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Hans Gerald Hödl and Lukas Pokorny  
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# Religion in Austria

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## **Jehovas Zeugen in Österreich als Körperschaft des öffentlichen Rechts.**

Edited by Walter Hetzenauer. Schriftenreihe Colloquium, Band 20. Wien: Verlag Österreich, 2014. Pp. 330. ISBN: 978-3-7046-6594-2. €56.00

*Richard Potz*

The present volume of the 'Colloquium' series contains twelve papers dedicated to the legal situation of Jehovah's Witnesses as a legally recognised religious society (*gesetzlich anerkannte Religionsgesellschaft*) in Austria. In the introductory chapter (pp. 27-34), Jürgen Noll describes the 'long road to recognition', starting with the first application in 1978 and ending with the finally successful fifth application in 2007. In fact, no religious community requesting legal recognition has influenced the development of this legal process in the last decades as greatly as Jehovah's Witnesses have through their complaints to the Austrian Supreme Courts and the European Court of Human Rights. In chapter 2 (pp. 35-87), a fundamental article in this collection, Helmut Ortner analyses the Austrian concept of legally recognised religious communities which have the status of public-law corporations, as provided in Article 15 of the *Staatsgrundgesetz (StGG, Basic Law)* and explicitly laid down in the special laws for individual churches and religious societies (Article II Concordat 1933, § 1 section 2 I *ProtestantenG* 1961; § 1 *IsraelitenG* 2013; § 1 *IslamG* 2015). Nevertheless, legally recognised churches and religious societies do not have the essential characteristics of public-law corporations in the sense of administrative law. They are neither state-established institutions nor have they been conferred sovereign power. By their very nature, they lie outwith state structures, and their legislative, administrative, and judicial acts are not subject to state surveillance. In the final part of his article, Ortner deals with the constitutional foundations of the bestowal of public-law status, an issue that was raised particularly in connection with the recognition procedures of Jehovah's Witnesses in Austria (as well as in Germany). In fact, we are talking about a fundamental question of current Austrian law on religion, which is determined by differential treatment of legally recognised and non-recognised religious communities, constitutionally laid down in the aforementioned Article 15 *StGG*.

This differential treatment has remarkable consequences within various legal spheres for the religious community concerned as well as its individual adherents, as shown *inter alia* in the *Hofmann vs Austria* Case, mentioned below.

According to the currently prevailing theory, conferring the status of a public-law corporation has two different motives: On the one hand, it results from the guarantee of religious freedom for securing the religious communities' right of self-determination; on the other hand, it implies the offer to co-operate with the state in certain aspects. Regarding the former, the present legal situation is highly unsatisfactory. The special status for legally recognised religious communities could only be justified if there existed no differentiation between the two legal forms of religious communities as far as legal positions are concerned, which are directly derived from the fundamental right of religious freedom. Any differentiations provided by the legal order must be justified on objective and reasonable grounds—otherwise they represent non-objective infringements of the guarantees of fundamental rights and should be abolished. Unfortunately, for the time being, there is no indication whatsoever of any such intention, either with regard to the legislator, the Constitutional Court, the High Administrative Court, or even the European Court of Human Rights (ECHR). With regard to the second aspect, the so-called 'legitimate constitutional expectations' of the state primarily concern the contributions of the religious communities in the sphere of education, social and welfare activities, as well as their role as dialogue partners concerning the complex ethical issues the modern state has to comply with. This status makes clear that the state accepts the activity of churches and religious societies in the public arena and does not wish to displace them into the private sphere. In this context one has to keep in mind Article 17 section 3 of the TFEU (Treaty on the Functioning of the European Union), which emphasises the "specific contribution" of churches and religious associations and introduces "an open, transparent and regular dialogue" with them. Linguistically, the notion of a *public-law* status already implies a certain degree of willingness to co-operate with the State according to the self-understanding of the community. If one—quite legitimately—wants to avoid contact with state institutions, then the application for a public-law status in the last consequence is not comprehensible. This is of course not the case when the discrimination of religious communities without public-law status reaches a level that has consequences in the sphere of basic rights guarantees. As such, the question has regularly arisen as to whether the exclusion of the non-recognised religious communities from numerous benefits (alternatives, reductions, or exemptions) could be justified on reasonable grounds. Regardless of the



specific context, both Austrian High Courts referred exclusively to the explicit wording of numerous legal texts. Neither an interpretation in accordance with the constitution nor a repeal of the provisions in question on the grounds of unconstitutionality was taken into account—a fact which Jehovah’s Witnesses have always justly complained about. If Ortner argues for a constitutional right on awarding public-law status, which—according to a decision of the German Constitutional Court—leaves it open as to whether a religious community wishes to make use of the possibilities for cooperation with civil society associated therewith, this pre-condition is ignored. Against this background, the conferring of a public-law-status is not a case of ‘purchased privileges’ but depends on the respective religious community’s readiness for co-operation with the State according to its self-understanding. For that reason alone, the public-law status of such groups cannot be interpreted as a privilege in the tradition of an outmoded ‘etatic’ understanding of the State.

