

Germany's asylum policy and Iran's new apostasy law

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Abstract

This analysis deals in an exemplary way with the challenge of how to interpret information about religious persecution in countries of origin of refugees and asylum seekers within the legal framework of recipient countries.

Keywords Iran, draft apostasy law, asylum, deportation, legislation, policy, legal opinion.

1. The Federal Office for Migration and Refugees in Germany recently published an article in its bulletin *Entscheidungen Asyl Informations-Schnelldienst*¹ regarding religious freedom in Iran and particularly the situation of the Christians there. One can assume that this is not simply a noncommittal opinion of the Federal Office or the author of that contribution but that the aim of the article is to serve as a recommendation or basis for the decision makers of the Federal Office.

The author comes to the conclusion that although Islam is the state religion, the Iranian constitution guarantees adherents of Christianity, Judaism and Zoroastrism the right "to exercise within the framework of the laws their religious customs and ceremonial practices and to live in accordance with ecclesiastical prescriptions in personal matters and religious education." Therefore only Christian congregations with converts from Islam or which engage in public and active missionary work amongst Muslims, would have to expect systematic restraints or persecution by the state. Equally priests and

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¹ Jürgen de Haan, Zur Religionsfreiheit im Iran, in: *Entscheidungen Asyl, Informations-Schnelldienst* vol. 15, 7/2008:5-6. Available online: <http://tinyurl.com/BAMF08>. The website of the agency is: www.bamf.de.

other leaders of congregations and churches who are particularly active in the public domain would have to expect persecution.

Although the Sharia provides for the death penalty for apostasy, i.e. the conversion from Islam to Christianity (or any other religion), the criminal law of the state does not include any regulations for punishment of apostasy if apostasy is not linked to political activities. There are also no known cases in which the death penalty has actually been imposed, or of extra judicial killings for apostasy.

The author is of the opinion that even the fact that an existing draft bill which calls for conversion from Islam to Christianity to be subjected to the death penalty does not change the situation described. He believes that this draft bill is merely intended as a warning to discourage Muslims from converting to Christianity; there is thus no serious intention to pass the bill and to apply it. To strengthen his point he refers to a meeting that took place in April 2008 between the Papal Council for Inter-religious Dialogue and Shiite spiritual leaders in which the participants had agreed to mutually tolerate and respect each other's religion.

A situation of persecution of Christians in Iran in the proper sense is thus denied, except for the above mentioned cases, and it is postulated that there exists merely a general social and economic marginalization of Christians.

The unspoken legal consequence of this depiction of the situation in Iran is probably the opinion that the condition of 'persecution for reasons of faith' is not fulfilled at present in the case of Christians, so that should they enter Germany they would not have any claim to neutral asylum or protection from deportation.

2.1 It is important to note, however, that the situation of Christians in Iran as described in that article should already lead to a different legal conclusion. For § 60 par. 1 p. 1 Law on Residence grants protection from deportation, if the life or freedom of the deportee is threatened for reasons of the religion in the country into which someone is to be deported.

In terms of § 60 par. 2 and 3 of the Law on Residence the same applies in cases of impending torture or death penalty for the same reasons. According to the jurisdiction of the Federal Constitutional Court and the Federal Administrative Court such a threat based on the

religion cannot be assumed if the relevant person has been granted the so-called religious subsistence minimum in the state to which he is to be deported.² Practising faith privately, such as in the form of home services and witness in a private group, where Christians are by themselves, was hitherto regarded as sufficient to guarantee the religious subsistence minimum (see preceding footnote). The writer of the article in the Express Information Service, or rather the Federal Office, apparently assumes that this religious minimum subsistence for Christians is currently protected in Iran.

2.2 Furthermore the article is based on an incorrect or at least incomplete description of the situation in Iran. In the current situation (that has been going on for a long time) Christians in Iran cannot even practice their faith in the very limited form regarded as possible and sufficient in the article. It is even stated in the article itself that congregations admitting former Muslims can expect systematic restraints and even persecution by state organs forthwith, i.e. also without any public appearance of these former Muslims or the remaining members of the congregation. Thus an elderly Christian couple was killed a few months ago as a result of a raid on an underground prayer group meeting. The secret police had dispersed the meeting on 27 July 2008 and had beaten and arrested the participants. Only a couple of days later the husband died from the serious injuries he sustained; at the beginning of August his wife died from the consequences of emotional stress.³ Of course, every Christian congregation is under an obligation to accept as members people who have turned to Jesus Christ in conversion and wish to join the congregation, irrespective of their ethnic origins, their social rank or the religion to which they formerly belonged (see Gal 3:28; Eph 2:14ff).

