

State-Dialogue with Muslim Communities in Italy and Germany - The Political Context and the Legal Frameworks for Dialogue with Islamic Faith Communities in Both Countries

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A. Introduction - Muslims in Europe: Integration and Security

Estimates of the number of Muslims in EU Member States vary widely, depending on the methodology and definitions used and the geographical limits imposed. Excluding Turkey and the Balkan-regions, researchers estimate that as many as 13 to 20 million Muslims live in the EU: That is about 3.5 - 4% of the total EU population.¹ Muslims are the largest religious minority in Europe, and Islam is the continent's fastest growing religion. Substantial Muslim populations exist especially in Western European countries, including France, Germany, the United Kingdom, Spain, Italy, the Netherlands, Belgium and the Scandinavian Countries. Europe's Muslim populations are ethnically diverse and Muslim immigrants in Europe hail from a variety of Middle Eastern, African, and Asian countries, as well

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¹ The European Monitoring Centre on Racism and Xenophobia (EUMC) has pointed out "that Muslims, like other religious groups remain inadequately recorded statistically" and that "even demographic data relies often on unofficial estimates that vary substantially;" see MUSLIMS IN THE EUROPEAN UNION: DISCRIMINATION AND ISLAMOPHOBIA, EUMC, ed. (2006), at 7-8. Some commentators also point out how problematic the definition of "Muslim" or "cultural Muslim" often is, since it is - due to a lack of data - often based on ethnicity rather than religious belief and thus follows the Islamic concept that one becomes a Muslim either by birth or by religious conversion and that one cannot change one's religious belief. For further discussion, see Riem Spielhaus, *Religion und Identität. Vom deutschen Versuch, "Ausländer" zu "Muslimen" zu machen*, March INTERNATIONALE POLITIK 28, 29-32 (2006), available at: www.internationalepolitik.de/archiv/2006/maerz2006/religion-und-identitaet--vom-deutschen-versuch----auslaender---zu---muslimen---zu-machen.html, accessed: 2 April 2007.

as Turkey.² Most Muslim communities have their roots in Western Europe's colonial heritage and immigration policies of the 1950s and 1960s used to counter labor shortages during the period of reconstruction after World War II. These policies attracted large numbers of North Africans, Turks, and Pakistanis. Furthermore, in recent years, there have been influxes of Muslim migrants and political refugees from other regions and countries, including the Balkans, Afghanistan, Iraq, Somalia, and the West Bank and Gaza Strip.

While European Muslims share, or are affiliated with, Islam as a common religious belief, they are far away from forming a homogenous or unified community with a common identity. This is due to the variety of their or their family's, country of origin, generational differences, and variations in religious practice and political affiliation.³

The proportion of Muslims who have citizenship of an EU Member State varies among European countries largely as a consequence of different naturalization regulations. The same is true with regard to the degree of legal and social integration of Muslim communities: In most EU Member States it remains a challenge still today.⁴

² There are also "older" Muslim communities in the Balkans particularly in Bosnia-Herzegovina, Albania, Kosovo, Macedonia, Greece and Bulgaria as well as smaller Minorities as e.g. Tartars in parts of Poland and of course parts of the Sinti and Roma populations throughout Europe.

³ Especially many of the second and third-generation Muslims born into secular European societies are re-examining their identity and their beliefs. On the search for new identities and the dangers of a "deterritorialized" Islam, see OLIVIER ROY, *GLOBALISED ISLAM: THE SEARCH FOR A NEW UMMAH* (2004).

