YEARS OF AUSTRIAN LEGISLATION ON ISLAM
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an essay by Richard Potz
Koran fragment
Parchment, ascribed
to the second half of the
9th century and the
Abbasid-Tulunid region
due to the artistic style of
writing and the especially
rich ornamentation.
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Foreword

By adopting the Islam Act of 1912, Austria created unique conditions for integrating people of Muslim faith in society that are unparalleled in Europe. This early recognition of Islam thus established the basis for an orderly and respectful coexistence. Present-day experience illustrates that the structures that have developed over 100 years and govern the way in which Muslims and the Austrian state cooperate and interact with each other are of decisive benefit in solving inter-faith and inter-cultural issues.

The Islam Act of 1912 established the basis for the official recognition of Islam as a religious denomination in Austria. It is a special feature of Austrian law that the granting of legal recognition to a religious community is linked with its recognition as a legal entity under public law. By granting this type of recognition the Austrian state extends a general invitation for cooperation based on mutuality.

The establishment of a special State Secretariat for Integration has marked an important step in this context. This innovative approach reflects the efforts undertaken by the state towards facilitating peaceful and constructive coexistence irrespective of origin, religion, culture or background of all people living in Austria.

The Austrian state expects recognised religious communities to contribute towards and assist in preventing inter-faith and inter-ethnic conflicts. The Austrian Federal Ministry for European and International Affairs has for many years now organised seminars on Austrian geography, history, culture and civilisation directed at Imams and religious representatives from Muslim mosque associations. Besides giving a general introduction to the fundamental values of Austrian society these seminars also aim to enable those attending to develop new approaches for the social integration of their community members. In this context, the institutionalised relations with the Islamic community in Austria make a substantial contribution to ensuring that this project has been highly successful for many years now.

Today, the important role an intensive, consistent and ongoing inter-faith and inter-cultural dialogue plays in contributing towards safeguarding peace is recognised throughout the world. We are thus pleased to say that Austria’s long-standing tradition and track-record in this regard enjoys international recognition and appreciation. The establishment of the International King Abdullah Bin Abdulaziz
The Austrian Vice-Chancellor and Foreign Minister Dr. Michael Spindelegger with the President of the Islamic Community in Austria Dr. Fuat Sanac. © Islamic Community in Austria (IGGIÖ)

Centre for Interreligious and Intercultural Dialogue in Vienna marks another contribution to the global advancement of human rights and universal freedoms including freedom of faith, conscience and creed.

This brochure not only describes the development and the history of the Islam Act of 1912 but also highlights its special significance. In this context we may, however, not forget to consider the dialogue among cultures and religions – which has evolved over many decades – in the light of current events and to adapt and further develop it in line with present-day requirements. It is thus our common duty to make sure that positive developments are fostered and that dialogue, sincerity and mutual respect remain the core elements that characterize the way we interact with one another.

Vice-Chancellor and Foreign Minister Dr. Michael Spindelegger
Minister for Cultural and Religious Affairs Karl Count Stürgkh in his submission to Emperor Franz Joseph on 5 June 1909 regarding the draft bill for an Islam Act.

"On the other hand one may indeed, although much about the religion of Mohammed is alien to the occidental cultural awareness, justly claim that the fundamental moral ideas of Islam are by no means an absolute contradiction to the moral and ethic concepts and views of the Occident, as Islam too in its way stipulates truthfulness, integrity, dutifulness and legality as inviolable standards of human thinking and acting. ... Likewise it may indeed surely be claimed that neither the practice of the cultus nor other activities of religious life practiced by the confessors of Islam in Austria would in any way cause offence or contravene the prevalent cultural conceptions of our country."

"It is without doubt that the scriptures on which the teachings of Islam are based, contain thoughts which, in many areas, cannot be denied grandness and depth, wisdom and poetry. ... Considering these facts, one may in connection with the legislative action requested indeed overlook some other additional aspects that will not necessarily harmonise with the convictions of our moral cultural awareness."

"As the lives of the confessors of Islam reveal a deep and innermost belief in God together with a high level of ethic dutifulness, there may be no doubt that either the practice of the cultus or any other expressions of religious conviction that occur could be a source of offence or contradict the postulates of cultural life either at the current time or in the future."

From the Explanatory Remarks on the Submission of the Islam Act in the Herrenhaus (House of Lords).
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Gesch vom 15. Juli 1912,

betreffend die Anerkennung der Anhänger des Islams nach heimischem Ritus als Religionsgesellschaft.

Mit Zustimmung der beiden Häuser des Reichsrates finde ich angemessen, wie folgt:

Artikel I.


§ 1.

Die äußeren Religionszugehörigkeiten der Anhänger des Islams sind auf Grundlage der Selbstvermählung und Selbstverwaltung, jedoch unter Beachtung der Staatsaufsicht, im Verantwortungsgesetz zu regeln, obwohl die Errichtung und der Bestand vorläufig einer Kulturgemeinde gestattet ist.

Hierbei ist insbesondere auf die Zusammenarbeit der Kultusorganisation der im Ausland lebenden Anhänger des Islams mit jenem Bosniens und der Herzegovina Bedacht zu nehmen.

Auch vor Konsolidierung einer Kultusgemeinde können solange Bestimmungen für religiöse Zwecke des Islams erlassen werden.

§ 2.

Für das Amt eines Religionsdieners können mit Einwilligung des Kultusministers auch Kultusfunktionäre aus Bosniern und der Herzegovina berufen werden.

§ 3.

