

The use of loudspeakers for the Islamic call to prayer

An infringement upon negative religious freedom?

Thomas Schirmmacher¹

Keywords Switzerland, muezzin, church bells.

1. An important distinction

The question of whether Muslims are allowed to build a minaret and the question of whether a muezzin is allowed to use a loudspeaker five times a day for a call to prayer must be clearly distinguished from each other.² Within the framework of religious freedom, the construction of minarets is allowed in Germany. The range of protection provided by Article 4 of Germany's Basic Law does not differentiate based on the numerical strength or social relevance of a religious association.³ The construction of minarets therefore follows the foundational idea of equal treatment. The same principle applies to the issue of what building limitations can be placed upon churches and other religious structures (e.g. location, use, height, number of parking spaces). In these decisions, fair consideration must be given equally to new construction of large churches and to smaller churches.

Let us turn our attention exclusively to the call to prayer. The Swiss newspaper *Schweizer Tagesanzeiger* writes poignantly, "The minaret is an elevated portion of a mosque, from which a muezzin calls believers to pray five times a day and glorify Allah. In most cases, a minaret is a tower. Nowadays, a muezzin mostly does this

¹ Thomas Schirmmacher (* 1960) is an international human rights expert and chair of the International Council of the International Society for Human Rights, Associate Secretary General of the World Evangelical Alliance and director of the International Institute for Religious Freedom (Bonn, Cape Town, Colombo). He is professor of the sociology of religion at the State University of the West in Timisoara in Romania and Distinguished Professor of Global Ethics and International Development at William Carey University in Shillong (Meghalaya, India). Schirmmacher earned four doctorates in Theology (Dr. theol., 1985, Netherlands), in Cultural Anthropology (PhD, 1989, USA), in Ethics (ThD, 1996, USA), and in Sociology of Religions (Dr. phil., 2007, Germany) and received two honorary doctorates in Theology (DD, 1997, USA) and International Development (DD, 2006, India). Article received: 19 Sept. 2015; Accepted: 26 Sept. 2015. Contact: Friedrichstr. 38, 53111 Bonn, Germany, Fax +49 2289650389, Email: DrThSchirmmacher@me.com.

² As far as I can see, the so-called Swiss Minaret Initiative, a law voted in by the majority of the voters against the will of the government that banned the building of minarets, deliberately did not keep both of these questions apart but rather combined them.

³ See Martin Völpel. *Streitpunkt Gebetsruf: Zu rechtlichen Aspekten im Zusammenhang mit dem lautsprecherunterstützten Ruf des Muezzin* (Bonn: Die Bundesregierung/Federal Government, 1997), 26.

over a loudspeaker since his voice would otherwise not be heard over the noise of the traffic – and in so doing the minaret fulfils the same function as a church tower with a bell.”⁴

In such case, all limitations placed on bell ringing would apply equally to the amplified call to prayer issued from a minaret. As Claus-Dieter Classen states, a regulation can “only be uniformly applied to all religions. . . . The muezzin’s call can thus not be allowed to experience an essentially more restrictive treatment than Christian bells.”⁵ But I am not sure that the two situations are truly equal. In my view, the muezzin, in making a verbal confession of faith, compels other people to participate in the exercise of another religion five times a day. As a result, this case touches upon the concept of negative religious freedom.

Admittedly, this issue is disputable, and I am not a legal specialist. Rather, I view the issue primarily from the point of view of a sociologist and a human rights activist. Nevertheless, I want to start a discussion on this important topic.

2. Do legal limitations on the use of church bells and on the calls of muezzins deny basic rights?

It is not possible to limit a guaranteed basic right to religious freedom on any basis other than by applying another basic right that is guaranteed in the constitution. This principle applies all over the world, although for simplicity I will stick with the German case in this essay.

Because of the fundamental right to religious freedom, no religious community is required to comply with permissible religious noise levels, as would be the case with non-religious facilities. A mosque thus needs no operating license for its muezzin to make calls to prayer through a loudspeaker. Legal clarification of a matter becomes possible when someone lodges a complaint after a practice has been started.

In Article 140 of Germany’s Basic Law, which derives from Article 137, Paragraph 3, Sentence 3 of the Weimar Constitution (the 1919 German constitution), one finds these words: “Every religious community administers its own affairs within the frame of the general laws valid for all. It appoints its officials without the participation of the State or the civil community.” According to Sentence 1 of Article 137, a religious community must be officially recognized to qualify for this protection.