⁴ On the integration of Muslims in the EU, see *THE INTEGRATION OF MUSLIM MIGRANTS IN EUROPE: RELIGIOUS AND POLITICAL ASPECTS IN THE AFTERMATH OF 11 SEPTEMBER 2001*, EU COMMISSION INTERMEDIARY REPORT (2003); U.S. Congressional Research Service. *Muslims in Europe: Integration Policies in Selected Countries* (Order Code RL33166, 18 November 2005) Paul Gallis, Kristin Archick, Francis Miko, and Steven Woehrel, eds., available at: CRS-web [hereinafter CRS-REPORT INTEGRATION]; MIRJAM DITTRICH, *MUSLIMS IN EUROPE: ADDRESSING THE CHALLENGES OF RADICALISATION*, (European Policy Centre Working Paper, 23, 2003), available at: www.epc.eu, accessed: 10 August 2006. Detailed country-profiles and further information available at: <http://euro-islam.info>. For more in depth analysis see ROBERTA ALUFFI BECK PECCOZ AND GIOVANNA ZICONE, *THE LEGAL TREATMENT OF ISLAMIC MINORITIES IN EUROPE* (2004); *EUROPEAN MUSLIMS AND THE SECULAR STATE* (Jocelyn Césari and Sean McLoughlin, eds., 2005); J. CÉSARI, *WHEN ISLAM AND DEMOCRACY MEET: MUSLIMS IN EUROPE AND IN THE UNITED STATES* (2004); J. CÉSARI, *ISLAM AND FUNDAMENTAL RIGHTS IN EUROPE*, REPORT FOR THE EUROPEAN COMMISSION, DG JUSTICE AND HOME AFFAIRES (2004 B); *MUSULMANI IN ITALIA: LA CONDIZIONE GIURIDICA DELLE COMUNITÀ ISLAMICHE* (Silvio Ferrari, ed., 2000); ANDREW GEDDES, *IMMIGRATION AND EUROPEAN INTEGRATION: TOWARDS A FORTRESS EUROPE?* (2000); JYTTE KLAUSEN, *THE ISLAMIC CHALLENGE. POLITICS AND RELIGION IN WESTERN EUROPE* (2005); ROBERT PAULY JR., *ISLAM IN EUROPE: INTEGRATION OR MARGINALIZATION?* (2004); THORSTEN GERALD SCHNEIDERS ET AL., *MUSLIME IM RECHTSSTAAT* (2005); *CHALLENGING IMMIGRATION AND ETHNIC RELATIONS POLITICS* (Koopmans/Statham, eds., 2000); ROBERT PAULY, JR., *ISLAM IN EUROPE: INTEGRATION OR MARGINALIZATION?* (2004); *ISLAM IN EUROPE: THE POLITICS OF RELIGION AND COMMUNITY* (Steven Vertovec and Ceri Peach, eds., 1997).

In its report on Islamophobia in 2006, the *European Monitoring Centre on Racism and Xenophobia* (EUMC) has pointed out among its key findings, that:

- "Muslims are often victims of negative stereotyping, at times reinforced through negative or selective reporting in the Media. In addition, they are vulnerable to manifestations of prejudice and hatred in the form of anything from verbal threats through physical attacks on people and property;
- many Muslims, particularly young people, face limited opportunities for social advancement, social exclusion and discrimination which could give rise to hopelessness and alienation;
- research and statistical data [...] show that Muslims are often disproportionately represented in areas with poor housing conditions, while their educational achievements fall below average and their unemployment rates are higher than average. Muslims are often employed in jobs that require qualifications and as a group they are over-represented in low-paying sectors of the economy."⁵

But Muslims in Europe are not only faced with mere *social* integration challenges. The terrorist attacks in New York, Madrid and London and violent acts such as the Murder of the Dutch filmmaker, Theo Van Gogh, in November 2004 or the violent protests against the cartoons of the prophet Muhammad in Denmark⁶ by radicalized Islamists have changed and distorted public perception of Muslims in Europe. These attacks reinforced perceived linkages of Islam with terror and violence⁷ and seem to support Samuel P. Huntington's prognosis of a "clash of civilizations."⁸ In this context, the temptation to identify Islam with fundamentalism has become more pronounced. For many people in Europe Islam has by definition become the "other," an antipode to Western secular democracy.⁹ This has

⁵ *Supra* note 1, at 8.

⁶ See TØGER SEIDENFADEN AND RUNE ENGELBRECHT LARSEN, *KARIKATUR-KRISEN. EN UNDERSØGELSE AF BAGGRUND OG ANSVAR* (The Cartoon Crisis: An Investigation into Background and Responsibilities) (2006).

⁷ See A COLLECTION OF COUNTRY REPORTS FROM RAXEN, THE EUROPEAN MONITORING CENTRE ON RACISM AND XENOPHOBIA (2001).

⁸ SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996).