Findet die Regierung, daß einer den Geistlichen betreffenden Anordnung des Verwalters des Ansehens öffentliche Widersprüche entgegenstehen, so kann sie derselbe unstreitig.

§ 4.

Ein Religionsdienster, welcher vorbeugender oder solcher persönlicher Handlungen schuldig erachtet worden ist, die aus Gemeinsschaft entstehen, gegen die allgemeine Ordnung oder zu öffentlichen Regimen geschädigten, obdessen Verhalten die öffentliche Ordnung zu gefährden droht, ist von seinem Amt zu entfernen.

§ 5.

Die Staatsbehörde hat darüber zu machen, daß die Religionsgesellschaft der Anhänger des Islams nach heimischem Ritus, deren Gemeinden und Organe ihren Wirkungskreis nicht überschreiten und den Bestimmungen der Gesetze sowie der in Aussicht
genommenen Verordnung über die äußeren Rechtsverhältnisse dieser Religionsgesellschaft und der auf diesen Beredten erlassenen Anordnungen der staatlichen Behörden nachzuwenden. In diesem Falle können die Wohltaten Geldbeträge in einer der Verordnung verbliebenen angemessenen Höhe sowie sonst gelegentlich zufließige Zuwendungen in Anwendung bringen.

§ 6.
Die Religionsgesellschaft der Anhänger des Islams nach halbeschönem Mitthe alleinig als solche sowie hinsichtlich ihrer Religionsführung und ihrer Religionsdienst bestimmten gesetzlichen Schutz wie andere gelegentlich anerkannte Religionsgesellschaften.

Auch die Lehren des Islams, seine Eucharistien und Gottesdienste genügen diesen Schutz, insoweit sie nicht mit den Staatsgewohnheiten im Widerstreit seien.

§ 7.

Die religiösen Vorschriften in Ansehung der Ehe werden durch diese Bestimmung nicht berührt.

§ 8.
Durch Verordnung wird bestimmt, ab und in welcher Weise Religionsdiener des Islams zur Mitwirkung bei der Führung der Geburts-, Ehes- und Sterbeordnungen ihrer Religionsgesellschaften herauszugeben werden können.

Artikel II.
Mit dem Vollauf dieses Gesetzes sind Mein Minister für Kultus und Unterricht, Mein Minister des Innern und Mein Gesandter beansprucht.

Bad-Ischl, am 15. Juli 1912.

Franz Joseph m. p.
Hohenburg m. p. Heinoitav m. p.


The background: 
Austria-Hungary occupies Bosnia

With its occupation of Bosnia and Herzegovina, the Habsburg Monarchy was for the first time faced with the challenge of assimilating an Islamic population on its territory. This also marked the beginning of a religious policy with an explicit focus on Islam that was originally determined by the specific conditions in Bosnia and Herzegovina, and following the annexation of the two countries in 1908 was also reflected in the Austrian legal system in the form of the Islam Act of 1912.

Bosnia has always been a focus of Austrian expansion policy in the Balkans. When the Ottoman Empire’s bankruptcy triggered uprisings in 1875, the Austro-Hungarian Empire sent a diplomatic note to the Porte calling for the observation of reform pledges, including first of all religious freedom and agricultural reform. Subsequently, the Austro-Hungarian Empire succeeded in securing Russia’s agreement to the occupation of Bosnia and Herzegovina in the event of a Russian conflict with the Ottoman Empire.

When Article XXV of the Berlin Treaty of 1878 entitled the Austro-Hungarian Empire to administer the Provinces of Bosnia and Herzegovina, the Austrian Emperor proclaimed “that all sons of this country shall enjoy the same rights under the law, that they shall all be protected in their lives, their faiths, their goods and chattles”.3

Although the ruling dynasty was traditionally Catholic, the Austro-Hungarian Empire had long ceased to be a Catholic empire in 1878. By ensuring equal treatment of all legally recognized churches and religious communities under constitutional law, the Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger (the Basic Law on the General Rights of Nationals) of 1867 had marked a rule of law turning point that did, however, not rule out the state’s right of supervision. According to Article 15 of the Basic Law on the General Rights of Nationals “every church and religious society recognised by the law has the right to joint public religious practice, shall arrange and administer its internal affairs autonomously, [...] but is like every society subject to the laws of the land”. The constitutional system with its guarantees under Basic Law and the concept of an institutional inclusion of religious communities in public tasks which had thus been established was also to serve as the basis of the religious legislation to be

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3 Proclamation to the inhabitants of Bosnia and Herzegovina, Wiener Zeitung of 28 July 1878, 1, printed in Edmund Bernatzik, Österreichische Verfassungsgesetze, Leipzig 1906, No. 196.
introduced in Bosnia and Herzegovina. To this end, however, it was to some extent necessary to create new framework conditions for the three major religious denominations in Bosnia and Herzegovina. Under Article II, the convention with the Ottoman Empire of 21 April 1879 guaranteed religious freedom, and in particular the public practice of religion, to the existing faiths and religions in Bosnia and Herzegovina, which represented a safeguard particularly for the Muslim population. After some dilatoriness, the Islamic community in Bosnia was eventually reorganised in 1882 which went hand in hand with a certain “hierarchization” of its structure in line with Christian models.

