

Berlin court bans Islamic prayer in schools

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Students in Berlin are not to be allowed to perform Islamic prayers on school grounds. While the Christian religion is routinely taught at public schools and—according to a 1979 Constitutional Court ruling—Christian school prayers can even be spoken during normal lessons, Islamic students are not allowed to perform their ritual prayers, even if they do this outside of lessons and only once a day.

This decision of the Berlin city government (Senate) was endorsed last week by the Superior Administrative Court in Berlin, overturning a ruling of the lower Administrative Court. The Social Democratic Party (SPD), which controls the Berlin Senate together with the Left Party and is responsible for school administration, welcomed the ruling, as did the Christian Democratic Party (CDU) and the Greens. The ruling may be contested by the plaintiffs.

What has happened? According to the Administrative Court, on November 1, 2007, at a secondary school in Berlin-Wedding, the plaintiff M. Yunus and other students had knelt on their jackets during a break in lessons and had prayed for about 10 minutes. This happened in a remote hallway of the school building that was not readily visible. They were observed by other students and a teacher, who informed the head teacher. The following day, the head teacher told the students concerned that it was not permitted to pray on school grounds and, according to the plaintiff, threatened them with expulsion from school.

The following day, the head teacher wrote a letter to the parents of M. Yunus warning, “Religious expressions—including prayers—belong in the private sphere or in places of worship. We have held an initial conversation with your son in which we explained to him the rules of conduct that apply at Berlin schools. I ask you, as parents, to support the school in its efforts”.

This rule of conduct, however, was created by the head teacher. A legal basis for it does not exist; and the student went to court.

In an interim decision, the Administrative Court said the school was obliged to allow students to carry out prayers outside of lessons. The school then provided an empty classroom that could be used during the break between the sixth and seventh lessons.

The court later found in favour of the plaintiffs on the substantive issue, ruling that a student is entitled to perform

Islamic prayers once a day during school hours outside of lessons. The school administration had not demonstrated this would cause any specific problems for the school that could militate against it, the court said.

This ruling was met with harsh criticism in political circles. Kurt Wansner, responsible for the CDU’s integration policies, said the decision would damage integration, outweighing anything that would be gained by it. Özcan Mutlu, educational spokesperson for the Greens, described the ruling as sending the “wrong signal on integration policy”. And the Neukölln district mayor, Heinz Buschkowsky (SPD), warned: “This is a further step in the consolidation of a parallel society and toward social division”. The school administration appealed.

In the press, the verdict was mainly presented as if the Administrative Court had granted the students an entitlement to a prayer room. However, this was explicitly not the case, and this facility was never actually called for; the plaintiff had merely sought to oppose the ban on praying outside of lessons.

Nevertheless, the school had kept precise records about the use of the room, which M. Yunus had always needed to have unlocked by a teacher. During the appeal hearing it was then hotly debated as to how often he had used the prayer room—supposedly only 14 times. “I can’t unlock the room now”, was often the reply of the teacher, according to the student. For this reason he had conducted his noon prayers in another classroom or in the gym locker room. Later, he had waited until after school.

In its appeal against the verdict, the reasons cited by the SPD-led Berlin Senate committee responsible for schools in the first instance are extraordinary. The Superior Administrative Court has apparently essentially supported them, although its written judgment has not yet been published.

The misleading argument that “anybody could come and claim the need for a prayer room” was the most absurd, since not even the plaintiff had claimed entitlement to such a space, not to speak of classmates of other faiths. The case had begun not with a claim of entitlement, but with a ban by the school administration. In other schools in Berlin, such conflicts have been resolved by allowing students to use unoccupied or unused rooms.

The Senate representatives raised much more serious accusations. They linked the performing of Islamic prayers outside of religious education to all kinds of possible conflicts

at school that might have a religious context: the mutual abuse of pupils of different religious communities, the mutual control of whether Ramadan is observed, insults against girls who do not wear headscarves, the justification of honour killings and expressions of anti-Semitic attitudes. It should be noted, however, that the Senate representatives did not even allege that the now 16-year-old plaintiff had been involved in any such incidents, nor did they seek to justify why permitting prayers would cause or intensify such conflicts.

The Superior Administrative Court not only accepted this defamation, it upheld the ban with an argument of perfidious subtlety that is probably only possible from the German judiciary.

First, the court found it plausible that the school might want to shield students engaged in prayer from those of other faiths and had therefore assigned a separate room for them. Second, the court said he was not entitled to such a room on the grounds of religious freedom, because it did not confer a right on believers to have their faith promoted. It was merely a defensive right against the state.

In other words, first the state is awarded the power to shield from others the Muslim who performs his religion visibly, i.e., to isolate him. In the second step it is stated that this isolation requires an organizational effort, to which the Muslim is not entitled. Derived from this is not the abandonment of the isolation, but a ban to practice one's religion!

The Senate justified its support for a ban on praying with the argument that the state must be neutral on religious matters. But the student had asked for nothing more. He did not claim that the state must identify itself with his religion, as might be the case if a crucifix were hung in a classroom. He merely opposed the state ban on him practising his religion outside of lessons.

In the first instance, the Administrative Court had referred to a much more comprehensive ruling of the Constitutional Court in 1979. The Constitutional Court had declared admissible that Christian school prayers could be spoken at the suggestion of a teacher during normal lessons. Students of other religion or no religion had the opportunity to sit quietly or to leave the room.

This decision blatantly violated state neutrality in religious matters, but it concerned Christian prayers. Religious tolerance is traditionally seen by German jurists and politicians as imposing an obligation of non-Christians to accept the privileged position of Christianity, which is closely linked with the German state.

When it comes to Islamic prayers, the Senate lawyers judged them completely differently in the oral hearing. They claimed that they were demonstrative and missionary: to exercise a "collective rite of a political nature meant to influence others". In a press release that welcomed the ruling of the Superior Administrative Court, the Senate claimed that other students were "put under pressure" by the Islamic prayers.

Ritual prayer, just as the confession of the faith, belongs to the five basic requirements or "pillars" of Islam. Its renaissance

has undoubted political and social reasons, including discrimination, exclusion, war in the Middle East, and class divisions in society into rich and poor. Because these developments are supported and promoted by organizations such as the SPD, the Left Party and the unions, the opposition to them, in part, does not take on a left-wing, progressive form, but the form of an increase of religious tendencies. The SPD responds, as so often in its history, with oppression.

The Left Party has partially welcomed the ban on Islamic prayer by the Superior Administrative Court. While the Left Party's education spokesperson in Berlin had supported the ruling of the lower court, and expressed "surprise" at the decision of the appellate court, the unofficial house organ of the Left Party, *Neues Deutschland*, quoted the Senate's attorney with virtually undisguised approval. "The controversy over prayers has polarized students. Girls are being bullied because they were not wearing the headscarf correctly; there were disputes as to who was the better Muslim or which religion was of higher value.... Insistently, school administrators and teachers have warned of a slippery slope, should the judges confirm the lower court's verdict. Senate representatives appeared much relieved after the decision".

If the sentence stands, this indeed would be a slippery slope. So far in the debate about Islam in relation to schools it has mostly concerned female teachers wearing the headscarf; now it directly concerns the democratic rights of students. And if Islamic prayer is seen as a political demonstration of a coercive character, against the pressure of which the state must protect others through prohibitions, this argument can be easily transferred to schoolgirls wearing headscarves.



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