⁹ The political analyst José Casanova pointed out that in Europe "immigration and Islam are almost synonymous", since the "overwhelming majority of immigrants in most European countries, the UK being the main exception, are Muslims and the overwhelming majority of western European Muslims are immigrants". According to Casanova "this entails a superimposition of different dimensions of 'otherness' that exacerbates issues of boundaries, accommodation and incorporation: The immigrant, the religious, the racial, and the socio-economic underprivileged 'other' all tend to coincide." See José

led to a problematic discourse of "us" and "they" - "we Europeans" and "they Muslims" - which many Muslims find stigmatizing and alienating.¹⁰ This discourse deepens the already existing integration challenges and social rifts between Muslim migrants and their European "host-societies." Moreover it contributes to the further withdrawal of many Muslims into segregated "parallel societies."¹¹ Analysts, such as Olivier Roy and Francis Fukuyama, have pointed out, that the radical Islamist ideology that has motivated terror attacks over the past decade has to be seen in large measure as a manifestation of modern identity politics rather than of traditional Muslim culture.¹² Especially young second or third generation Muslim immigrants seem to search for new identities outside the norms of their western "host-countries" and sometimes turn towards violent radicalism. The root of this radical Islamism - according to Roy - is not of a cultural nature - that is, it is not a by-product of something inherent in Islam or the culture that this religion has produced. Radical Islamism has emerged - according to him - rather because Islam has become "deterritorialized" in such a way as to throw open the whole question of Muslim identity. Identity therefore becomes problematic precisely when Muslims leave traditional Muslim societies by, for example, emigrating to western Europe.

One's identity as a Muslim is no longer supported by the outside society; indeed, there is strong pressure to conform to the West's prevailing cultural norms. The question of authenticity arises in a way that it never did in the traditional society, since a gap develops between one's inner identity as a Muslim and one's behavior vis-à-vis the surrounding society. Radical Islamism and jihadism can arise in response to the resulting quest for identity. These ideologies can provide answers to the question of "Who am I?" posed by a young Muslim in Holland or France: You are a member of a "global *umma*" defined by adherence to a universal Islamic doctrine. Muslim identity thus becomes a matter of inner belief rather than outward conformity to social practice. Roy points out that this constitutes the "Protestantisation" of Muslim belief, where salvation lies in a subjective state that is at odds with

Casanova, *Religion, European secular identities, and European integration*, available at: www.eurozine.com/articles/2004-07-29-casanova-en.html, accessed: 20 February 2007.

¹⁰ As KLAUSEN, *supra* note 4, has pointed out in her study on the Muslim elites in Europe, many secular Muslims that are part of societal elites feel defensive and marginalized due to the constant allegation that Muslims are potential terrorists.

¹¹ See Andrea Brandt and Cordula Meyer, *Religious Divisions in Germany. A Parallel Muslim Universe*, SPIEGEL-ONLINE, 27 February 2007, available at: www.spiegel.de/international/0,1518,467360,00.html, accessed: 3 April 2007.

¹² ROY, *supra* note 3, and Francis Fukuyama, *Identity and Migration* 17 JOURNAL OF DEMOCRACY 5 (2006) and adapted for reprint in PROSPECT MAGAZINE, February 2007, available at: http://www.prospect-magazine.co.uk/article_details.php?id=8239, accessed: 3 April 2007. See also GILES KEPEL, THE WAR FOR MUSLIM MINDS: ISLAM AND THE WEST (2004); GILES KEPEL, THE ROOTS OF RADICAL ISLAM (2005).

one's outward behaviour. Understanding radical Islamism as a form of identity politics also explains why second and third-generation European Muslims have turned to it. First-generation immigrants have usually not made a psychological break with the culture of their land of birth and carry traditional practices with them to their new homes. Their children, by contrast, are often contemptuous of their parents' religiosity, and yet have not become integrated into the culture of the new society. Stuck between two cultures with which they cannot identify, they find a strong appeal to the Universalist ideology of contemporary jihadism.

