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When a Church becomes a Mosque: The former Kapernaumkirche in Hamburg

Abstract: In most European states, a different legal order applies to the majority church as to religious minorities. Most European states and international law provide legal protection for religious minorities, either within the framework of religious freedom [e.g. art. 18 UDHR] or by specific legislation for numerical minorities [e.g. Capotorti 1979]. This article examines the case of the former Protestant Kapernaumkirche in Hamburg which has been turned into a mosque in order to show what individualisation theory [e.g. Davie 1994; Heelas, Woodhead 2005; Hervieu-Léger 1999, 2000; Cipriani 1999, Knoblauch 1999] can contribute to understand current developments in Europe's religious landscape, and for assessing the appropriateness of the current legal order for a situation where Christians constitute the numerical majority in Germany, but show low church attendance and decreasing religious belief [Pickel 2018]. Since the church is classified as a monument, even the legal framework of law on monument protection is considered.

Keywords: privatisation theory, individualisation theory, Islam, Church buildings, mosques

Introduction

Most states provide a different legal order for the majority church or churches as for minority religious communities. However, many large institutionalised churches see decreases in religious practice, while Muslim communities see rising numbers of members. This development has the potential to make the current legal order in ecclesiastical law obsolete, because of the bias between religious practice and rights enjoyed by the religious community.

The rededication of disused churches into mosques is a very visible example of this process, perhaps even more so than the building of new mosques. This is why

this article examines the former EKD Protestant Kapernaumkirche in Hamburg, turned into the Al-Nour mosque.

When Capotorti [1979: 42] defined the term of the minority in his report on art. 27 ICCPR, he mentioned as the main criterion a group's identification with other group members. For religious minorities, this means that groups of believers count as minorities if their religiosity [measured as „belonging, believing, behaving", Davie 1990: 455], is not privatised. The Capotorti report practically uses the same arguments as individualisation theory from sociology of religion, although this theory was developed later.

The article follows the following structure: First, it exposes legislation on religious freedom and religious minorities at the international, European and German levels. After that, it includes a chapter on German legislation on monument protection. We ask whether application of this legislation might lead to a different assessment of the rededication than legislation on religious freedom. Next, a chapter on privatisation theory in sociology of religion shows how privatisation of religious belief, behaviour and membership happen, both for Christianity and for Islam in Europe. A chapter on communitarianism and other approaches in political philosophy is included in order to show alternative approaches to those used in international, European and German law on individual, collective and group rights. The following chapter summarises some positions by Martin Luther and the EKD on the purpose of church buildings. The next chapter deals with the empirical case study. It is followed by the analysis and the conclusion.

Case study selection and Methods

The selection of the case study was made because the Al-Nour mosque is the only case of a rededicated EKD church in Germany. The method is a qualitative content analysis of legal documents, secondary literature on theories from sociology of religion and media coverage of the case study. The theoretical framework is applied to the case study.

1. Legislation on Religious Freedom and Religious Minorities

1.1. International Law

Although the rededication of the Kapernaumkirche is an internal German case with no international actors involved, we esteem it necessary to begin with the international level of legislation, because legislation at the lower levels has to follow it.

International law provides the following rights: Art. 18 Universal Declaration of Human Rights [1948] grants the right to religious freedom in international law.

The International Covenant on Civil and Political Rights [1966, General Assembly Resolution 2200A [XXI] guarantees the protection of religious minorities and strengthens the corporative side of religious freedom [art. 27 ICCPR]: „In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

According to the Capotorti study on art. 27 ICCPR [1979, E/CN.4/Sub.2/384/Rev.1], a minority distinguishes itself from the majority population by objective criteria: distinctive criteria [religion, language, ethnicity]; an subordinate position; numerical inferiority; citizenship of the country of residence; permanent residence. We can speak of a subordinate position if the state's legal system is completely tailored to the majority population's social, cultural and economical needs. But it is only by subjective identification with a group that a group of people with a distinctive criterion become a minority [Capotorti 1979: 42].

The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities [1992, UN General Assembly Resolution 47/135] asks states in art. 1 to protect the existence and the identity of such minorities. Its art. 2 grants persons belonging to minorities the right to enjoy their own culture and to profess their own religion [para. 1], to participate fully in public life [para. 2], in public decision-making [para. 3], and to found their own associations [para. 4]. Their may exerce these rights alone or together with other members of their group [art. 3].

