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The case of Germany

ABSTRACT

This contribution deals with constitutional and other legal questions concerning the role of religion in elementary and secondary state schools. The author gives a short overview of the historic development so far and continues by discussing current legal problems in regard to religious instruction as part of the regular curriculum (with the right of parents and students to opt out). As far as the conveying of religious values in school and the expression of religious convictions by teachers and students are concerned the author outlines conflicting constitutional positions, in particular the principle of state’s religious neutrality in school. He takes up furthermore new legal challenges by the growing presence of Muslim students in schools.

1. INTRODUCTION: A HISTORICAL RETROSPECT

Since the gradual introduction of compulsory schooling in Germany in the 18th century, schools had always been perceived as the most important agencies for the socialization of young people. This was due to the assumption that whoever controls the school also controls the young generation and, therefore, the future of society.

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So educational policy became a battlefield in which diverse and controversial beliefs, ideas and ideologies struggled with one another in order to determine the value orientation of schools in general and particularly of state schools. In this struggle, the churches initially succeeded in retaining their influence. Since the beginning of the 19th century the “Volksschule”, a school traditionally attended by the great majority of pupils particularly in rural areas, was as a rule a “Bekenntnisschule”, that is to say a school where the pupils were taught by teachers of the same denomination (Bekenntnis), whether Protestant or Catholic. This structure prevailed, with the exception of the Nazi period and the 40 years of the German Democratic Republic (GDR), in most parts of (West) Germany until the 1970s, many Länder guaranteeing the existence of the denominational school even in their constitutions. The Bekenntnisschule offered, at least in theory, the advantage of an integrated education in which aims, content, and practice of instruction complemented each other.

The great migration after the end of the Second World War and an increasing mobility stimulated by economic progress brought a denominational reshaping of the population that could not be without consequences for the schools. Areas that previously had been Protestant or Catholic lost their monolithic religious character. For example, in a city such as Cologne, a traditional Catholic stronghold, Catholics today make up only 42.5 percent of the inhabitants, the rest being distributed among Protestants (18 percent), Muslims (roughly 8 percent) and others (including a growing portion of people unaffiliated to churches and other religious organizations). In Germany as a whole nowadays 33 percent of the population are members of the Protestant and Catholic churches each, the remaining third perceive themselves as Muslims, sectarians or, in growing numbers – in particular in the area of the former GDR – as non-believers.

The Bekenntnisschule no longer seemed and seems in tune with the development of society at large. After a series of political conflicts and lawsuits in the 1970s, most Länder in West Germany, by amending their respective constitutions, introduced the “christliche Gemeinschaftsschule” (Christian communal school) as regular form of compulsory school. Though not bound by a particular creed, the educational philosophy of these schools is rooted in Christian cultural traditions. The Bundesverfassungsgericht (the Federal Constitutional Court) made it clear that the Christian communal school is compatible with the Basic Law since on the one hand it is open to Christian confessions while on the other it excludes ideological/religious pressures as far as possible. The Christian communal school in the view of the Court does not impose an constitutionally unreasonable conflict of faith and conscience neither on parents and students who prefer a religious education on a denominational basis nor on parents and students who reject such an education.322

322 Cf. the three decisions of the Federal Constitutional Court on 17 December 1975, BVerfGE 41, 29; 41, 65 and 41, 88.