Whether there is anything specific to the Muslim religion that encourages this radicalization remains an open question. Several analysts suggest that mainstreaming Muslims into European society would not necessarily translate into an "embrace of liberal values" and some even question whether Islam itself is compatible with what they call "European political principles and values": The former professor for Islamic history at Cairo's prestigious Al-Azhar University and former *imam* in a mosque in Gizeh, Mark A. Gabriel, who converted to Christianity and today lives in the US argues that Islam is a belief which focuses on expansion and which is fundamentally opposed to "Western values."¹³ A recent polemic was sparked by the French philosopher Robert Redeker, who published an editorial on 19 September 2006 in the French daily, *Le Figaro*, arguing that Islam tries to impose its rigid rules upon Western society. US-Holocaust Historian Daniel Jonah Goldhagen goes even further by pointing to the similarities between militant Islam and Nazism.¹⁴ Other academics argue that Muslim communities must be more vocal against extremism, and actively counter rather than tolerate radical preachers.¹⁵ Advocates of a modern westernized Islam, such as Navid Kermani, have rejected the idea that democracy and Islam cannot be reconciled arguing that the Koran is neither a manifest nor a pamphlet against modernism and democracy and that "nobody will seriously claim, that believing Muslims cannot take part in Europe because of believing in the unity of God, Muhammad as the last prophet, judgment at doomsday, turn five times daily to Mecca to pray, fast one month in the year, pay poverty-tax and would like to travel to Mecca once in their lives."¹⁶

¹³ See Mark A. Gabriel, *Die Offenbarungen Mohammeds. Der Islam ist in Schwierigkeiten*, DAS PARLAMENT, 4 September 2006, quoting *supra* 8:12, 8:39, 8:60, or 9:29 of the Koran which he interprets as violently anti-Christian and anti-Jewish.

¹⁴ See SPIEGEL-ONLINE, 23 November 2006, available at: <http://www.spiegel.de/kultur/gesellschaft/0,1518,druck-450090,00.html>, accessed: 3 April 2007.

¹⁵ See: *Europeans have stopped Defending their Values*, SPIEGEL-ONLINE, 2 October 2006, available at: <http://www.spiegel.de/international/spiegel/0,1518,druck-440340,00.html>, accessed: 3 April 2007.

¹⁶ Navid Kermani, *Islam in Europa - neue Konstellationen, alte Wahrnehmungen*, in MUSLIME IM SÄKULAREN RECHTSSTAAT 11 (Thomas Hartmann, Margret Krannich eds., 2001).

Although the vast majority of Muslims in Europe are not involved in radical activities, Islamist extremists and vocal fringe communities, that advocate terrorism, exist and reportedly have provided cover for terrorist cells.¹⁷ Some European Muslims claim common cause with suffering brethren in the Israeli Occupied Palestinian Territories, as well as in Iraq, Chechnya, and elsewhere.¹⁸ They tend to view the “war on terror” as a war on Islam, and perceive an unjust double standard at work in the foreign policies of many European governments, especially those that supported the US-led war in Iraq.¹⁹

Given the fact that following the 11 September 2001 attacks on the United States, Germany and Spain were identified as key logistical and planning bases by U.S. and European officials, American analysts tend to see Europe's failure to better integrate Muslims as a ticking bomb that has already contributed to terrorism²⁰ and will continue to do so in the future with dangerous consequences for European democracy itself.²¹ Thus Muslim presence in Europe tends to be seen not solely as a

¹⁷ According to the 2005 yearly report of the *Bundesverfassungsschutz* (German Internal Intelligence Service) less than 1% of the Muslims living in Germany – approximately 32,000 people – have supported Islamist organizations, but the numbers have risen from around 30,950 in 2003, see ANNUAL REPORT OF THE OFFICE FOR THE PROTECTION OF THE CONSTITUTION 191 (2005), available at: http://www.verfassungsschutz.de/download/SHOW/vsbericht_2005_engl.pdf, accessed: 3 April 2007.

¹⁸ See Interview with the Journalist Hazem Saghie, *Warum die Wut weiter wachsen wird*, DIE ZEIT 17 Aug. 2006 who points out, that the anger and frustration of young people is permanently rekindled by images of American or Israeli acts of brutality. Everything fits into the image of “We against them.” Chechnya, Bosnia, Afghanistan, Iraq, Palestine and Lebanon form a single panorama of Muslim suffering.