Under this reorganised structure the lowest level, the “dzemat”, more or less corresponded to a parish organisation. A dzemat with a mosque (“dzamija”) as its centre generally consisted of a village or part of a city. The next highest administrative unit was the “medzlis”, with the “muftiat” that was comparable to a bishopric. There were eight such muftiats in Bosnia. The organisation was headed by the Reis-ul-Ulema – comparable to a Metropolitan – who was elected by the supreme legislative body of the Islamic community, the general assembly which inter alia appointed muftis and founded new religious schools (“madrasahs”). Its executive body, the Rijaset in Sarajevo, still exists today and is headed by a Reis-ul-Ulema and a spiritual council composed of four individuals.4

This institutional Europeanization of the organisation of the Islamic community in Bosnia stimulated a large-scale modernisation of Bosnian Islam which also had an impact on its history in the 20th century. This was thus the first time on European soil that an autochthon Muslim population was confronted with a Western state system that guaranteed religious freedom. The Austrian religious law system was to have a determining influence on Bosnian Islam also later on and is the source of special hallmarks the Islamic religious community still has in present-day Bosnia and Herzegovina. In return, the organisational structures of Bosnian Islam served as a model for the charter of the Islamische Glaubensgemeinschaft in Österreich (IGGiÖ, Islamic Community in Austria) that was drafted in 1978. In this way, the Austro-Islamic model created at the time had, so to speak, returned to Austria.

Following the occupation and later the annexation of Bosnia and Herzegovina, Austro-Hungarian religious policy was faced with multi-faceted challenges. The

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4 On the administration of Bosnia and Herzegovina see especially Schmid, Ferdinand, Bosnien und die Herzegovina unter der Verwaltung Österreich-Ungarns, Leipzig 1914.
goal was to establish a religion-neutral system that was considered as not being too discriminatory by Muslims in a region that had for centuries been dominated by the Islamic population group.

The Austrian administration took a highly circumspect approach in modernising the legal system. In this spirit, a four-volume “Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze, Verordnungen und Normalweisungen” (collection of the laws, ordinances and normal instructions adopted for Bosnia and Herzegovina) was published in Vienna in 1881 that also included translations of a large number of Turkish laws and a systematic manual on “Eherecht, Familienrecht und Erbrecht der Mohammedaner nach dem hanefitischen Ritus” (martial law, family law and inheritance law of Mohammedans of the Hanafite rite) published in German in 1883, which is unjustly paid only little attention in literature. What is remarkable in this context is that based on this collection polygamy was allowed in Bosnia for Muslims, it was forbidden to enter women’s chambers without permission and regulations on veiling and unveiling before the court had been defined. In principle, these legal regulations in fact remained in force for Muslims in Yugoslavia until after the end of the Second World War.

Irrespective of the fact that the Austro-Hungarian administration did not always act with providence and had to gather its experiences and learn its lessons only painstakingly, cooperation with the dynamic forces in the country in the long term resulted in a remarkably European orientation of Bosnian Muslims which continues to determine their identity and self-perception to the present day.
The annexation of Bosnia and the Austrian Islam Act

The Austro-Hungarian Empire thus pursued a cautiously Islam-friendly line of policy which was most clearly reflected in the preparation and drafting of the Islam Act. Throughout this process, the lessons learned and the experience the Bosnian administration had made with Islam and Muslims came to play a special role. The empire’s attitude became particularly apparent in the statements on the drafts of the Islam bill made by the Common Ministry of Finance that was responsible for Bosnia and Herzegovina.5

Only a few weeks after the annexation of Bosnia and Herzegovina in 1908 – the political and/or international law and state law aspects of which cannot be discussed in further detail in this publication – representatives of Muslims living in Vienna sounded out whether there was “favourable disposition to granting Islam legal recognition”. Only a short time later, a submission of the same content was made by an Aktionskomitee des Österreichischen Orientvereins zur Erbauung einer Moschee in Wien (action committee of the Austrian Orient association for the construction of a mosque in Vienna), dated 22 January 1909. In this submission, explicit reference was made to the intention expressed by the Mayor of Vienna Karl Lueger to build a mosque for the Muslims living in Vienna6. With reference to the legal situation, which prohibited the public practice of religion by denominations not officially recognised, recognition according to the Anerkennungsgesetz (Recognition Act) was described as a necessary pre-requisite for such a construction project.

The ministry, however, refused to deal with this submission stating that the Aktionskomitee des Österreichischen Orientvereins, which was composed of non-Muslims, lacked the legitimisation for filing such an application for recognition. It was, nevertheless, decided to discuss the matter with the Common Ministry of Finance that was responsible for Bosnia and “had a favourable attitude towards the objective of such an action”. Following a “preliminary discussion on the modalities for the recognition of the Islamic faith in Austria” on 14 January 1909, three drafts were prepared remarkably quickly and served as the basis for further negotiations. Although no information is available on those drafts, which were not pursued any further, it is, however, possible to largely reconstruct the draft that provided the basis for the future law based on the minutes taken during the negotiations.

6 The number of Muslims living in Vienna at the time was, however, not very high, the Explanatory Remarks refer to 889 Muslims living in Vienna “according to the latest statistical records”.
The working group dealing with these drafts was composed of representatives from three ministries, the Ministry of Culture and Education, the Ministry of Justice and the Ministry of the Interior. Representatives of the Imperial and Royal Minister of Foreign Affairs and the Imperial and Royal Common Ministry of Finance/Office for the Affairs of Bosnia and Herzegovina were also consulted and/or included as necessary. The working group convened for its first meeting on 25 and 27 February 1909.

First of all, the bill’s title was revised and members soon agreed on “Gesetz betreffend die rechtliche Stellung der Anhänger des Islam” (law on the legal position of the adherents of Islam) as the title.