The Vienna Declaration on the rights of members of national, ethnic, religious minorities [1993, UN Doc. A/46/678 Add. 2] asks in art. 26 states to „promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities" and in art. 27 to „include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society."

The Vienna Declaration and Programme of Action [1993, adopted by the World Conference on Human Rights in Vienna] states in its part II, para. 22: „The World Conference on Human Rights calls upon all Governments to take all appropriate

measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief." To conclude, these legal acts show a high degree of protection for religious and other minorities.

1.2. European Law

Since Germany is a member state of the EU, it could be useful to examine the contribution of European law to the right to freedom of religion and protection of minorities. The European Convention of Human Rights [ECHR] from 1950 formulates the right to individual positive and negative freedom of thought, conscience and religion in art. 9 para. 1: „Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance," [art. 9 para. 1 ECHR]. Collective observance of religious freedom, or collective religious freedom, is granted through the group of worshipping individuals. Today, this article is interpreted as an implicit guarantee of the corporative right for religious communities [Walter 2006: 332].

The Charter of Fundamental Rights of the European Union [2000, 2000/C 364/1] grants everyone in its art. 10 the right to freedom of thought, conscience and religion, either alone or in community with others, in public and in private, in worship, teaching, practice and observance.

The Treaty of the Functioning of the European Union [2007] states in its art. 17 that the EU respects and does not prejudice the status under national law of churches and religious communities in the member states. Its art. 19 allows the Council to combat discrimination for religious reasons.

1.3. German Ecclesiastical Law

Ecclesiastical law is regulated in the the German Constitution, the Basic Law [GG]. Its art. 4 grants individual and collective religious freedom. Art. 7 para. 3 regulates religious education in public schools. The Basic Law retains art. 136-141 from the

Constitution of Weimar in its art. 140 GG. Apart from these articles, the Federal Länder have the right to regulate the legal status of religious communities [art. 140, art. 137 para. 8].

Religious communities may either acquire legal personality of private law or of public law. The former follows the principles of civil law [art. 137 para. 4] and the legal form of the private association. The Catholic church, the Protestant Landeskirchen and the Jewish community have the legal personality of a corporation in public law [art. 137 para. 5 Weimar Constitution]. Some newer religious communities were able to gain this status. They do not count as part of the government, but they enjoy fundamental rights. The state may not exerce supervision on them.

Religious communities enjoy the right to draw taxes from their members, to employ staff according to public law, to legislation concerning internal affairs, such as self-organisation or membership, to run schools or welfare organisations, to build places for religious worship and to impart religious education at public schools according to art. 7 para. 3 GG. These rights are independent of the religious community's legal status. The religious community negotiates them with the Land.

The Federal Government created the German Islam Conference [DIK] in 2006 as a forum of representation for Muslim umbrella organisations. They have formulated recommendations for Muslim welfare organisations, religious education and theology degrees. The largest Sunni umbrella organisations are the Türkisch-Islamische Union [DITIB], the Islamrat für die Bundesrepublik Deutschland, the Verband der Islamischen Kulturzentren [VIKZ], the Zentralrat der Muslime [ZMD]. The Shia umbrella organisations are much smaller. Apart from the Ahmadiyya Muslim Jamaat communities in Hamburg and Hesse, no Muslim community has a legal personality in public law [Lehnhoff 2019].

Public building legislation requires that the needs of religious communities are met [Baugesetzbuch, BauGB and Baunutzungsverordnung, BauNVO, para. 1 V. 2 no. 2 and 6 BauGB]. No distinction is made depending on the religious community's legal status. Restrictions need to have a concrete motivation stemming from urban development [Institut für Weltanschauungsrecht 2017, Hammer, 2000; Gaudernack, 2011; Troidl, 2012]. A sentence by the German Constitutional Court [BVerfG 17/12/1975] declares that religious freedom does not only comprehend internal freedom to believe, but also external freedom to manifest one's faith

in public. This means that art. 4 para. 1 and 2 Basic Law do not only prohibit interventions by the state in religious practice, but that is also mandates that the state actively creates space for religious practice [Troidl 2012: 60]. According to a sentence by the Administrative Court of Bavaria [BayVGH 29/08/1996], the religious community's right to build the places of worship it needs is part of its members' collective right of religious freedom [Troidl 2012: 61].

