

Germany: Submission to the UN Universal Periodic Review

7 September 2008

The use of a 'Muslim-only' questionnaire to screen requests for naturalisation

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A. The introduction of a 'Muslim-only' questionnaire

In 2005 the Interior Minister for the State of Baden-Württemberg issued immigration officers with a questionnaire to help them screen requests for naturalisation. Minutes of government meetings reveal that the questionnaire was never intended for general use. It was designed with the specific aim of targeting applicants from OIC countries and "all other applicants appearing to be Muslims". By contrast, "Europeans, Americans or other nationalities" were to be exempt.

Where it does apply, the questionnaire creates a direct link between an individual's personal beliefs or morals and his or her deemed 'suitability' for naturalisation. Applicants are asked their opinions on a range of intimate issues, including: conjugal relations, choice of spouse, personal dress sense and even the rights or wrongs of homosexuality. On the basis of the answers given, the government believes it can reliably assess a person's likely loyalty to the "basic liberal constitutional order" (*freiheitlich demokratische Grundordnung*). The latter, it should be noted, is a strict condition for acquiring citizenship under §10 of the Naturalisation Law (*Staatsbürgerschaftsgesetz*).

B. Compatibility with human rights law

It is doubtful that the use of such a questionnaire is compatible with Germany's obligations under international human rights law. In particular:

i. The questionnaire is overtly discriminatory. It purposely targets those applicants who are or appear to be Muslim, to the blanket exclusion of all others. Yet, discrimination on grounds of religious or ethnic origin is contrary to the European Convention on Human Rights (article 14) and to the International Convention on the Elimination of All Forms of Racial Discrimination (Protocol 12). In the expert legal opinions of the Max-Planck Institute for International Law and of the President of the International Human Rights League, the use of the questionnaire violates international law.

ii. Many of the questions asked of applicants intrude into deeply private and irrelevant aspects of their personal lives. The government of Baden-Württemberg's interpretation of loyalty to the "constitutional order" is wide beyond reason. According to the Federal Constitutional Court, that term simply denotes an order based on the rule of law, liberty and equality. By contrast, the questionnaire stretches the notion of loyalty much further, by demanding that would-be citizens subscribe to a particular set of morals for regulating their home and family lives. It is difficult to see how an individual's privately held views on homosexuality or dress sense (for example) can render him objectively a greater or lesser threat to the German "constitutional order".

C. Wider political implications

The use of the questionnaire has wider implications for faith communities in Germany, Muslim and non-Muslim alike:

i. The effect of the questionnaire, which serves effectively as a gatekeeper to naturalisation, is to significantly curb the political participation and social mobility of Muslims in Germany. Denial of citizenship can mean that a person is denied voting rights and/ or the right to enter certain professions, despite being a long-standing and law-abiding resident in Germany.

ii. The very idea of a 'Muslim-only' questionnaire ostracises Muslims in Germany. It undermines the considerable on-going efforts to build bridges between them and other communities. It should come as little surprise therefore, that the questionnaire has been roundly condemned – by various churches, the General Secretary of the Central Council of Jews, the Green Party and the Mayor of Heidelberg, as well as Muslim umbrella organisations.

iii. The questionnaire is an attempt by the State government to mould a cultural and moral conformity among Germany's diverse Muslim community. As minutes of government meetings reveal, those who promoted the questionnaire express a clear ideological preference for a particular brand of "Euro-Islam" over more orthodox teachings. The questionnaire itself places great emphasis on an individual's personal beliefs and allies these closely to the question of naturalisation. To this extent, it imposes severe restrictions on German Muslims' religious freedom.

D. Further reading

IHRC, *The Über-citizen and German Kulturkampf* – s.10 German Naturalisation Law: a front?, A Briefing on German Citizen Law Part I, May 2008, revised September 2007

L Fekete, IRR, Integration, Islamophobia and civil rights in Europe 2008

Heribert Prantl *Alle Muslime sind verdächtig* (Süddeutsche Zeitung, 29.1.2006)
<http://www.sueddeutsche.de/deutschland/artikel/140/69071/print.html> retrieved 13.5.2006

Goessner, R *Rechtspolitisch-gutachterliche Stellungnahme zum Gesprächsleitfaden für ein Einbürgerungsbehoerden in Baden-Württemberg* (Bremen, 12.1.2006) <http://www.rolf-goessner.de/Muslim-TestNF2-06.htm> retrieved 13.5.2006