Both in classic reference works regarding religious freedom and persecution of Christians that are categorised according to countries and in the annual reports of human rights organisations and the U.S. government regarding the state of human rights and religious freedom, every year Iran is among the most obvious examples of states in which there is no religious freedom and in which even adherents of the state religion are persecuted and restrained brutally if they express

² See e.g. Federal Constitutional Court Ruling 74:31ff, 38, 40; 76:143ff, 158; Federal Administrative Court 111:223ff, 230.

³ *Idea Spektrum* 33/08:27.

divergent opinions.⁴ The non-Muslim minorities mentioned in the article in the Express Information Service are being oppressed and are sometimes persecuted seriously, for example by having their leaders murdered.

The most massive surveillance and persecution occur in the case of conversions from Islam to the Baha'i and protestant-evangelical Christian faith. Defection from Islam is not only in theory subject to the death penalty, but also in practice, contrary to what is stated by the representation in the article of the Express Information Service. The death penalty for apostasy is in fact imposed by the courts and executed in prisons, and Hezbollah groups commit secret or public murders to punish apostasy. The official reason stated for imposing and executing the death penalty is often not the breaking with Islam, but some other (alleged) crimes, such as for example espionage. While the threat of the death penalty for breaking with Islam is not contained in the law, it goes back to an order by Ayatollah Khomeini which is regarded as part of the Sharia. These orders by the Ayatollah and numerous related *fatwa* (binding legal opinions) of important Islamic scholars are regarded as a separate legal authority in Iran. This is indeed made possible by the constitution of Iran, according to section 167 which states which crimes may be punished on which "there are no laws", but the criminal liability of which derives from other legal authorities. This became publicly known particularly through the pronouncement of the death penalty on Salman Rushdie and the appeal to murder him, based on the fact that Rushdie, who was born in India as a Muslim, had broken with Islam.

Furthermore it is necessary to point out that officially registered evangelical congregations may only meet on Sundays. The pastor has to inform the government before a member is accepted, whereupon the member receives a special permit which he has to carry with him at all times. At the beginning of a service the permits are often controlled by guardians of religions at the entrance or sometimes even during the service. Even in Teheran Iranians without a permit and tourists are prevented from entering church premises.

⁴ The overwhelming evidence is summarized with numerous references by Thomas Schirrmacher, Persecution of religious minorities and suppression of religious freedom in Iran, IJRF (2)1, 2009:111-130 which is the source this opinion piece is quoting, unless otherwise stated.

2.3 Furthermore, the article completely ignores the EU directive 2004/83/EG dated 29/04/2004. This states in section 10 para. 1 b that when assessing persecution for religious reasons it has to be taken into consideration that the concept of religion includes participation in religious rites in private *or public* (emphasis by author). Public practising of faith and the minimum religious subsistence in this sense include e.g. holding public services, missionary and evangelistic activities – also outside the private realm, performing baptisms in private and public, the right of a church to determine its own affairs and many others.⁵ All of this is currently not guaranteed for Christians in Iran and for a long time has not been safeguarded and would result in persecution threatening the life or freedom of the people concerned. The above-mentioned EU directive has also been the binding law of the member states of the EU since 10/10/2006. In accordance with section 38 para. 1, p. 1 this directive had to be implemented into national law of the member states by that date; if this has not happened, as in the case of Germany, the jurisdiction of the European Court of Justice determines that the directive shall be valid immediately after expiry of the implementation period, subject to certain conditions – which are given here – in favour of the individual citizen (Zimmermanns 2008:5; 7-8).

Accordingly, in a judgement of 19/10/2006 (A 6 K 10335/04) the Administrative Court of Karlsruhe has granted protection against deportation in favour of a woman who had come from Iran, had become a Christian in Germany and was baptised. The Administrative Court of Stuttgart made a similar judgement a few months later (01/06/2007 – A 11 K 1005/06).

