

COMMENT

Recent Legal Developments in Germany: Infant Circumcision and Church Tax

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During the course of 2012 two significant developments occurred in Germany that are of wider interest for those who study law and religion internationally. This brief note draws attention to a decision from Cologne that was probably wrongly decided, the effect of which will be reversed by amended legislation, and to a directive from the Catholic Bishops' Conference concerning the excommunication of those Catholics who decline to pay their church tax.

INFANT CIRCUMCISION

The District Court of Cologne (Landgericht Köln WA 151 Ns 169/11)¹ handed down a much debated judgment on 7 May 2012 in criminal proceedings against a Muslim medical doctor who had performed a religious circumcision on a four-year-old boy at the request of the boy's parents. The court held that the religious circumcision of a minor was a violation of the right of the boy to physical integrity and not justified by the right of the parents to decide on the religious upbringing of their child. While the court thus decided that the doctor had performed an unjustified bodily injury according to § 223 of the Criminal Code it nevertheless acquitted the accused through lack of guilt: he was unaware of the potential illegality of his action, because consented male religious circumcision had not previously been considered to be a punishable crime. The decision has become final.

1 The judgment can be found (in German) on the following website: <http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2012/151_Ns_169_11_Urteil_20120507.html>, accessed 8 October 2012.

While the judgment has no binding force on other courts, it has caused much concern, especially within Muslim and Jewish parts of the population; deplorably, however, a considerable part of the German public has welcomed the decision. The judgment is legally wrong in several respects, not the least because it did not even mention the right of the child itself to be raised in its religion. Meanwhile, the German federal government has initiated an amendment of the Civil Code explicitly stating the right of parents to have their male children (only) circumcised without clinical indication if performed according to proper medical standards. Thus, adequately trained religious personnel will continue to have the right to perform this traditional religious practice.

WITHDRAWAL FROM THE ROMAN CATHOLIC CHURCH IN GERMANY

The German (Roman Catholic) Bishops' Conference has adopted new rules on those who leave the Church by way of a declaration before the German state authorities.² The Roman Catholic Church in Germany has the status of a corporation under public law, with the right to levy a church tax on their members; those who want to avoid paying the church tax can do so by leaving the Church in an act to be declared before state authorities. The church tax was introduced by the German states in the nineteenth century to abrogate state funding of the churches and to make church members themselves pay for its continued operation. The decree states

Those who declare before the competent civil authorities for whatever reason their secession from the Church violate their duty to maintain the community with the Church . . . and their duty to contribute financially so that the Church can fulfil her task.

Those who nevertheless withdraw from the Church are not admitted to confession, to communion at the Eucharist, to be a godparent or to hold office in the Church. However – and this is different from previous provision – they will no longer automatically be excommunicated.

The decree of the German Bishops' Conference was recognised by the Congregation for Bishops in the Vatican on 28 August 2012 and came into force on 24 September 2012. It came shortly before a judgment of the German Supreme Federal Administrative Court holding that state authorities may not accept a declaration of withdrawal from 'the church as a corporation

2 See (in German) <http://www.dbk.de/fileadmin/redaktion/diverse_downloads/presse/2012-145a-Allgemeines-Dekret-Kirchenaustritt_Dekret.pdf>, accessed 8 October 2012.

under public law'.³ Such a declaration could be understood as a theological qualification or condition, the validity of which the secular state is not competent to judge.

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The Sacramental Significance of the Coronation

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The Queen remains in robust health but, inevitably, as she gets older there is speculation about the form and content of the next coronation service, whenever it may be needed.

We should not forget that the service is, perhaps, the oldest ritual in the country. Its beginnings predate the Norman Conquest and it has had a significant influence on the development of similar rites in other parts of Europe. Over the centuries it has changed very little; it has become a little more elaborate, been translated into English, had the Eucharistic material conformed to the Book of Common Prayer and, of course, had the Oath to maintain the 'reformed religion established by law' inserted by Parliament in 1689. Any other changes have been minor and incidental. The overwhelming impression is that of a fundamentally Christian act of worship during which the new monarch is crowned and enthroned. This is preceded, however, by the giving of a Bible, with the words 'we present you with this Book, the most valuable thing that this world affords. Here is Wisdom; this is the royal law. These are the lively Oracles of God.'

The new monarch has already promised in the Oath to 'maintain the Laws of God and the true profession of the Gospel'. These are not just words. We know that, in the course of time, the Bible has profoundly influenced the thoughts and actions of kings and queens. The emergence, under Alfred, of a common-law

3 BVerwG, 26.09.2012 – 6 C 7.12. See further (in German) <<http://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BVerwG&Datum=26.09.2012&Aktenzeichen=6%20C%207.12>>, accessed 8 October 2012.