Next (pp. 89-152), Walter Hetzenauer describes the content of the status of legally recognised churches and religious societies. In many legal fields, significant consequences are derived from public-law status. The chapter provides an excellent overview of the diversity of the specific regulations for the legally recognised churches and religious societies, which—as already stated in the comment on the contribution by Helmut Ortner—raises the issue of granting privileges to the religious communities in question in areas where the implementation of religious freedom is at stake. In her chapter entitled “Public-law Recognition and Discrimination” (pp. 153-169), Damaris Schwebisch gives a brief summary of the Austrian anti-discrimination law, including a typical case concerning a Jehovah’s witness. In chapter 5 (pp. 171-189), David Vldar deals with Recognition and *Sektenstigma* (‘sect stigma’). Obviously, the use of the term ‘sect’ in connection with a specific group implies a certain degree of defamation. Undoubtedly, the term has a somewhat negative connotation, that is, in the sense of stigmatisation. For a long time, the notion of ‘sect’ was not a term encountered in the Austrian legal order. Things changed in 1998, when the Federal Office for Information on Sect-Issues (*Bundesstelle für Sektenfragen*) was set up by the Federal Law concerning the Establishment of a Documentation and Information Office for Sect Affairs (Federal Office for Sect Affairs) (*Bundesgesetz über die Einrichtung einer Dokumentations- und Informationsstelle für Sektenfragen [Bundesstelle für Sektenfragen]*). The *Bundesstelle* was established as an independent institution under public law acting in the field of non-sovereign administrative power under the supervision of the Federal Minister for Environment, Youth, and Family. According to § 1 section 1, it is the duty of the *Bundesstelle* to document and in-

form the public about possible dangers arising from sects and the activities of sect-like organisations. The legislator describes the movements in question as communities based on religious or philosophical beliefs which may give rise to risks adversely affecting life or physical health, and the free development of personality. They include: the freedom to join or leave religious or philosophical communities; the integrity of family life, property, or the financial autonomy of the individual; and the free mental and physical development of children and juveniles, provided that a well-founded suspicion to this effect exists. For many years Jehovah's Witnesses belonged to those groups towards which the majority of inquiries were directed. Since legal recognition, the situation of Jehovah's Witnesses has changed because, according to § 1 section 2, the law does not apply to legally recognised churches and religious societies. If there are some complaints, the *Bundesstelle* is only obliged to inform the church or religious society affected by them.

Richard Leitner (pp. 191-200) informs the reader about pastoral care and mission in the concept of Jehovah's Witnesses, and Gerson Kern (pp. 201-213) about religious orders and their members in Austrian law. According to the understanding of Jehovah's Witnesses, special full-time servants such as special pioneers, travelling overseers, missionaries, or Bethelites are religious ministers. The members of the order receive a small fee to cover expenses. The order itself has no funds. Finally, Kern lists the existing special state regulations for members of an order, which must also apply to the members of the order of Jehovah's Witnesses. Patrick Warty (pp. 215-235) deals with one of the most practical consequences of legal recognition in Austria: 'privileges' related to financing and tax law. Like many other churches and religious societies, Jehovah's Witnesses make no use of the option of the easier way of collecting arrears by way of administrative execution. The provisions of tax law which are relevant to religious communities are, on the one hand, based on the consequences in revenue law resulting from the public-law status of legally recognised churches and religious societies, hence mainly in regard to corporate income tax liability and value added tax liability. On the other hand, Austrian tax law provides for benefits, that is, reductions or exemptions for corporations which pursue "ecclesiastical aims" (*kirchliche Zwecke*) in addition to those with public utility or charitable purposes. According to § 38 section 1 of the Federal Revenue Act (*Bundesabgabenordnung*) 1961, "ecclesiastical aims" are those that help to promote only legally recognised churches and religious societies. As a consequence, State-registered religious confessional communities (*staatlich eingetragene religiöse Bekenntnisgemeinschaften*) are granted tax benefits for welfare and charitable purposes but not for religious purposes in the

strict sense. In this respect, the legal recognition has considerable practical importance for Jehovah's Witnesses at the financial level.

In chapter 9 (pp. 237-249), Christian Trabucco gives an overview of the biblical foundations of the attitude of Jehovah's Witnesses towards military service and their history of conscientious objection in Austria. Article 9a of the Austrian Constitution guarantees the right to render a form of non-military service in the case of conscientious objectors. This is specified in § 2 of the Act Concerning Non-Military Service (*Zivildienstgesetz*) 1986, according to which a person liable for military service is obliged to explicitly declare that he is objecting for reasons of conscience—except in cases of self-defence or defence of others from imminent attack—to use force of arms against other human beings and would be subject to moral conflict if forced to do military service. In this case the person is obliged to serve in alternative civil services. For several years, a practice existed that Jehovah's Witnesses who also rejected civil service were neither called to arms nor to non-military civil service. At the end of the 1990s this was changed so that some young Jehovah's Witnesses who rejected military and civil service were sentenced to imprisonment. However, in the following years, Jehovah's Witnesses revised their doctrine; thus, the question of active non-military-service is currently considered to be a matter of one's decision. Therefore, the problem was more or less eliminated.