2. Legislation on the Protection of Monuments

The Kapernaumkirche is classified as a monument, therefore it can have explanative value to look at German legislation on monument protection. Monument preservation falls to the German Länder [art. 70, 72 and 74 GG]. Law on monument protection [Denkmalrecht] belongs to administrative law. Its legal basis on the federal level is the law on monument protection [Kulturgutschutzgesetz, KGSG, 2016]. It protects cultural assets of special national value for German cultural identity, but even assets of particular value for other peoples. This act adapted German legislation to international and EU standards, especially to the UNESCO agreement of 1970. The main points of this act are: to ban illegal trade with cultural assets [UN resolution 2199/2015, no. 15-17; UN resolution 2253/2015, supplement I; UN resolution 2347/2017]; strengthening procedures for restitution; modernising regulations on cultural assets of national importance; enhancing protection of museum collections; closing gaps in prevention of export [Beauftragte der Bundesregierung für Kultur und Medien 2023].

Monuments [Denkmäler] fall into the categories of unmovable monuments such as buildings, archaeological findings, areas or landscapes, or movable monuments such as museum or archive objects. Each Land has its own law on monument protection, following the principle of the cultural sovereignty [Kulturhoheit] of the Länder [art. 30 GG]. It has also its own regional body for monument protection [Denkmalschutzbehörde, Landesamt für Denkmalpflege]. Most regional constitutions contain text on the protection of monuments [Davydov 2024], because legislation on monuments falls within the competence of the Länder. Monuments enjoy public protection as visible signs of local identity during former periods, which presumes a minimum amount of preserved building substance. For classification as a monument, a building does not need to be of extraordinary artistic value, and in some cases, not even of a minimum age [Davydov 2024].

The procedure to place a building under protection is as follows: Either protection already applies to a building by law, so it only has to be added to the register

[notification system], or a building can be protected by the formal legal act [declaration system] of registering a building [ibid.]. Alterations of monuments or in their surroundings may only be done with the consent of the Office for Preservation. All laws for monument protection call for a balance between preservation and the owner's interests. Sometimes, the claim from the Charter of Venice to use appropriate materials and techniques is followed [ibid.]. According to the State of Hamburg's law on Protection of Monuments, built monuments, areas, garden monuments and archaeological finds and in some cases, movable objects are protected as monuments [para. 1]. Buildings whose preservation lies within public interest because of their historical, artistic or scientific value count as built monuments [para. 2, HmbGVBl. 2013, 142 of 05/04/2013].

The Evangelical Protestant Church in Germany [EKD] created the foundation Stiftung zur Bewahrung kirchlicher Baudenkmäler in Deutschland in 1997. It is responsible for the preservation and restauration of ecclesiastical buildings.

3. Sociology of Religion: Individualisation and Privatisation Theory
The following chapter on sociology of religion is included for describing and explaining current and past processes and developments in the religious landscape. This applies both to theories from this discipline and to empirical literature on the situation of religion in Germany.

Sociology of religion has been shaped for a long time by the dominance of secularisation theory [Wilson 1982, Dobbelaere 2002, Bruce 1999, 2002; Norris and Inglehart 2004]. In the 1980s, rational choice theory appeared as an alternative model [Stark and Bainbridge 1985, Iannaccone 1991, 1992; Stark and Iannaccone 1994; Stark and Finke 2000]. Individualisation theory has developed as a third approach [Davie 1994; Heelas, Woodhead 2005; Hervieu-Léger 1999, 2000; Cipriani 1999, Knoblauch 1999; Wuthnow 200]. This theory states that modernisation is not necessarily linked to the decrease of religious belief, membership in religious institutions and religious practice. Instead, this theory distinguishes between church and religion: Individuals increasingly take their distances from institutionalised religion, but they adhere to religious beliefs even more than they used to do [Pollack, Pickel 2007:603].

Luckmann [1967] was the first sociologist to advocate individualisation theory by coining the term of „invisible religion", advancing a broad and functional definition of religion, detached from religious institutions: within religion, the human

being transcends its biological substance and becomes fully human [Knoblauch 1991: 12]. The term of privatisation of religion consists both of individual religiosity, i.e. the extent to which the individual adopts the religious perspective, and „churchness", i.e. the adoption of socially organised religious beliefs and practices. However, „churchness" assumes both the existence of a religious institution and of a holy cosmos [ibid.: 16]. Luckmann states that only in the West, religion was administered by a highly specialist institution whose knowledge was not accessible to laymen. Over time, the religious institution became more rationalised and secularised. So, secularisation for Luckmann does not mean a loss of religion, but a transfer of religion from the clergy to the laypeople [ibid.:18].