From the very beginning, it was assumed that – irrespective of whether it was possible to recognise Islam or not – recognition according to the general provisions of the Recognition Act of 1874, that were guided by Christian organisational structures, was not possible and therefore out of the question. In the course of the drafting process, it was repeatedly mentioned that the main reason why it was impossible to apply these regulations was that the formation of religious communities as stipulated in the Recognition Act was neither given nor foreseeable. For the time being the goal thus consisted of ensuring the adherents of Islam enjoyed the same legal status as the members of the legally recognised churches and religious communities.

This, however, brought up questions regarding the scope of this recognition. The representative of the Foreign Ministry voiced concerns over a broad formulation, stating that such broad wording was “too vague” because “it could mean subsuming all Mohammedan rites, while only Sunni Mohammedans of the Hanafite rite [lived] in Bosnia and Herzegovina”. Apart from this unclear scope of application, the working group members also discussed other arguments voiced against such broad wording including, for instance, political consideration for the Ottoman Empire. Another fact mentioned was that by choosing broad wording one would take too little account of the difference between Sunnis and Shiites, and ultimately, that this would mean that under the law one [could] thus “easily favour the European-Mohammedan over his other fellow-believers [...]”. This statement alludes to the traditional classification of the Hanafite school of religious law as “European-Islamic”. Against this background, the working group finally approved of the restriction to “adherents of Islam of the Hanafite rite”.

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The discussions regarding the law’s title were to regain topical importance many years later, when the addition “of Hanafite rite” was omitted following a decision by the Austrian Constitutional Court of 10 December 1987, which will be discussed later in this text.

The “vagueness” which had been criticized as early as 1909 actually became a problem following the immigration of Muslims of diverse traditions to Austria. Just how topical and relevant this issue still was from the religious-law point of view became apparent when an Alevi group that does not want to renounce the Islamic roots of Alevism and thus calls itself the Islamische Alevitische Glaubensgemeinschaft (Islamic Alevi Congregation) applied for registration as a religious and/or faith community. After discussing the matter, the Constitutional Court eventually negated that there should be just one Islamic religious community and/or faith community. It pointed out that where according to a group’s self-perception reference to Islam is essential, the religiously-neutral state may not deny such a part of a name. This means that henceforth a group that is not covered by the Islam Law may call itself Islamic and file for recognition and/or registration. The Islamische Alevitische Glaubensgemeinschaft in Österreich (IAGÖ, Islamic Alevi Congregation in Austria) was consequently registered in Austria. The questions this has prompted concerning the legal treatment of the other Alevi groups – which do not consider reference to Islam as pivotal – have, however, not yet been finally dealt with.

The scope of criminal law protection that was to be granted to the religious community to be newly recognised represented a particularly controversial issue that was given in-depth consideration. Some members of the working group expressed the view that “it would indeed be hardly acceptable to grant the ‘teachings, customs and institutions of Islam’ the same protection under criminal law involving the same criminal law penalties as enjoyed by legally recognised denominations”. In the drafts, the religious and cultural administration therefore considered “sufficient protection only against grave religious offences directed against Islam” as necessary.

This view was particularly opposed by the representative of the Ministry of Justice stating that he deemed “a differentiation under criminal law to the disadvantage of Islam and its religious institutions inappropriate”. The representative of the Foreign Ministry also advocated “treating the Islamic institutions as favoura-
bly as possible”. Both of them pointed out that “criticism of a recognised faith, provided it was voiced in an appropriate manner or a polemic voiced in an appropriate manner against its teachings were not in the least proscribed under criminal law”.

This reasoning from 1909 is absolutely in line with the current jurisdiction of the European Court of Human Rights according to which “freedom of expression constitutes one of the essential foundations of a democratic society and is one of the basic conditions for its progress and for each individual’s self-fulfilment. […] It is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”. (ECHR, F.A. v. Turkey no. 42571/98, ECHR 2005-VIII of 13 September 2005).

In the case of marital law, which was the next topic to be dealt with, incorporating the confessional marital law of Islam was considered hardly feasible. It was agreed that “marital law was the area in which one could make the smallest number of concessions to the Mohammedans”, “from the public administration point of view it was therefore necessary to insist on the mandatory civil law marriage for Mohammedan marriages”. Above all, working group members stressed that this should not have any bearing on the fact that polygamy remained a punishable crime in Austria.

On 15 March 1909, the draft setting out the findings of the working group’s negotiations was forwarded to the relevant ministries. In the explanation section, the Ministry of Culture discusses in considerable detail the still open issue of criminal law protection, pointing out that it must be considered that “Islam, although there was a certain tolerance vis-à-vis the adherents of all revealed religions, does in fact take a negative view of the idea of these religions’ equality with its own adherents”. In this context, the draft refers to the Islamic law provisions regarding lapse of faith and refers to Ottoman legislation which still discriminates against other religions.
In this context, an argument is brought into play that – although inadmissible in a state governed by the rule of law – is currently used quite frequently, namely reciprocity. The Ministry of Culture could not resist pointing out that “in the present draft the adherents of Islam are in any case granted a better and safer legal position in Austria than other religious communities existing in this country [in other words the Christian churches] enjoy in Turkey”.