¹⁹ Some analysts say that the increase of jihadist websites and internet chat-rooms has resulted in extremism appealing to ever younger Muslims. Recent media reports indicate instances of very young French Muslim teenagers being recruited to fight in Iraq; German and Italian law enforcement authorities also have reportedly disrupted efforts by Islamist extremists to recruit European youths for Iraq. See Marlena Telvick, *Al Qaeda Today: The New Face of the Global Jihad*, FRONTLINE, available at: www.pbs.org, accessed: 25 January 2005; Sebastian Rotella, *Europe's Boys of Jihad*, LOS ANGELES TIMES, 2 April 2005. For more recent in-depth analysis see JIHADI TERRORISTS IN EUROPE, THEIR CHARACTERISTICS AND THE CIRCUMSTANCES IN WHICH THEY JOINED THE JIHAD: AN EXPLANATORY STUDY (Edwin Bakker, ed., 2007); MARC SAGEMAN, UNDERSTANDING TERROR NETWORKS (2004).

²⁰ Numerous terrorist arrests were also made in Belgium, France, Italy, and the UK. The 11 March 2004 terrorist bombings of commuter trains in Madrid, Spain that killed 191 people were carried out by an Al Qaeda-inspired group of North Africans, mostly Moroccans resident in Spain. On 7 July 2005 “home-grown” Islamic terrorists struck the London transport system killing at least 52 people, plus the four bombers, and injuring over 700. On 21 July 2005, four attackers tried but failed to set off four explosions on London's tube and bus lines; no casualties resulted. In July 2006 there were further attempts in Britain to attack planes with liquid explosives and an attempt to blow up commuter trains in Cologne. See EUROPEAN APPROACHES TO HOMELAND SECURITY AND COUNTERTERRORISM (Kristin Archick, Carl Ek, Paul Gallis, Francis T. Miko, and Steven Woehrel eds., 2006), available at: www.fas.org/sgp/crs/homesec/RL33573.pdf, accessed: 3 April 2007.

²¹ Robert S. Leiken, Director of the Immigration and National Security Program at the Nixon Center and

social integration issue - but increasingly so as a security issue.

Immigration policies in European countries have traditionally been very diverse and European harmonization has proved complex.²² An active integration policy has for a long time been neglected. While some European countries have in the past considered immigration as a temporary phenomenon and labelled immigrants as “guest workers,”²³ other European countries, such as Great Britain and the Netherlands, have had political majorities who embraced the notion of becoming multicultural societies and encouraged the creation of ethnic mosaics.²⁴ This

author of the book “Bearers of Jihad? Immigration and National Security After 9/11,” has argued that the deficit of integration policies in European Countries has made European Muslim populations a hotbed for breeding terrorism. See *Europe's Angry Muslims*, in 84 FOREIGN AFFAIRS 120 (2005), available at: www.globalsecurity.org/security/library/report/2004/muslimext-uk.htm, accessed: 3 April 2007; see also Fukujama, *supra* note 12.

²² For a recent overview of immigration and integration policies in Europe, see Claudio Bolzman and Manuel Boucher, *De l'Immigration à l'Intégration: En Europe, à chacun son "modèle"*, in LE MONDE DIPLOMATIQUE, June 2006, at 15; K. Ziegler, *Integration und Ausgrenzung im Lichte der Migrationspolitik der Europäischen Union - die 'Festung Europa'?* INTEGRATION UND RECHT 127 (K. Sahlfeld et al., eds., 2003); ELIZABETH COLLETT, ONE SIZE FITS ALL? TAILORED INTEGRATION POLICIES FOR MIGRANTS IN THE EUROPEAN UNION (EPC Working Paper No.24, April 2006), available at: www.epc.eu/TEWN/pdf/602431467_EPC%20Working%20Paper%2024.pdf, accessed: 3 April 2007. Thomas Gross, *Integration of Immigrants: The Perspective of European Community Law*, 7 EUROPEAN JOURNAL OF MIGRATION AND LAW 145 (2005); Stefano Bertozzi, *Legal Migration: Time for Europe to play its Hand*, (CEPS Working Document No.257, February 2007); Stefano Bertozzi, *Integration: An ever-closer challenge* (CEPS Working Document No.258, Feb 2007), both available for free download at: www.ceps.be, accessed: 3 April 2007.

