there are important forward-thinking religious individuals involved in the cause of religious freedom and in constructing helpful approaches, but they do not operate in the center of the theological discussion.

Since the Orthodox churches in Germany are very small, ecumenically well integrated, and oriented towards human rights, we are more aware of the lack of a tradition of religious freedom in Islam. However, precisely for the encounter with Islam, the issue in Orthodox countries is likewise serious. This is above all the case when one takes into consideration the territory covered by the European Council and for instance sees that in the Orthodox countries of Russia and Belarus alone there are 14.5 million Muslims.

The 'orthodox' countries

If one looks for instance at *Hungary* or the *Czech Republic*, there are by all means countries which used the new start after 1990 to produce a lasting, high level of protection of religious freedom. This basically applies to all countries where a large share of the population is Catholic or Protestant.

The countries where the majority of the population is Orthodox (which for the purpose of simplicity I call 'Orthodox countries' as is correspondingly done with other religions) have for the most part, in spite of often good initial progress, not taken advantage of the opportunity. The following list should demonstrate this.

The Constitution of Greece sets down in § 13.3 that the state supervises all ministers of religious communities and this includes, by the way, Orthodox clerics who are paid from general tax revenues. The exercise of a religious office without permission is not acceptable.

In order to break Moscow's influence, the government in the *Ukraine* supports the establishment and entrenchment of any break from the official church normally subject to the patriarchs in Moscow.

The educational legislation in *Georgia* dating from 2005 prohibits soliciting anyone for a religion in school and during times of instruction, while in reality all pupils receive Orthodox religious instruction. In *Georgia* for instance, the government failed to come up with improvements in religious freedom due primarily to resistance from the national church and Orthodox clerics.

In *Macedonia* the state battles other Orthodox churches that come up alongside the Macedonian Orthodox Church. The prime example of this consists of the multiple imprisonments of Bishop Jovan VI., in 2004–2006 and again between 2006–2008, and the demolition of Serbian Orthodox churches even though it was declared illegal later. Serbia reacted similarly to the Macedonian Church in favoring the Serbian Orthodox Church, but with less severe means.

Moldova denies registration to churches other than the Orthodox Church of Moldova, with all the consequences of non-registration and the lack of legal personality that goes along with it. The Bessarabic Orthodox Church wrested its registration from a ruling by the European Court of Human Rights in 2002. However, *Moldova* continues to deny registration to other Orthodox churches and both Muslim entities there (and in any case all smaller Protestant minorities) who did not file complaints. This is naturally not in keeping with the sense of the fundamental decision by the European Court of Human Rights.

In *Bulgaria* the Orthodox Church has split into what are practically two equally large fractions. The state fights the 'Alternative Synod' with a full range of means such as expropriation for the benefit of the legal successor of the historic church.

In *Belarus* it is not possible for an Orthodox church to be registered and licensed that is not subject to the Moscow patriarchy, as is the case with the official Belarusian Orthodox Church. The main target remains the Catholic Church, however, and in particular the fact that approximately one-half of their 350 priests are from foreign countries (predominantly Poland). A number of them have been expelled from the country. Its supervision is reminiscent of the time of the Soviet Union in its structure and methods.

In the process, the government in *Belarus* on the one hand uses the Orthodox Church in order to maintain nationalism and controls it closely. On the other hand, there are no known protests on the part of the church against the basic political orientation against other churches.

Estonia is agitating a sharp dispute between the Moscow patriarchy and the Ecumenical Patriarchy (domiciled in Istanbul), and the respective churches subordinate to them, whereby the church belonging to Moscow, as the second largest religious community after the Lutheran Church, is greatly disadvantaged and for instance is not allowed to be a member in Estonia's ecclesiastical council that is financed by tax revenues.

According to a decision by the secretary of the interior in *Armenia*, religious minorities have been excluded from police service since 2002. The Armenian law against proselytism is among the most strident in the non-Islamic world and for all practical purposes suspends the right to religious freedom.

It is regrettable that the legislation of some of the countries of Eastern Europe has regressed. In this vein, the 2006 law regarding religion in *Romania* is strongly oriented toward granting a few religious communities rights while denying recognition to less prominent religions.

However, in light of the EU protest against this law, it is worth noting that the laws pertaining to religion in Austria, Greece, and Belgium are likewise targeted at discrimination against unwelcomed small and new religions. The UN Special Rapporteurs Abdelfattah Amor and Asma Jahangir, the new, locally present UN Special Rapporteur on freedom of religion or belief, and the board of consultants for the Office for Democratic Institutions and Human Rights (ODIR) of the Organization for Security and Co-operation in Europe (OSCE) have lodged criticism.

In expedited proceedings and mostly done within a timeframe including holidays such as Christmas, probably in order to prevent objections from the side of the EU, ODIR, and others, laws have been railroaded through that worsen the situation for religious minorities: Bulgaria in 2002, Kosovo in 2006, Serbia in 2006, Romania in 2007. Belarus, Azerbaijan, Armenia, Russia and Moldova have all passed strict registration laws during the past few years that ignore the rulings of the European Court of Human Rights.

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