In its statement of 1 April, the Ministry of Justice, however, insisted on the provision of broad protection under criminal law. Regarding a reservation with respect to “the local moral and cultural views” when applying the Criminal Code, the Ministry of Justice proposed that this passage be deleted as it would “give an overly wide scope for judicial discretion”, which would lead to “inadequacies in the practical implementation which might frustrate the purpose of this law”. The Ministry of Justice held the view that this wording lacked the preciseness that is particularly indispensable for criminal legislation. The general remarks added at the time have lost none of their topicality and give a very good testimony to the Austrian Ministry of Justice at the beginning of the 20th century and even by present day standards:

“What is considered as being contradictory to cultural views today will cease to be a contradiction after some time because one has got used to what is new and strange. Besides, a discrepancy between the teachings, customs and institutions of a religion and the moral and cultural views of the time might indeed represent an obstacle to the recognition of this religious community but must not be considered a licence to grossly violating the principle of consideration for those who hold different beliefs. Any religious practice that is recognised by the state shall be protected against gross disparagement as this hurts people’s most holy and personal ideologies and feelings which could consequently trigger the most dangerous reaction and most seriously jeopardise public peace. Criticism and polemics voiced in an appropriate manner are not hindered or restricted by criminal law protection against mockery and humiliation.”

The suggestion made by the Ministry of Justice was fully taken into account and Article 6 Section 1 of the law thus reads: “The religious community of the adherents of Islam according to the Hanafite rite shall, both as regards the community as such as well as religious worship and religious servants, enjoy the same legal protection as is granted to other legally recognised religious communities”, and
Section 2 adds “The doctrines of Islam, its institutions and customs shall enjoy the same protection too, unless they are contrary to state law”.

The report prepared by the Herrenhaus Commission explicitly states that “this reservation is warranted because in the Islam’s entire body of doctrine of moral precepts and religious canons one finds many a view and many a sentence which cannot be granted full protection under the law because of its contradiction with the relevant applicable national legislation. In this context it may suffice to refer to polygamy, which, as small a role it may indeed play in practice in the lives of adherents of Islam living in this country, does in these exist as a legal institution”.

In its statement, the Common Ministry of Finance that was responsible for Bosnia and Herzegovina once again made the case for Islamic marital law: “In order to facilitate acclimatisation for Mohammedans in a largely Christian state, it seems indicated to adopt at least the main principles of the Shariah-based marital law regarding impediments to marriage and separation with the respective provisos that are required with respect to national legislation, similar to the approach taken at the time regarding marriages of Jews”. Should this approach be considered too difficult at the moment, it would, “in the interest of the favourable reception of the present law among Mohammedans be of substantial advantage if Article 5 were to contain a passage from which one could conclude that the provisions governing the marriage of individuals, who do not belong to a legally recognised religious community, were to be only applied temporarily”. After consultation with the Ministry of Culture this proposal was, however, not taken into account. The Muslims were thus the first group for whom the mandatory civil law marriage was introduced in Austria. What is, however, highly remarkable in the context of these negotiations is that the Common Ministry of Finance had indeed considered the partial inclusion, albeit under the relevant ordre public proviso, of Islamic marital law in the Austrian denominationally-bound marital law to be feasible.

On 5 June, the Ministries’ statements were again summarised for the bill and special proposals and suggestions directed at other ministries were also attached. It was thus suggested that the Foreign Ministry, for instance, equip the ambassador to the Holy See with special instructions in order to counter potential misinterpretations on the part of “influential Roman circles”. This was, however, only to be done in an informal non-official manner. The Ministry of Culture, moreover, included a summary of arguments that spoke in favour of recognising Islam
undertaking efforts to dispel in particular concerns that the law might serve the expansion of Islam or lead to the recognition of polygamous marriages by the state. The ministry also pointed out that “the entire civic attitude of the local Mohammedans was correctly loyal” and stated that “by their religious association rights or interests of any kind that are enjoyed by the other denominations existing in the state are by no means offended”.

Ambassador Count Szécsen subsequently discussed the issue confidentially in Rome with the conservative Secretary of State Cardinal Merry del Val who considered the legislative measure “quite natural”.

In the final ministerial submission to Emperor Franz Joseph of 5 June 1909, Minister of Culture Karl Count Stürgkh again addresses the concerns regarding the different nature of Islam, however, qualifying them at the same time: “On the other hand one may indeed, although much in the religion of Mohammed is alien to occidental cultural awareness, justly claim that the fundamental moral ideas of Islam are by no means an absolute contradiction to the moral and ethic concepts and views of the Occident, as Islam too in its way stipulates truthfulness, integrity, dutifulness and legality as inviolable standards of human thinking and acting. […] Likewise it may indeed surely be claimed that neither the practice of the cultus nor other activities of religious life practiced by the confessors of Islam in Austria would in any way cause offence or contravene the prevalent cultural conceptions of our country”.

The imperial resolution subsequently signed by the Emperor on 16 June was introduced as a bill on 19 June in the Herrenhaus (House of Lords). The attached “Explanatory Remarks” give an overview of the draft’s background and history and the discussions which took place in the working group. Islam is again given highly positive consideration. Irrespective of the fact that the specific requirements for recognition under the Recognition Act were not met, “it may above all not be called into question that … the general conditions for such a recognition are nevertheless present”. It is also pointed out that “for a religious doctrine to which about 220 million people who live under most diverse geographic conditions in the most diverse political bodies and communities and under most varied social and political conditions profess” it was inevitable that a “general appraisal” be undertaken and that the decision was not taken “based on a specific individual criticism of these or those doctrines, these or those imperatives, obligations, prohibitions or admissions of the moral doctrine”. “In view of this overall
The paper continues, “the lack of conformity of individual convictions, prescriptions and customs with those religions that form the moral and cultural basis of our state and political system should in the context of a legislative-political assessment – and this is the exclusive purpose of this assessment – indeed not be to the fore”.