In Germany, the Federal Emission Control Act (*Bundes-Immissionsschutzgesetz*, or *BImSchG*) provides the legal framework for permitting and controlling noise generation. (The longer name for this law is translated as “Federal Act on the Pre-

⁴ “Allahs Türme” (2009), available at https://www.nzz.ch/allahs_tuerme-1.3884276 (2009).

⁵ Claus-Dieter Classen, *Religionsrecht* (Tübingen: Mohr Siebeck, 2006), 162–163 (paragraph 390).

vention of Harmful Effects on the Environment caused by Air Pollution, Noise, Vibration and Similar Phenomena.” It is Germany’s most important environmental law.) It can be applied to church bells only when they are fulfilling a so-called worldly function (for instance, pealing to indicate the time of day).⁶ In the case of a muezzin, there is no worldly noise; all the muezzin’s calls are religious in nature. Moreover, one can take action against the pealing of bells or the muezzin’s calls through a loudspeaker only to protect other rights, such as the right to inviolability, which takes effect if the noise generation is so loud that it negatively impacts one’s health.⁷ To state it in another way, our justice system distinguishes between *liturgical* bell ringing (for instance, at the beginning of a worship service or during the time when the community of believers is repeating the Lord’s Prayer) and *worldly* or secular ringing (e.g. a fire alarm or a public clock or when marking political events). Worldly bell ringing might enjoy a certain protection as an old tradition. However, it is generally subject to normal laws, for which reason a citizen can bring a civil suit to stop it, whereas one cannot do so to prevent liturgical bell ringing. This activity is essentially protected unless it infringes upon other basic rights, and even then some sort of balance has to be sought between the conflicting rights.⁸ The practical ramifications can be illustrated by an example related to volume. The worldly ringing of bells, like all forms of public noise generation, is subject to the allowable reference values contained in the Technical Guidelines for Noise Prevention (Technische Anleitung zum Schutz gegen Lärm, or TA Lärm). In contrast, these reference values do not apply to the liturgical ringing of bells, which can be louder, although there is naturally a limit here if the bells cause adverse health effects for others.

Such a differentiation does not apply in the case of the calls made by a muezzin. In his case, there are only calls made in a liturgical form. “The call of the muezzin has solely a ritual significance and corresponds to the liturgical ringing of bells. For that reason, it cannot generally be prohibited, but according to each situation there are constraints which can be imposed.”⁹ That the call of the muezzin is not yet under administrative jurisdiction has to do only with the fact that Muslim groups are not yet bodies under public law – and there are already exceptions to this, such as the Ahmadiyyas in the state of Hesse.

Ansgar Hense has listed which rights at the constitutional level could limit the right to religious freedom in the case of bell ringing:

⁶ See Gerhard Czermak, *Religions- und Weltanschauungsrecht* (Berlin and Heidelberg: Springer-Verlag, 2008), 233 (paragraph 441).

⁷ Classen, *Religionsrecht*, 162 (paragraph 388).

⁸ Czermak, *Religions- und Weltanschauungsrecht*, 233-234 (paragraphs 441-442).

⁹ Czermak, *Religions- und Weltanschauungsrecht*, 234 (paragraph 443).

1. The protection of life and physical integrity (Article 2, Paragraph 2, Sentence 1 of the Basic Law), in the case of too much noise generation;
2. Only in a very limited way: the right to general freedom of action (Article 2, Paragraph 1 and Article 14 of the Basic Law);
3. In an even more limited way: the prohibition against impairment of property, such as when a neighboring piece of property loses value;
4. Finally, negative religious freedom.¹⁰

Since in every case only the last of these rights would apply, whereas the first three can be claimed only in a concrete, local case and must be reviewed individually, I will focus on negative religious freedom in the following discussion.

3. On negative religious freedom

On one hand, negative religious freedom arises implicitly from the right to freedom of religion and worldview (Article 4, Paragraph 1 of the Basic Law, the “Grundgesetz”, the name of the Constitution of Germany).¹¹ The right to choose and exercise one’s own religion or non-religious worldview naturally includes not being compelled to exercise any religion.

Additionally, a special type of negative religious freedom appears in Article 140 of the Basic Law (derived from Article 136, Paragraph 4 of the Weimar Constitution): “Nobody may be forced to participate in a religious act or festivity, to join in religious practices or to swear a religious oath.”

Since no one is required to participate directly in the exercise of religion in the case of the call to prayer, just as in response to the ringing of bells, Martin Völpe denies the applicability of even this special form of negative freedom, contending that there is no “freedom from the religious exercise of others.”¹² Granted, the muezzin’s call entails no direct or even coerced participation. However, there is involuntary contact with the call to prayer through one’s eyes and ears.