In the following chapter (pp. 251-268), Timon Jakli deals with the rehabilitation of Jehovah's Witnesses who were victims of the Nazi terror regime, often murdered without trial. This was a complicated and protracted process, which has found its final conclusion in the 2009 Cancellation and Rehabilitation Act (*Aufhebungs- und Rehabilitierungsgesetz*). Next (pp. 269-286), Patrick Warty presents three famous decisions in his paper entitled 'Jehovah's Witnesses in Austria before the European Court of Human Rights'. The oft-cited case of *Hoffmann vs Austria* (ECHR 22 June 1993, appl. no. 12875/87) addressed the legality of taking into account the religious conviction of one of the parents being an adherent of Jehovah's Witnesses when deciding on the right of custody over the children after divorce. The ECHR held (by five votes to four) that there had been a violation of Article 8 taken in conjunction with Article 14 of the Convention: "Notwithstanding any possible arguments to the contrary, a distinction based essentially on a difference in religion alone is not acceptable". The principal assumption that a child being educated by a member of a religious minority would be pushed to the margins of society was considered to be incompatible with the concept of a democratic society. Therefore, the Court could not find that a reasonable relationship of proportionality existed between the means employed and the aim pursued. In fact, this judgment had great prej-

udicial effect on the judicial practice, which strictly adheres to the Court's statement that interference in fundamental rights can only be legitimated if this would be the only way to ensure the child's wellbeing. Since then, in matters of custody rights relating to religion, the guardianship bodies and courts usually abstain from withdrawing the right to custody completely but, if need be, order a restriction concerning certain affairs, often regarding religious activities or health treatment. In a number of decisions, the ECHR had to deal with two crucial issues of Austrian law on religion—the preconditions of legal recognition of religious communities on the one hand, and the unequal treatment of legally recognised religious societies and State-registered religious confessional communities on the other. It must be underscored that both are closely linked and must not be considered in isolation. The most prominent decision of the ECHR deals with the recognition of Jehovah's Witnesses (ECHR 31 July 2008, appl. no. 40.825/98). The Court stated that, in view of the substantive privileges accorded to legally recognised religious societies, the obligation under Article 9 of the Convention requires therefore that if a state sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status, and the criteria established must be applied in a non-discriminatory manner. Unfortunately, this decision was never adequately implemented. In three decisions concerning military and non-military service (*Lang vs Austria*; *Gütl vs Austria*; and *Löffelman vs Austria*; appl. no. 28.648/03, 49.686/99, 42.967/98, respectively), the ECHR considered the relevant provisions of the Austrian Military Act (*Wehrgesetz*) and the Non-Military Service Act to be discriminatory. The applicants were Jehovah's Witnesses acting as 'elders' for the community, which involved providing pastoral care, conducting church services, and preaching. They argued that the exemption from military or non-military service did not apply to them as opposed to members of recognised churches and religious societies although they were charged with comparable religious functions. The Court established a connection to its judgment from July 2008, and accordingly, to the fact that Jehovah's Witnesses had been denied legal recognition on the basis of a precondition (ten-year waiting period) contravening the Convention's guarantees. This was a quite problematic approach because, reacting on the specific situation of Jehovah's Witnesses, it has no consequences for any other religious community. The last chapter (pp. 287-309) by Armin Pökl gives an overview of 'Jehovah's Witnesses as a public-law corporation in Germany'.

The present volume is a sort of handbook on the special law on religion regarding the religious society of ‘Jehovah’s Witnesses in Austria’—finally recognised after lengthy difficulties—and, as such, currently unique.

## References

- Bundesgesetz über die Einrichtung einer Dokumentations- und Informationsstelle für Sektenfragen (Bundesstelle für Sektenfragen), in: *Bundesgesetzblatt für die Republik Österreich*, issued on August 20, 1998, Teil I; online: [http://www.ris.bka.gv.at/Dokumente/BgblPdf/1998\\_150\\_1/1998\\_150\\_1.pdf](http://www.ris.bka.gv.at/Dokumente/BgblPdf/1998_150_1/1998_150_1.pdf) (accessed: November 18, 2016)
- Kundmachung: Wiederverlautbarung des Zivildienstgesetzes, in: *Bundesgesetzblatt für die Republik Österreich*, issued on December 23, 1986, 267. Stück; online: [https://www.ris.bka.gv.at/Dokumente/BgblPdf/1986\\_679\\_0/1986\\_679\\_0.pdf](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1986_679_0/1986_679_0.pdf) (accessed: November 18, 2016)
- Bundesgesetz: Bundesabgabenordnung – BAO, in: *Bundesgesetzblatt für die Republik Österreich*, issued on August 4, 1961, 54. Stück; online: [https://www.ris.bka.gv.at/Dokumente/BgblPdf/1961\\_194\\_0/1961\\_194\\_0.pdf](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1961_194_0/1961_194_0.pdf) (accessed: November 18, 2016)
- Consolidated Version of the Treaty on the Functioning of the European Union*, issued on October 26, 2012; online: [http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_2&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF) (accessed: November 18, 2016)