The Explanatory Remarks continue by stating that “it is without doubt that the scriptures on which the teachings of Islam are based, contain thoughts which, in many areas, cannot be denied grandness and depth, wisdom and poetry. ... Considering these facts, one may in connection with the legislative action requested indeed overlook some additional aspects that will not necessarily harmonise with the convictions of our moral cultural awareness”.

This wording is remarkably similar to the present day religious law standard according to which it is not the individual convictions and rules that shall be decisive for the legal recognition of a religious community but the overall quality and the goals and objectives of the community as a whole.

Doubts regarding the recognisability of Islam were also removed by pointing to the situation in Bosnia and Herzegovina, where “as the lives of the confessors of Islam reveal a deep and innermost belief in God together with a high level of ethic dutifulness, there may be no doubt that either the practice of the cultus or any other expressions of religious conviction that occur could be a source of offence or contradict the postulates of cultural life either at the current time or in the future”.

As the Herrenhaus was, for formal reasons no longer able to deal with this bill, it was again referred to a special commission in autumn 1909. The report prepared by this special commission briefly repeats the fundamental considerations that had led to the planned legislation and adds a number of supplementary remarks. Although it discusses some reservations regarding Islamic law, the commission’s report points to the positive aspects of Islam: “It should be mentioned that Islam is a monotheistic religion according to whose teachings God is one, spiritual and eternal, wisdom, omnipotence and mercy are the properties of God. Islam teaches the immortality of the soul, future reward and punishment and one also finds passages of high ethic value in the Koran”.

Owing to a lack of time, the Abgeordnetenhaus (House of Representatives) could not discuss the bill before the end of the parliamentary session, which meant that
the government had to introduce it again in the Herrenhaus. It thus once again passed through the parliamentary procedure both in the Herrenhaus and the Abgeordnetenhaus and the Act finally entered into force on 15 July 1912.\(^7\)

The Austrian Islam Act that thus came into being had a long-term effect in the, now small, republic and also in the second half of the 20th century by creating singular conditions for the legal integration of Muslims in Western and Central Europe.

As regards Muslim life after the end of the Habsburg Monarchy, the Islamischer Kulturbund (Islamic cultural association) established in 1932 by Austrian Muslims is particularly worth mentioning. In line with a well-established Viennese tradition, the association was based in a coffee house. Its first president was the ethnologist Leopold/Umar Rolf von Ehrenfels, who had converted to Islam in Berlin in 1927. Following Austria’s Anschluss to Nazi Germany, the Islamischer Kulturbund was dissolved; Ehrenfels had to emigrate and became professor of anthropology in Madras where he focused on the ethnology of India and the position of women in Indian society.

In the 20th century, the most prominent Muslim of Austrian descent was Leopold Weiss. He was born in Lemberg (Lviv) in 1900 as the son of a lawyer from a Rabbi family and grew up in Vienna. Following a journey to Palestine and especially after coming into contact with the Arab Bedouins’ way of life he turned to Islam. In 1926, he converted to Islam in the Berlin Muslim community and changed his name to Muhammad Asad. He then lived in Saudi Arabia from 1927 to 1932 where he became a close confidant of Ibn Saud, the founder of Saudi Arabia and also came into close contact with Wahhabism. In 1932 he went to India where he met Muhammad Iqbal and contributed to preparing the independence of what was to become Pakistan. During the Second World War he lived in a British detention camp. His attempts to take his family to British India failed and his whole family was killed in concentration camps.

On 14 April 2008, the square in front of the main entrance of the Vienna International Centre (“UNO City”) was named Muhammad-Asad Square in his honour.

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\(^7\) A parallel law was adopted for the Hungarian part of the Austro-Hungarian Monarchy that remained in force until the Communist takeover. The Austrian Islam Act remained in force in Czechoslovakia before it was abrogated in October 1949 by Communist church-policy legislation.
The establishment of the Islamic Community in Austria

After the Second World War, the Austrian branch of the international organisation “Jami´at al Islam” for a short time tended to the affairs of Muslims in Austria. The Verein der Muslime Österreichs (association of the Muslims of Austria) set up in 1951 was followed by the Moslemischer Sozialdienst (Muslim Social Service) established in 1962 on the initiative of Bosnian intellectuals. The latter not only provided social, religious and cultural services to Muslims in Austria but also strove to establish an Islamic community in Austria. The influx of Muslim students, refugees, diplomats and guest workers particularly to Vienna from the mid-1960s onwards also contributed to increasing efforts towards having the recognition of 1912 eventually incorporated at institutional level, as is characteristic of Austrian religious legislation. On 26 January 1971, representatives of the Moslemischer Sozialdienst had submitted a first application to this effect in Vienna. Following lengthy negotiations with the governmental cultural authorities, a modified application was finally successful on 20 April 1979.

In the preceding eight years of negotiations, some of the problems that had to be faced in 1912 re-emerged - first and foremost the issue of the religious community’s legal personality, internal rules, charter and organisation. These shortcomings were no longer an issue now, since the Moslemischer Sozialdienst, on the one hand, had a legal basis as an association that could be related to and, on the other hand, the previously mentioned “institutionalisation” of the Islamic community in Bosnia could serve as a role model.

Surprisingly, the issue of polygamy was again brought up in the preliminary negotiations. Expert opinions were commissioned, one from the Al-Azhar University in Cairo and the other from the Presidency of Religious Affairs of the Republic of Turkey (Diyanet). These expert opinions explained that vis-à-vis the state a Muslim could not invoke a right to polygamy that was permitted by Islam.