3. But above all, the article in the Express Information Service does not give any, respectively any proper attention to the amendment of the law threatening the conversion of a Muslim to Christianity with the death penalty, with regards to the resulting persecution situation, respectively with regards to the aggravation of the persecution situation.

3.1 The relevant draft bill is not merely a measure to “threaten” and intimidate, but one can assume that it is to be enacted and applied. The

⁵ See Thomas Zimmermanns, *Abschiebungsschutz für verfolgte Christen* [Protection against deportation for persecuted Christians], MBS-Texte 92, 2008:8-12, - www.bucer.eu/uploads/media/mbstexte092_b.pdf.

assessment of the bill as a mere ‘threat’ is astonishing: as a matter of principle each draft bill must be assumed to be taken seriously, that it is to be enacted and that the law will then also be applied, unless in the exceptional case where there are important reasons to the contrary. But there is no evidence of such reasons. On the contrary, a representative of the Department of Foreign Affairs declared in the Human Rights Committee of the Federal Parliament of Germany at the beginning of 2008 that the planned apostasy law “was cause for the greatest concerns”. When the bill was read for the first time on 09/09/2008 it had already been passed by the Iranian Parliament.⁶ It is only the approval of the Islamic Guardian Council that is still necessary for the enactment of this Act. This bill provides that the death sentence is the only possible punishment in case of conversion of a male Muslim from Islam to Christianity or another religion.⁷ It appears that the law is also to be applied to Muslims who converted even before the enactment of the Act.⁸ Compared to the previous legal position this is a further noticeable intensification. While so far the change of religions is regarded as a ‘crime’ by the Sharia, the nature and extent of the punishment is within the discretion of the court. According to the planned law the death penalty is not only imminent if a convert practices or confesses his new faith in public, but even due to the fact of the conversion as such, the decisive element of which is regarded as a declaration by the convert to a third party that he or she does not want to be a Muslim any longer.⁹ Therefore the minimum religious subsistence is not given any longer to converted Muslims, even according to the strictest definition of this term, and the conditions of § 60 para 3 of the law of permanent residence are fulfilled.

⁶ *Idea Spektrum* 39/08:14.

⁷ The bill i.r.o. § 225 par. 7 and 8 of the Islamic Law of Retaliation provides this. For a woman breaking with Islam, the highest penalty is life-long imprisonment in terms of the bill i.r.o. § 225 par. 10, while she has to be whipped during the five daily prayer times and her quality of life and quantity of food, clothing and water have to be reduced to intensify her imprisonment until she shows remorse.

⁸ *Idea Spektrum* 39/08:14.

⁹ See bill i.r.o. § 225 par. 1 of the Islamic Law of Retaliation: “Every Muslim proclaiming clearly that he or she has broken with Islam and confesses him-/herself to be an unbeliever, is an apostate”. “Unbelief” does not only imply atheism, but any other religion besides Islam.

3.2 Finally, the joint declaration by the Shiite and Catholic theologians mentioned in the article by the Federal Office does not change this outcome in the least. Although it is stated in no. 3 of the joint declaration: "Neither reason nor faith should be used for violence" and it is stated in no. 5 "Christians and Muslims should go beyond tolerance ... " as well as "They [Christians and Muslims] are called to mutual respect ... " However, this declaration is not binding for the state organs of Iran and will therefore not have any influence on the legislation and jurisdiction. There is also the fact that the leader of the Iranian delegation was not an Ayatollah, but Mahdi Mostafavi, the leader of the "Islamic Culture and Relations Organization" (ICRO) in Teheran. According to their self-portrayal, this organisation is linked to the Department of Foreign Affairs of Teheran and acts in accordance with the orders of the leader of the Islamic revolution and the foreign affairs directives of the Islamic Republic of Iran. This indicates strongly that this declaration was only signed by the Iranian-Shiite side with the intention to deceive and that only the prevalent (criminal) law as well as the Sharia are and will remain decisive for the legal position of Christians in Iran.

4. The description of the persecution situation of Christians in Iran with regard to the asylum and deportation law of Germany as well as the assessment of the Iranian draft apostasy law in the article in the Express Information Service of the Federal Office for Migration and Refugees therefore, on closer evaluation, has to be regarded as inappropriate and merely playing down the situation.