

AUT-2019-1-001

a) Austria / b) [Constitutional Court](#) / c) / d) 13-03-2019 / e) E 3830/2018 / f) / g) / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

[05.02.02.06](#) Fundamental Rights - Equality - Criteria of distinction - **Religion**.

Keywords of the alphabetical index:

[Equality](#) / [Religion, organisation](#) / [Religion](#), autonomy, limit.

Headnotes:

The Federal Law on the External Legal Relationships of Islamic Religious Societies prohibits religious communities from raising funds in respect of their usual activities from outside Austria. This provision is objectively justified as it safeguards the independent administration of internal affairs of Islamic religious communities or societies and secures their autonomy from influence from other states and their institutions.

Summary:

1. According to § 6.2 of the Federal Law on the External Legal Relationships of Islamic Religious Societies (hereinafter, the "Islam Act 2015"), funds for ordinary activities intended to satisfy the religious needs of their members have to be procured in Austria by religious societies, religious communities or their members.

2. The applicants before the Constitutional Court, two Turkish nationals, worked as clergymen (Imams). They had been sent by the Presidency of Religious Affairs of the Republic of Turkey (*Diyanet İsleri Başkanlığı*) to conduct foreign service in Austria and were expelled because of this activity.

The applicants filed constitutional complaints with the Constitutional Court, alleging, in particular, that their right to equal treatment of foreigners had been violated (Article 1.1 of the Federal Constitutional Act on Elimination of Racial Discrimination). They also alleged that their personal rights had been infringed on the basis that § 6.2 of the Islam Act 2015 was an unconstitutional law. They also raised concerns about the prohibition on external financing of religious societies, which was the basis for their expulsion and which is regulated by that statutory provision.

3. The Constitutional Court held that § 6.2 of the Islam Act 2015 gave effect to the principle of self-preservation capacity. It does so as it ensures the application of the principle independence of churches and religious societies to Islamic religious societies or communities. The way in which funds are raised to finance the activities of legally recognised churches and religious communities is covered by corporate freedom of religion. On the constitutional level, this freedom is protected by Article 15 of the Basic Law on the General

Rights of Nationals (hereinafter, "StGG") and [Article 9 ECHR](#). The Court stated that although § 6.2 of the Islam Act 2015 interfered with this freedom by restricting the manner in which financing could be obtained, it neither constituted an inadmissible interference with the internal affairs of Islamic religious societies within the meaning of Article 15 StGG, nor was it a disproportionate interference with religious freedom according to [Article 9 ECHR](#).

The Court noted that Article 15 StGG includes the right of legally recognised churches and religious communities to administer their internal affairs independently, such as, in principle, through raising and using funds. The Court held that maintaining the independence and autonomy of churches and religious communities from the state, and especially from other states and their institutions is in the public interest. In order to safeguard the independence of a religious society, it is also necessary to ensure that the ordinary activities of such societies, carried out to satisfy the religious needs of members are, in principle, financed by means of domestic financial resources; this too is in the public interest.

The Court concluded that § 6.2 of the Islam Act 2015 served the legitimate aim of securing the self-preservation and autonomous administration of the internal affairs of Islamic religious communities or societies. The prohibition on raising funds through on-going financing from abroad, i.e. the requirement to secure sufficient funds in Austria, secured their autonomy from influence from other states and their institutions. It, therefore, did not constitute an inadmissible regulation of their internal affairs within the meaning of Article 15 StGG.

With regard to [Article 9 ECHR](#), the Court held that § 6.2 of the Islam Act 2015 did not constitute a disproportionate interference when interpreted in conformity with the Constitution. By preventing influence of other states and their institutions through the provision by them of ongoing income, this provision helps to preserve both the independence of Islamic religious societies or communities as well as the autonomous administration of their internal affairs. The weight of this objective justified the regulation, when, in conformity with the Constitution, it referred to financial contributions from other states and their institutions, but not to contributions from foreign private individuals, as such contributions would not have the same autonomy-restricting effect as the provision of funds by a state or their institutions.

The Constitutional Court concluded that § 6.2 of the Islam Act 2015 did not represent an unjustified unequal treatment of, or discrimination against, Islamic religious societies. The additional requirements placed on Islamic religious societies or communities were justified objectively with regard to the aim of preventing any impact on the autonomy, religious content and freedom of worship and on independent administration of their internal affairs. The prohibition on external financing secured the autonomy of Islamic religious communities; it was an objective provision that did not violate [Article 7 of the Federal Constitutional Law](#). Equally, it did not violate [Article 14 ECHR](#). It did not as it was within the discretion of states to determine provisions, the aim of which was to maintain religious communities' autonomy through ensuring that determined that their funding had to be procured from sources internal to the state.

Cross-references:

European Court of Human Rights:

- *Association of Jehovah's Witnesses v. France*, no. 8916/05, 30.06.2011;

- *Izzettin Dogan and Others v. Turkey*, no. 62649/10, 26.04.2016, *Reports of Judgments and Decisions* 2016.

Languages:

German.