Another difficulty arose from the Islam Act adopted during the Austro-Hungarian Monarchy, which – as discussed above – only referred to the Hanafite school of law. The preservation of this restriction was very carefully considered by the competent ministry, which again turned to the Turkish government for clarification. With reference to the relevant statement by the Turkish government of 18 December 1972, the ministerial document then prepared thus reads: “The matter of the fact is that in Islam there are no law schools (cults) that would profoundly differ
from each other – as is the case with some other religions. The schools of law that are recognized and known by the names of Hanafites, Shafiites, Malikites and Hanbalites are all orthodox”.

The ‘expansion’ to the non-Hanafites was thus left over to the Islamic community in agreement with the self-perception of Islam. According to the views expressed by those who applied for recognition, the same considerations also held true for the Twelver Shiites, Ibadites and Zaidites and consequently the Islamic Community referred to the seven schools of law in its charter.

On 2 May 1979, the establishment of the first religious community based on the Islam Act and the charter of the Islamische Glaubensgemeinschaft in Österreich (IGGiÖ, Islamic Community in Austria) were positively acknowledged.

In 1987, the Austrian Constitutional Court repealed the passage “according to the Hanafite rite” in the Islam Act as unconstitutional. In its reasoning the Constitutional Court stated that such a restriction represented a differentiation that was inadmissible for a religiously-neutral state and thus interfered with the Islamic Community’s right to self-determination. The latter subsequently changed its charter. Since then “all adherents of Islam who have their residence in the Republic of Austria” (IGGiÖ charter, Article 1) belong to it. This decision, however, meant that the issue of allocating those groups that actually refer to an Islamic
tradition but had so far not been covered by the Islam Act and the IGGiÖ’s constitution, re-emerged as a pressing issue.

As a legally recognised religious community, the Islamische Glaubensgemeinschaft in Österreich has since 1979 enjoyed the position of a statutory body under public law. It thus belongs to the group of 14 churches and religious communities that are recognised in Austria and include the Roman Catholic church as well as small communities like the Methodist church or Jehovah’s Witnesses (since 2009). By granting them public law status, the state offers to cooperate with these religious communities, which, however, also implies that they must be ready and willing to fulfil the constitutional expectations that are implicitly associated with recognition. This implies that the respective religious community accepts the democratic state governed by the rule of law and complies with the fundamental consensus in society.

Against this background the challenge for Islam therefore consists in living up to a role as a statutory body under public law in a Western-pluralistic state governed by the rule of law. The state may expect the religious communities to contribute to managing the ethical problems erupting in our society and to cooperate in the field of education and upbringing, in fulfilling the various charitable tasks and providing care and services to people in specific existential situations, by for instance providing pastoral care and spiritual guidance for the sick and imprisoned.
The development of the Islamic Community until the 2010/11 elections

In 1999, the IGGiÖ implemented a number of charter reforms aimed at promoting both its democratisation and its representative nature. In the course of these reforms, an advisory board composed of the chairmen of the large Islamic associations was set up to enable the latter to present their positions to the IGGiÖ.

In this context, it should not be ignored that tensions within the Muslim community had led to disputes with regard to the IGGiÖ. From the very start, these tensions were mainly rooted in the different ethnic traditions of Muslims and/or the political developments in their countries of origin. Against this background, a complaint was lodged with the Austrian Constitutional Court against a decision by the competent minister rejecting the acceptance and taking note of canvassing ads for special functions within the Islamic religious community. The court stated that only in the event of gross violation of the provisions set out in the respective religious community’s charter shall the individuals thus elected not be entitled to represent the community vis-à-vis third parties.

It was particularly the claim to sole representation that had already triggered criticism within the Muslim community in the 1980s. Turkish-Muslim associations in particular criticised the IGGiÖ’s decisions with respect to the design of the syllabus for religious instruction or the recognition of Imams as they had not
been involved in these decisions. The fact that both public and media discussions on the IGGiÖ have clearly increased since the 1990s at the same time illustrates that Austrian Muslims have become more aware of their democratic means to shape politics, thus having so-to-speak “arrived” in Austrian society.

An issue that has been a frequent source of criticism is the ex lege membership of all Muslims in the IGGiÖ in line with the model of governmental self-administration institutions, which is, however, frequently considered inadequate in the case of Islam and other religious communities as well. The characteristic feature of such organisational systems of self-government at state level is that they are designed according to democratic principles and that decision-making processes are based on consistent and integrated democratic structures. This principle is, however, not often applicable in the case of religious communities. The differentiation made by the protestant theologian Reiner Preul between, as he puts it, an “acquired and affirmative” membership and a membership which is “assigned” by the state is generally developing into a pivotal question for religious communities. In this sense, the ex lege membership of Austrian Muslims in the IGGiÖ represented a weak point that had made the Islamic Community vulnerable to criticism particularly against the background of the Austrian Muslims’ ethnical and theological diversity. An issue that was frequently voiced in this context was that mainly Turkish associations with high membership figures like the ATIB (Türkisch Islamische Union in Österreich, Turkish Islamic Union in Austria) did not have representative officials in the IGGiÖ.

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8 Niklas Luhmann, Funktion der Religion, Frankfurt/Main 1977, p.295
Not least because of such disputes, the IGGiÖ started to focus on amending its charter in 2007. The relevant preparation and approval processes were, however, quite time consuming, which was also due to discussions on the election modus. Following the adoption of the new charter on 22 October 2009, the community worked intensively on conducting new elections. The election procedure is, however, highly complicated. The community’s leading bodies are elected indirectly based on a multi-level procedure which endeavours to take full account of the IGGiÖ’s complex structure. A newspaper commenting on that process remarked that “one could think that everything is very complicated. But actually this also serves to illustrate how deeply the Muslims are rooted in Austria”.