The Federal Constitutional Court has judged, with respect to public religious symbols, that merely seeing a religious item does not force anyone to participate in the exercise of religion: “In a society which provides space for various forms of faith convictions, there is no right for the citizen to be spared from professions of other faiths, ritualistic actions, and religious symbols.”¹³ The right to conduct mission activities also includes disseminating one’s own faith publicly, such as on placards and displays or via street preachers.

¹⁰ Ansgar Hense, *Glockenläuten und Uhrenschlag. Der Gebrauch von Kirchenglocken in der kirchlichen und staatlichen Rechtsordnung* (Berlin: Duncker and Humblot, 1998), 259.

¹¹ For a discussion, see Hense, *Glockenläuten und Uhrenschlag*, 278–282.

¹² Völpe, *Streitpunkt Gebetsruf*, 19; see also 20.

¹³ BVerG93, 1/16 (judgement dated 24 September 2003); see Hense, *Glockenläuten und Uhrenschlag*, 279.

Repetitions	Wording of the Adhān	English Translation	Comment
4x	Allāhu akbar	Allah (God) is great (greater than anything and can be compared with nothing else).	Malikite legal school repeats only twice
2x	Ašhadu an lā ilāha illā llāh	I testify that there is no God except Allah (God).	–
2x	Ašhadu anna Muḥammad-an rasūlu llāh	I testify that Muhammad is the messenger of Allah (God).	–
2x	Ḥayya ‘alā ṣ-ṣalāh	Hurry to prayer.	–
2x	Ḥayya ‘alā l-falāḥ	Hurry to well-being (salvation, prosperity).	–
[2x]	Ḥayya ‘alā ḥayri l-‘amal	The time for the best deeds has come.	Exclusively used by Shiites
2x	aṣ-ṣalātu ḥayrun minan-naum	Prayer is better than sleep.	Exclusively used by Sunnis (only at morning prayer)
2x	Allāhu akbar	Allah (God) is great (greater than anything and can be compared with nothing else).	–
1x	Lā illāha illā llāh	There is none worthy of worship except Allah (God).	Repeated twice by Shiites

I think, however, that the call by a muezzin is somewhat different. The crux of Islamic doctrine from the Koran, which declares that there is only one God and that Muhammad is his prophet, is expressed in the core statements “Allahu akbar” (“God is greater” or “God is greatest”) and “la illaha illa-llah” (“there is no God except Allah”). Both are components of the daily prayer conducted five times per day (Arabic *salāt*) and of the Friday prayer in mosques and are also components of the muezzin’s call (*adhān*). The content of the muezzin’s call is described in the table above.

The muezzin’s call thus contains the core of Islamic belief. Therefore, one must ask whether this is truly parallel to the ringing of bells, considering that the muezzin announces a direct confession of faith that everyone must hear five times per day. Moreover, does it make a difference that this confession additionally differentiates the Islamic faith from other religions – including specifically from Christianity? Does it make a difference that this confession rejects other religions and that everyone must hear it five times a day so that it is unwillingly internalized and then

repeatedly comes to one's mind, like an 'earworm', even when the muezzin is not making the call to prayer?

A more suitable parallel to the muezzin's call would be if Christians were to sing the Apostles' Creed audibly and understandably through a loudspeaker from church towers until the church's neighbours could not get the song out of their head.

In my opinion, Gernot Facius correctly describes the difference: "Bells do not 'convey' any particular message. On the contrary, the muezzin calls out a confession of faith in public."¹⁴ In the end, how the Islamic call to prayer is assessed will depend on whether this call, as a formulated confession of faith in which non-Muslims must also participate, infringes upon negative religious freedom, or whether this claim is denied either by saying that merely listening does not violate negative religious freedom or by arguing that non-Muslim Germans don't understand Arabic anyway.

4. Dispensing with the loudspeakers?

The call of the muezzin is a necessary component of the Islamic faith, but amplification through loudspeakers is not. From an Islamic point of view, one could do away with the amplification without making the prayer invalid.

For example, the call by a muezzin is often dispensed with in Indonesia, the world's largest Islamic country by population. Instead, the sound of gongs is used. In Marseille, France, the Muslim community has also discontinued the muezzin's call at its large mosque and instead sends a strong light signal to summon the people to prayer. In countries or areas where no public call to prayer is allowed, the call is made within the mosque at a moderate volume.