²³ This has especially been the case in countries such as Germany, Austria, and Switzerland that did not have immigration from former colonies but invited foreign workers to their territories on the basis of bilateral treaties in order to counter shortages on the labor market in the 1950s and 1960s. See CRS-REPORT INTEGRATION, (2005), at 31- 38; RIVA KASTORYANO, NEGOTIATING IDENTITIES: STATES AND IMMIGRANTS IN FRANCE AND GERMANY (2002). Since 2005 "integration" has become one of the priorities of domestic policy in Germany. For an official presentation of German immigration and integration policy, see the homepage of the German Federal Ministry of the Interior available at www.bmi.bund.de and focused on the phenomenon of migration see www.zuwanderung.de, as well as the homepage of the Federal Authority for Migration and Refugees available at: www.bamf.bund.de, all accessed: 11 May 2006. For a more critical assessment of the history of German “Ausländerpolitik” until 2001, see ULRICH HERBERT, GESCHICHTE DER AUSLÄNDERPOLITIK IN DEUTSCHLAND. SAISONARBEITER, ZWANGSARBEITER, GASTARBEITER, FLÜCHTLINGE (2001).

²⁴ See CRS-REPORT, *supra* note 23, at 10-21. For an interesting insight into British government policy see the so-called Turnbull-correspondence leaked to the British press in April-May 2004, available at: www.globalsecurity.org/security/library/report/2004/muslimext-uk.htm, accessed: 3 April 2007. See also for a more recent view of the current situation in Britain: *Special report Islam and free speech. Racial and religious hatred: Of imams and Nazis*, THE ECONOMIST, 11 February 2006, at 26, which illustrates how the case against the imam of Finsbury-Park Mosque, Al Hamza, in London has changed British attitude towards dealing with the Muslim faith community. On the Netherlands see Ian Buruma, *Wie der Multikulturalismus zu retten ist*, FRANKFURTER ALLGEMEINE ZEITUNG [FAZ], 7 November 2006. Jonathan Paris, *Europe and its Muslims*, 86 FOREIGN AFFAIRS [FOREIGN AFF.] 181 (2007) points out, that the UK, along with Scandinavia, Germany, and the Netherlands, has promoted an integration-policy, which is

concept of integration, which allowed immigrants to preserve their identity and diversity whilst not being asked to adjust and embrace the values of their host country, has been strongly criticized for having been too oriented on group recognition and group rights and for having ceded too much authority to cultural communities to define rules of behavior for their own members rather than insisting on individual integration.²⁵

France, the country with the biggest Muslim population in Europe, has adopted an integration policy which is aimed at turning Muslim immigrants into *citoyen français*.²⁶ Despite the fact that the French "assimilationist approach" has been hailed as a precedent for creating national identity not based on ethnicity or religion²⁷ as opposed to "corporatist islands" like Germany, which find it awkward

loosely called "multiculturalism" and involves a refusal to assert the superiority of local values. In particular UK-authorities are now discovering, that "a sizable percentage of their Muslim citizens have become angry, isolated, and dangerous." An example of this new awareness is, according to Paris, the highly unusual warning in November 2006 by the head of the MI5 that some 1,600 suspects in 200 terrorist cells were under surveillance.

²⁵ Fukujama, *supra* note 12, also argues that the "old multicultural model" "needs to be replaced by more energetic efforts to integrate non-western populations into a common liberal culture." Flowing from a "misplaced sense of respect for cultural differences – and in some cases out of imperial guilt" it has been "based on group recognition and group rights" which could not be reconciled with liberalism since, or when, "not all groups uphold the liberal values." According to Fukujama liberal societies have their own values regarding the equal worth and dignity of individuals and could therefore not be culturally neutral. Consequently cultures "that do not accept these premises" – according to Fukujama – "do not deserve equal protection in a liberal democracy." Some Muslim communities were making "demands for group rights" that simply could not be "squared with liberal principles of individual equality" e.g. "special exemptions from the family law, the right to exclude non-Muslims from certain types of public events, or the right to challenge free speech in the name of religious offence (as with the Danish Cartoons Incidents)" or have "expressed ambitions to challenge the secular character of the political order as a whole" and thus "clearly intrude on the rights of other individuals in the society" and pushed "cultural autonomy well beyond the private sphere."