During stage one of the election process, i.e. the registration of eligible voters, 124,465 individuals signed up as members according to official figures from the IGGiÖ. Of these, however, only 27,095 were actually entitled to vote because they had paid the mandatory annual membership fee and of these only 20,485 individuals eventually went to the polls.

The number of registered members may serve as an indication for the IGGiÖ’s reach. Assuming that on top of these registered members there are some tens of thousands of religiously affiliated individuals who have so far not registered with the IGGiÖ, one would eventually arrive at a share that is equivalent to that given in the relevant documents on the number of actively practicing Muslims in
Europe. In the study “Islam in the European Union: What’s at stake in the future?”, Felice Dassetto, Silvio Ferrari and Brigitte Maréchal prepared for the European Parliament in 2007, it is estimated that the latter accounted for about one third of the then 15 million Muslims in the European Union.10

The number of mosque associations and specialised organisations registered in the course of this procedure with the IGGiÖ amounts to 250.

The elections subsequently held based on the new charter indeed marked a clear turning point in the IGGiÖ’s history. The clear winners were the large Turkish organisations such as ATIB and the Islamische Föderation (Islamic Federation) that has close ties with Millî Görüş, which now head the IGGiÖ in a coalition-like manner. ATIB was able to secure majorities mostly in the West of Austria, while the Islamische Föderation emerged victorious mainly in the East and especially in Vienna where it came out ahead of ATIB. The election results gave the IGGiÖ, so to speak, a Turkish face. Taking Vienna, for instance, as an example for the general trend in these elections, the “Turkish block” came first, followed by the Arab Muslims, the Muslims from the Balkan region (Bosnia, Albania, Macedonia, Sanjak), the “Austrian Muslims” from ethnically rather mixed associations, the Asian Muslims (Bangladesh, Pakistan) and the Shiites. Leadership in the majority of the communities is now of Turkish origin, the only exception being Carinthia with Bosnian leadership. Among the 501 elected delegates there are 44 women.

Conferences of Imams

On the initiative of the IGGiÖ and with support from the Austrian Foreign Ministry in particular, conferences of European Imams have been held in Austria for many years now. The first such conference, involving a substantial European attendance, took place in Graz in 2003 and was followed by two conferences held in Vienna in 2006 and in 2010. A conference of Austrian Imams was held in Vienna in 2005. Although their significance is sometimes disputed, a wide range of current religious and political topics were discussed at these conferences and a number of remarkable declarations adopted.

The conference held in Graz in 2003, for instance, focused on a positioning analysis of Muslims in Europe and stressed the independent identity of European Muslims. Discussions also dealt with theological reflection on the compatibility of Islam and democracy, the rule of law, human rights and pluralism as well as with practical implications for the work of Imams as multipliers who bear a special responsibility with respect to education and upbringing. Other topics included reflections on shaping relations between Muslims and other religious communities in Europe and with citizens who hold other views of the world in order to promote dialogue and peaceful coexistence. The conference contributed to setting the course for defining the legal order for Muslims in Europe based on the Islamic concepts of fiqh al aqaliat (Islamic jurisprudence on minorities, i.e. Muslims living in a non-Muslim country as a minority group) and fiqh al aulawiat (Islamic jurisprudence taking account of the priorities). These concepts address the fact that the situation of Muslims living in Europe differs from that in Muslim-dominated societies. The goal is to develop an understanding of legal interpretation that is more in line with the respective situation, yet without undertaking fundamental revisions. The focus was thus on the “middle way” (wasatiya) postulated in principle by Islam and on a moderate religious attitude (i’tidal) including disassociation from any form of radicalism and fanaticism. The traditional division of the world in a “House of Islam” (dar al-islam) and a “House of War” (dar al-harb) was clearly rejected. In 2005, this approach was confirmed for Austria at the same time stressing the independence of the IGGiÖ.

The meeting held in Vienna in 2006 addressed ongoing difficulties and the necessary efforts in connection with the acceptance of Muslims in the majority society. Muslims were thus called upon to consider themselves as an active
element within European societies. Necessary prerequisites mentioned in this context were especially the promotion of education and the rejection of anti-Muslim racism. Extremist acts of violence — irrespective from which side they emanated — were utterly rejected and a call was made for initiatives to be taken to counter such acts. Other concerns addressed in the conference dealt with the equality of men and women, the distinction between religion and tradition, the development of perspectives for young people and the use of the respective national language in youth organisations.

The introductory presentations also focused on the issue of Muslim contributions to a common European future. In the meeting’s final declaration, participants renewed their call for not departing from the “middle way”. The call that Imams also provide social and charitable services in the mosque communities indicates a certain embracing of the pastoral concept that is a familiar hallmark of European communities. Participants also stressed that it was important for Imams to be familiar with the respective national cultures. The goal defined by this conference was that Muslims contribute pro-actively towards the development of European societies.
The future of the Islam Act

The, by now, 100 year-old Islam Act is, for many reasons, in urgent need of amendment. For some areas it lacks legal regulations as are included in the respective specific laws for recognised churches and religious communities, for example in the fields of military chaplaincy and pastoral care and spiritual guidance in hospitals and prisons and with respect to university law. The planned amendment offers the opportunity to demonstrate by a so-called “paktiertes Gesetz” (an Act that is agreed upon by both parties) as is generally drafted in Austria for such special legislation, that both partners recognise each other and that both – the Islamic community and the Austrian state – have arrived in the 21st century.
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