Davie [1994, 2002], for instance, distinguishes between traditional religious practices and church membership, and religious belief and religious sensitivity on the other hand [Pollack, Pickel 2007: 604]. She obeserves a belief becoming ever more individual and heterogeneous, „believing without belonging" which becomes the prevailing religious pattern in the Northern countries. Also Hervieu-Léger [1999] observes an increasing loss of control by religious institutions on individual beliefs and religious practices, often syncretised from different religious traditions [Pollack, Pickel 2007: 604].

Hervieu-Légers [2000] theory on individualisation of religious belief and practice was developed in a Christian context and with the background of the Universal Declaration of Human Rights [UDHR]. This theory thus works best for a modern post-Christian context [Vongraven Eriksen 2020: 16].

The religious situation in Germany shows patterns confirming individualisation theory: In 1950, 96 percent of the German population belonged either to the Protestant or to the Catholic church [Körs 2015: 55]. In 1990, about 36 percent of the German population were members of the Protestant and 35 percent of the Catholic church. In 2016, the respective figures were 26 and 28 percent. The Germans not belonging to any church has increased from 24 to 36 percent in the same period. Slightly more than 20 percent of West and 10 percent of East Germans believe in a personal God. 22 percent of East Germans and 50 percent of West Germans define themselves as religious. Almost 40 percent of West Germans and 70 percent of East Germans want to limit the religious practice of Islam [Pickel 2018].

Some of the literature apply individualisation theory [Dessing, Jeldtoft, Nielsen, Woodhead 2013] to Muslims in Europe. According to Cesari, individualisation is

a large trend among Muslims in Europe, a development which is not observable outside of Europe [Peter 2006: 106]. An example is that Cesari [1998:27], Geaves [1996], Frégosi [1999, 2000, 2004], Klinkhammer [2000], Bouzar [2001], Jonker [2003] observe a loss of influence of Imams and religious institutions among younger Muslims [Peter 2006: 107]. There are two different explanations for this: the first one states that individualisation and fragmented authority lead to the liberalisation of Islam, the second that individualisation and fragmented authority were always present in Islam [Peter 2006: 107]. Cesari understands Muslims' individualisation as a form as adaptation to European society, together with secularisation and privatisation [Peter 2006].

Within the first position, we can distinguish further between those scholars who see as the primary cause of individualisation and fragmented authority travel, globalisation of Islam or new media [Mandaville 2001, 2003, Peter 2006: 107]. The second group of scholars understand Muslims' situation as immigrants in Europe as the cause of individualisation. Among these, we find Roy [2004], Cesari [2004] and Fadil [2005], who claim that young Muslims in Europe tend to individualise their religion because of the lack of a Muslim society with its institutions. So, they depend on their own search for knowledge and interpretations [Vongraven Eriksen 2020: 21]. Fadil [2005] shows how young Muslim women in Belgium rescue their individual faith from the authority of their parental culture, by using it for distancing themselves from it [Vongraven Eriksen 2020: 21].

Similarly, Jeldtoft [2011] observes that for non-institutionalised Muslims, being a Muslim means a process of self-identifying and belonging to a community made of morals and values. Worthington's [2015] empirical study of progressive Muslims shows similar findings. She interprets the progressive Islam practiced by her interviewees as a form of individualised religion [Worthington 2015: 134]. In progressive Muslim communities, religious authority is shared and women and other traditionally excluded groups have access to it. Instead of asking a scholar for islamic advice, believers can make ijtihad, independent reasoning, applied to everyday religion [Worthington 2015: 190].

In contrast to this explanation stands the position of Amir-Moazami and Salvatore [2003], who interpret current developments of individualisation among second-generation Muslims in Europe as continuations of reformist processes in the late 19th century in the Islamic world. They contribute by considering how Muslim religiosity takes place within a discursive tradition. They also prompt us to reflect

on the criteria by which we measure individualisation in Islam: What is the Islamic doxa from which individualising Islam departs? And how can we distinguish between internal interventions in the tradition of Islam, on the one hand, and individualisation, on the other hand? [Peter 2006: 107].

Roy [2004] combines the two positions by stating that if authoritative knowledge production in Islam always has been pluralised and fragmented, this can partly be used to explain individualisation processes among Muslims in Europe [Vongraven Eriksen 2020: 49-50].