²⁶ On France, see CRS-REPORT, *supra* note 23, at 21-31. The wide-scale riots and violence that broke out in late October 2005 throughout France in reaction to the deaths of two young Muslims and more recent incidents in 2006 have also been considered by analysts as indicators for integration failures. Stéphanie Giry, *France and Its Muslims*, 85 FOREIGN AFF. 87 (2006), underlines though, that this diagnosis is "glib and alarmist", "overlooks more nuanced and encouraging sociological realities" and that the problem of radicalization and jihadism is largely distinct from the issue of Muslim integration. Robert S. Leiken, *supra* note 21 stresses instead that France has stood out from the generally lenient policies on Islamic extremism, which were adopted by other European States: This assessment is echoed by Paris, *supra* note 24, who stresses that the French in their fight against the GIA have long adopted a "no-nonsense, preemptive style" in counterterrorism and intelligence, supplemented by an aggressive judiciary. For further analysis on the Islamic associations in France, see OLIVIER ROY, *LA LAÏCITE FACE A L'ISLAM* (2005); Franck Fregosi, *L'Islam e la Francia secondo Jean Pierre Chevènement. Profili teorici di un Islam repubblicano, in MUSULMANI IN ITALIA: LA CONDIZIONE GIURIDICA DELLE COMUNITÀ ISLAMICHE*, *supra* note 4, at 301-308.

²⁷ Giry, *supra* note 26, has stressed that the French system of *laïcité* encourages assimilation and discourages ethnic or religious identification. Also Fukujama, *supra* note 12, praises French

to discuss national identity,²⁸ most EU Member States continue to struggle to better integrate their growing Muslim populations. The social and security challenges which European countries face in this field remain very similar. The response which has been developed by EU governments is two-folded: (1) Stepping up repressive security measures; and (2) developing state-dialogue with Muslims in order to prevent radicalization by encouraging a moderate westernized Islam.

Since 11 September 2001 European governments have sought to contain Islamic extremism and counter jihadist terrorism primarily by tightening *security measures* and reforming immigration and asylum laws.²⁹ In many EU States legislation has been amended in order to allow authorities to investigate religious groups and facilitate the expulsion of Islamist radicals. The security services have reportedly also increased their monitoring of mosques and other meeting places. Also notable are EU efforts to boost police and judicial cooperation by introducing a European arrest warrant, enhancing intelligence-sharing and strengthening external EU border controls.³⁰

republicanism, "which in its classic form refused to recognize separate communal identities and used state-power to homogenize French society" but points out that the growth of terrorism and urban unrest has led to intense debate in France, why this form of integration has failed. Fukujama's explanation is that the French might themselves have given up the old concept of citizenship in favor of a version of multiculturalism. The headscarf ban of 2004 is interpreted by Fukujama as "the reassertion of an older concept of citizenship."

²⁸ Fukujama, *supra* note 12, argues that if in Europe the liberal principle of pluralism based on individuals rather than groups is really to be established, then its corporatist institutions inherited from the past must be addressed.

²⁹ In November 2006 the head of the British domestic intelligence service, MI5, announced publicly, that some 1,600 suspects in 200 terrorist cells were under surveillance, *see* J. Paris, *supra* note 24. For a critical assessment, *see* Carl Levy, *The European Union after 9/11: The Demise of a Liberal democratic Asylum Regime?* 40 GOVERNMENT AND OPPOSITION 26 (2005). Jochen Bittner and Michael Mönninger, *Europa rüstet auf. Vier Jahre nach dem 11. September: Im Vergleich zu Frankreich, England und Italien fallen die Anti-Terrorgesetze in Deutschland noch milde aus*, DIE ZEIT 9 August 2005 available at <http://hermes.zeit.de/pdf/archiv/2005/37/Anti-Terror.pdf>. Following the London attacks and the more recent uncovered plans to attack planes flying from the UK with liquid explosives by Islamist extremists, the British government, e.g. plans to review immigration controls to make it easier to exclude or deport foreign individuals who incite violence. UK legislation enacted in 2004 allows court-ordered detentions without charge for up to 14 days, and permits a range of "control orders," including house arrest, for terrorist suspects. Previous measures of indefinite detention without trial were challenged in December 2004 by the House of Lords ruling on the Anti-Terrorism Act, the so-called Belmarsh Case, *A (FC) and Others (FC) v. Secretary of State for the Home Department*, [2004] UKHL 56, available at: www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&others.pdf, accessed: 3 April 2007.

³⁰ On 21 September 2001 the European Council adopted an Action Plan on Terrorism which has since been updated. On 13 June 2002, two framework decisions were adopted by the Council of Ministers to establish a European Arrest Warrant (OJ L 190, 18 July 2002, at 1-20) and define a common concept of terrorist offences which all the Member States of the European Union must include in their legal system.