5. Excerpts from statement to the German Parliament

I will close by reproducing portions of a statement I made to the Bundestag (the German Parliament) on this topic:¹⁵

There is no human right which applies in an unlimited manner. The dignity of a human being is expressed in many respects, and they are to be collectively

¹⁴ Gernot Facius, "Der Ruf des Muezzins und die Glocke," *Die Welt*, 17 April 2001, <http://www.welt.de/print-welt/article445567/Der-Ruf-des-Muezzins-und-die-Glocke.html>.

¹⁵ For the full statement, see "Gemeinsamer Fragenkatalog für die öffentliche Anhörung des Ausschusses für Menschenrechte und humanitäre Hilfe des Deutschen Bundestages am 27.10.2010 zum Thema 'Religionsfreiheit und europäische Identität,'" <https://www.thomasschirmmacher.info/wp-content/uploads/2012/09/Schirmmacher-Fragenkatalog-Menschenrechtsausschuss-27102010-dritte-Fassung.pdf>.

acknowledged and implemented. There is no religious justification for child slavery or for getting around the prohibition against torture.

Insofar as international and European human rights standards are concerned, “encroachments” and “limitations”, respectively, in fundamental human rights are only allowed on the basis of a general law. (For instance, that was the foundation for the ruling made by the Federal Constitutional Court on the question of whether Muslim teachers in Bavaria are allowed to wear a headscarf. There was no corresponding law in Bavaria. In the meantime, this has been rectified.)

In such questions of limiting religious freedom in the case of conflict with other rights, the European Court of Human Rights has often ruled altogether very favourably and in a differentiating manner.¹⁶ In the process, it has involved limitations owing to public safety, public order, public health, and protection of the rights and freedoms of others.

With Islam, for reasons of equal treatment, a balance between religious freedom and other rights would have to occur. The only thing is that as far as the form of organization or support for a foundational democratic order is concerned, Islam does not bring along a historical accretion of preconditions over long stretches of time. At this point, equal treatment does not only have to occur formally. Rather, it also has to likewise encompass all content-related and other preconditions which, for example, churches have to fulfil.

Additionally, one cannot forget that in our country there are many laws touching upon moral questions and structures which have either been established against the will of the Christian religious community or go back to hard-won compromises. Why should it be any different for the Islamic religious community? Why should they experience no such incursion and for their part achieve in expedited proceedings what churches over the centuries and in recent decades have had to shed their skin for?

This also applies to building measures undertaken by various religions. It has to be a matter of equal treatment, whereby in the process Islamic mosque communities should not only compare themselves with mainstream Christian denominations, the large churches of which were almost all completely built in earlier times. Rather, they should compare themselves with Christian free churches, which also cannot build on every street corner, but must often search a long time for a suitable location on account of many constraints. Building laws and their implementation via democratically legitimate municipalities can also be applied to religious buildings, even if they are not able to prohibit religious buildings per se. In this respect, Muslims have to understand that in the case of approval to build mosques there can be delays, just as would be the case for every other religion or for every build-

¹⁶ All judgements by this court are discussed in Daniel Ottenberg, *Der Schutz der Religionsfreiheit im Internationalen Recht* (Wiesbaden: Nomos, 2009), 138–182.

ing of such a size. Thus, a Swiss village could by all means protect the historical village image and recommend a permissible height for all buildings, including the building height of a minaret or its location, which would not obstruct the image taken in when viewing a historic village.

However, to essentially prohibit particular religious communities from having certain conspicuous building elements, and to do so at the level of the constitution, as is the case in Switzerland, infringes upon religious freedom. This was possible up to now only under Swiss direct democracy, where a voice of protest from the population can break new ground in a direct manner. It is significant to note that the Swiss minaret initiative¹⁷ was backed neither by the government nor by any organized religious community. Also, the association of evangelical free churches, named the Swiss Evangelical Alliance, spoke out in opposition to the minaret initiative and against a prohibition on minarets. I have already critically pointed out that the Swiss minaret initiative, as far as I am able to survey its extent, has deliberately not distinguished between the construction of minarets and calls to prayer using loudspeakers. (By the way, the European Court of Human Rights will presumably annul the law one of these days.)

¹⁷ A well-researched work on the minaret initiative in Switzerland is Vincenzo Pacillo, “Stopp Minarett? The Controversy over the Building of Minarets in Switzerland: Religious Freedom versus Collective Identity,” in Silvio Ferrari and Sabrina Pastorelli (eds.), *Religion in Public Spaces: A European Perspective* (Ashgate, UK: Franham, 2012), 337–352.



Send your opinion piece to
editor@iirf.eu