4. Political Philosophy on Group Rights, with a focus on Communitarianism
The following chapter on communitarianism and Boshammer [2003] is included because it offers an explanation of the relationship between the individual, groups and the state. These groups may be ethnic, religious or distinguished by other criteria. These approaches claim to create a balance between granting equal rights to all citizens and to do justice to cultural differences.

Taylor [1992] explains the importance of identity and recognition in modern society by the collapse of social hierarchy and its replacement by universal and equal dignity [Taylor 1992: 27]. In the pre-modern age, identity and recognition were unproblematic and taken for given, because they were assigned by society [ibid.: 35]. The transition towards democratic society means the progressive disposal of ascribed characteristics that used to be essential to the self's identity [Sandel 2003: 149]. In private, the self is embedded in ties to family, friends etc., because it is incapable of self-knowledge alone and shares a view of the common good. In public, this does not apply, because ties to the political or religious community are not strong enough to generate the same allegiance [Sandel 2003: 156]. In the public sphere, a politics of equal recognition means the equalization of rights and entitlements between all citizens. The development of the modern idea of identity has lead to a politics of difference, to acknowledge each citizen or group in its individual identity [Taylor 1992: 37 f.]. These two principles contradict each other, and the principle of justice has prevailed in the process of building a homogeneous nation-state. Taylor favors a model where the integrity of cultures has an important place, and thus groups enjoy certain rights destined to maintain their cultural difference (politics of equal respect instead of difference-blind liberalism) [Taylor 1992: 61].

Walzer [1983] understands the political community as a group of people committed to dividing and sharing social goods, such as power, welfare or territory.

A pre-condition for this is distributive justice. The first and most important question belonging to distributive justice is how and by which criteria membership in this group is acquired [Walzer 1983: 1]. Territorial states and sometimes other kinds of communities enjoy the right to self-determination. This right is subjected both to internal decisions by the members themselves and to the external principle of mutual aid [between states]. The decision of membership falls under the right to self-determination [ibid.: 23].

One perspective that we esteem to belong in this chapter is that of Boshammer [2003], although she does not understand herself as a communitarian [Boshammer, e-mail from 22nd October 2023]. She develops a framework about the different kinds of rights which groups can claim for themselves and which the state can grant to them. Collective rights include the right to self-determination, that is, the state may not stop the group to care for its cultural heritage; the right to participation, that is, the guarantee that government and the public legal order take the group's interests into account; the right to recognition, that is, the group's right to toleration by and cooperation with majority society; and the right to self-assertion, that is, the group's right to override the individual rights of its individual members for the sake of preserving its cultural heritage [Boshammer 2003: 112 ff.].

5. Luther's Position on Preservation of Churches

The EKD is a federal umbrella organisations of regional Protestant churches, some of which are Lutheran, some Reformed and some United. The Nordkirche, to which the State of Hamburg belongs, is Lutheran. In the search for statements inherent to Lutheran Protestantism on this issue, the following quote by Martin Luther can be used: „There is no other purpose in building churches than that Christians may come together to pray, hear the sermon and receive the sacrament. And where such purpose ceases to be, one should destroy these churches, as it is done to all other houses, when they no longer serve their purpose" [own translation].

„Denn kein ander ursach ist Kirchen zu bauen, so ein Ursache ist, denn nur, dass die Christen mögen zusammenkommen, beten, Predigt hören und Sakrament empfangen. Und wo dieselb ursach aufhöret, sollt man dieselben Kirchen abbrechen, wie man allen anderen Häusern tut, wenn sie nimmer nütz sind," [Epistel am St.-Stephans-Tage 1522, in: WA 10/1, 1, 252 anno 1522, quoted after Jäggi 2013: 55-56].

On first sight, one could interpret it as even Luther would have supported the demolition of a church no longer in use. But one can also read it as more ambiguous: to the same extent as one can preserve other buildings no longer in use, but with monumental value, this can also apply to churches.

The EKD's guidelines on rededications of former churches state that the sale and re-use for a church may not changes its symbolic or memory value. In principle, this excludes a re-use by non-Christian religious communities [Körs 2015: 58].

6. Case Study: The Al-Nour Mosque in Hamburg

The Al-Nour Mosque is located in the former Lutheran Protestant Kapernaumkirche in Hamburg-Horn. The estimated 130,000-150,000 Muslims living in Hamburg gather in around 60 congregations, most of which which are located in inappropriate and unpractical buildings. There are three visible mosque buildings with minarets: the Imam Ali mosque from the 1960s, the Centrum mosque and the Bait-ul-Rasheed mosque [Körs 2015: 56].

The Kapernaumkirche was the first EKD building to be transformed into a mosque. It was built from 1958-1961 after a draft by Otto Kindt. It is a modern building made of concrete, bricks and glass. Falling membership figures and church taxes forced many congregations in Hamburg to merge or shut down. The last service was held on December 26, 2002. After a merger of congregations in 2004, the church was desacrated by the EKD congregation of Hamburg-Horn. It sold part of the property to an investor, who planned a daycare there, but this plan was not realised [Körs 2015: 56]. The building was left empty and its terraces were sometimes used by homeless people.

In November 2012, the new owner sold the estate to the congregation Al-Nour. This Muslim community with its 600 members had been active in Hamburg since 1993, but worshipped in an underground car park. It opened the mosque in 2018 with the name of Al-Nour Mosque [Nico Binde: Wie aus einer evangelischen Kirche eine Moschee wurde, Abendblatt, 26/09/2018]. Al-Nour belongs to the Rat der Islamischen Gemeinschaften in Hamburg e.V. and in the ZMD [Hamburger Kirche wird zur Moschee, FAZ 21/09/2015].

The structural alteration works were mostly financed by donations and by the state of Kuwait. The cross on the tower was replaced by the word „Allah" in Arabic. The former choir loft was enlarged in order to make space for two separated places

of worship for men and women. A new room was built between the nave and the tower, used for meetings and ritual lavations. Green light was added to the tower [Hamburger Kirche wird zur Moschee, FAZ 21/09/2015].

The rededication triggered a debate among churches, parties, speakers from civil society and academia. While the churches were mostly against rededication, parties were divided according to their political standing and actors from civil society and academia favoured it. The former EKD president Nikolaus Schneider perceived the rededication as a „spiritual imposition for the people living there and identifying with the church", because „Islam rejects the crucified and resurrected Jesus and his cross". The president of the church district Hamburg Ost Johann Hinrich Claussen would have preferred to demolish the church. He said that people with little relation to the church would be alienated by the rededication, because they still would perceive churches as holy places. The bishop of the regional church of Hamburg Nordkirche Kirsten Fehrs took a more moderate stance, stating that such a rededication would not happen again with the new legal order of the Nordkirche. In any case, she would try to accept the situation and to live on good terms with the Al-Nour congregation.

While the CDU saw the community of cultures and religions in danger and feared the rededication would send a message of exchangeability of Christianity and Islam, the SPD claimed that places of worship should unite and not divide. A right-wing citizens' initiative demonstrated against the mosque. The director of the Academy of the World Religions Wolfram Weiße interpreted the rededication as asign for the togetherness of religions. The theologian Perry Schmidt-Leukel spoke on the German Church Day 2013 in favour of the rededication saying that the same worship of God would be possible in different forms, enriching religious pluralism [Körs 2015: 57].

In spite of these broad differences in positions, the debate was carried out with moderation and it did not end in a conflict. One reason might have been that all actors understood from the beginning that the sale could not be cancelled. Another reason might have been that the Al-Nour congregation had been very cooperative and looked for dialogue with neighbours, the city government and other religious communities. Its leader Daniel Abdin described the building as a church from the outside and a mosque from the inside, and he expressed joy to have obtained a church classified as a monument. He also declared to have worked alsways in favour of integration and interreligious dialogue [Körs 2015: 57].

7. Analysis

German legislation on monumental protection lead to the following assessment: The State of Hamburg's law on Monument Protection allowed to classify the Kapernaumkirche as a built monument. The building's status as a monument was not altered by rededication. According to German building legislation [Baugesetzbuch, BauGB and Baunutzungsverordnung, BauNVO, para. 1 V. 2 no. 2 and 6 BauGB], the only restrictions allowed to be made are restrictions motivated by urban planning and not by the religious community's legal status. Since this building already existed, the rededication did not infringe building legislation. The relevant decision of the Federal Constitutional Court [BVerfG 17/12/1975 on art. 4 para. 1 and 2] even mandates the state to create places of worship for its religious communities. So, although the Muslim community who owns the mosque and its umbrella organisation ZMD has no legal personality in public law, it still was granted equal rights to have a place of worship with the large EKD and Catholic churches.

The UDHR and the ICCPR protect religious freedom both for the majority and the minority. The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities [18/12/1992, UN General Assembly Resolution 47/135] and the Vienna Declaration on the rights of members of national, ethnic, religious minorities [25/06/1993, UN Doc. A/46/678 Add. 2] request states to strengthen minority rights to self-determination, to participation and to recognition, in Boshammer's terms. So, these legal acts would support the rededication. On the other hand, they both enable the majority and the minority to have places of worship, but building a new mosque in another place would have equally fulfilled the requirements set by these legal acts.

The only legal act which might be interpreted against the rededication is part II, para. 2 of the Vienna Declaration and Programme of Action [25/06/1993, adopted by the World Conference on Human Rights in Vienna] calling on governments to take measures against the desacration of religious sites. However, it is likely this does not apply when a religious community itself decides to sell a religious site no longer in use. Such a sale falls within the right to self-determination.

The EKD's and the individual Protestant believer's right to religious freedom [in their individual, collective and corporative dimensions] are not violated by this rededication. When taking Luther's statement on the purpose and preservations of churches into account, it becomes clear that he was much more radical than

today's legislation on monument protection. Since he didn't see any other purposes in a church than to offer Christians a place to meet and to worship, they should be demolished.

The Communitarians Sandel [2003] and Taylor [1992] argue in favour of a politics of equal recognition of all citizens, but where groups enjoy certain rights destined to maintain their cultural difference [politics of difference]. Different, however, to modern legislation on religious freedom, Communitarians would apply these principles to all citizens in their individual identity, not making them dependent of whether individuals identify with their religious group or whether they adhere to a privatised form of religiosity. One can thus assume that Communitarians would argue for an equal visibility of Christian and Muslim buildings in the city, and understand why even nominal or privatised Christians might not feel at ease with this rededication. They could perhaps suggest that a new mosque might be built in another place and that the Kapernaumkirche might be preserved as a built monument.

The one fact contradicting this reasoning is the financial help from Kuwait, a state where Muslims are the majority. This makes questionable whether all the reasonings on protection of minorities from international law apply, since they probably were not formulated with a minority who is helped from another country in mind. In this case, individualisation theory applied to Islam could not be applied either, because of its statement that individualisation processes can only be observed among to Muslims in Europe, while Muslims outside of Europe and thus also in Kuwait, remain institutionalised and in some cases, even radicalised. The financial contribution by Kuwait thus counteracts the European individualisation process. Communitarianism cannot be used in this case, because it only makes statements on groups within a state and not on interventions from other countries.

Conclusion

In Boshammer's [2003] terms, the rededication of the mosque is an example of granting the collective rights to self-determination [i.e. to organising the preservation of their cultural heritage] and to recognition [because the newly-opened mosque is visible and has to be tolerated by society] to the Muslim community. Boshammer's distinction between different kinds of group rights allows for the conclusion that the Muslim community's right to self-determination is balanced against the Christian congregation's right to self-determination: the former has the right to acquire a place of worship, the latter has the right to sell one that is no

longer in use. As far as German public authorities were involved in allowing the rededication, it also counts as an example of the right to participation in public life.

Individualisation theory shows that the loss of influence of religious authorities over individual belief and religious practice have gone further in Christianity than in Islam. In our case study, a majority of Christians decides to no longer attend church, that is, to privatise the „behaving" dimension of religion [although the „belonging" and the „believing" dimensions still might be higher, but this is not relevant for the rededication]. Meanwhile, the Muslims living in Hamburg privatised the „behaving" dimension to a lower extent. „Behaving", here, has also a broader meaning, since it not only refers to mosque attendance, but also to collection of money for acquiring a place of worship. And this in spite of their lower number than the number of Christians in Hamburg, that is, they score lower on the „belonging" dimension (in absolute figures, not in percentages of the population with an ethnic background from respective mostly Christian or Muslim countries).

The examined literature on the application of individualisation theory to Islam leaves room for different interpretations: It suggests that although Islam in Europe today is still institutionalised enough to allow for the rededications of churches to mosques or of buildings of new mosques, these processes are only of a temporary nature. On the long term, if no interventions from majority Muslim countries counteract this process, individualisation will also affect Muslims in Europe, whether this is a continuation of reformist processes in the late 19th century in the Islamic world, or an adaptation to the behaviour of most nominally Christians in Europe.

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