Whilst these anti-terrorist measures have been taken at national and EU-level, there is growing awareness throughout EU Member States, that the problem of Muslim extremism and radicalization cannot adequately be addressed by using repressive means and policing Muslim communities – measures which might even aggravate feelings of exclusion and alienation amongst the Muslim population.³¹ In particular the November 2004 murder of Dutch filmmaker Theo van Gogh – an outspoken critic of the treatment of women in Islam who was killed by a 27-year-old Dutch citizen of Moroccan descent and a follower of radical Islam – has led European officials and social commentators to calling for greater integration of Muslims and other immigrants into mainstream European society through dialogue.³² The belief that Muslims and others must on the one hand embrace the native cultures of their "new" European home-countries, including secularism, and on the other hand be assisted in their integration into European societies is now widely shared among European policy-makers. In order to prevent radicalization some European governments have started encouraging actively moderate political Muslim voices and promoting a greater role for them by founding or encouraging the creation of national Muslim Councils.³³ These efforts are aimed at establishing discussion fora

Further measures were adopted in the following years. For further details see http://ec.europa.eu/justice_home/fsj/terrorism/fsj_terrorism_intro_en.htm, accessed: 3 April 2007. See EUROPEAN APPROACHES TO HOMELAND SECURITY AND COUNTERTERRORISM, *supra* note 6; Jan Hecker, *Die Europäisierung der inneren Sicherheit*, 59 DIE ÖFFENTLICHE VERWALTUNG 273 (2006); MIRJAM DITTRICH, FACING THE GLOBAL TERRORIST THREAT: A EUROPEAN RESPONSE (EPC-Working Paper No.14, January 2005), available at: www.epc.com, accessed: 3 April 2007; Daniel Keohane, *The EU and Counter-Terrorism* (CENTRE OF EUROPEAN REFORM, CER Working Paper, May 2005). This working paper can be ordered from the CER website (www.cer.org.uk).

³¹ A comprehensive strategy, that is going beyond repressive means, is also proposed by the European Commission in its Communication adopted on 21 September 2005 entitled "*Terrorist recruitment: addressing the factors contributing to violent radicalisation*" (COM, 2005 313 final).

³² German Federal Minister of the Interior Otto Schily called for the creation of a "European Islam", see German News, 28 November 2004, available at: <http://www.germnews.de/dn/2004/11/28>, accessed: 3 April 2007.

³³ For an overview see Sara Silvestri, *The Situation of Muslim Immigrants in Europe in the 21st century: The Creation of National Muslim Councils*, in 'CROSSING OVER' - COMPARING RECENT MIGRATION IN EUROPE AND THE UNITED STATES, 101 (H. Henke, ed., 2005). In its communication on *Terrorist recruitment: addressing the factors contributing to violent radicalisation* (COM, 2005 313 final) adopted on 21 September 2005 the European Commission (EC) has encouraged an exchange of views and opinions with regard to Dialogue between the State and Religions, in order to create a method of communication to eliminate barriers and develop understanding of cultural diversities based on religious ideas (particularly when dealing with radical, extremist and fundamentalist concepts). The EC has stressed that the EU fully respects the status of churches and religious associations or communities in the Member States under national law (Declaration No 11 to the Amsterdam Treaty) and that the relationship between the State and Churches and religious associations is not an EU competence. At the same time there is also a tradition of dialogue between religions, churches and communities of conviction on the EU-level which has established a wide and diverse network of confessional and non-confessional partners. The EU intends to build on these initiatives in order to contribute to the prevention of violent radicalization and

to help promote “home-grown Islam” in which local Islamic associations, and in particular the *imams*, are expected to play an important role conveying European values rather than Islamic radicalization. Often unfamiliar with the fractioned milieu of Islamic associations in their countries these efforts have also the objective of providing governments with a national Islamic leadership which could then serve as a partner and counterpart for dialogue.³⁴ The need for this stems from the fact that the relatively young Muslim faith communities – as distinguished from Christian or Jewish faith communities which in many European countries have built up, through the last centuries, a uniform and hierarchic community representation which is embedded into a corporatist constitutional framework – often lack institutions that could serve as an community interest representatives and legitimate partners in dialogue with government institutions. In many European countries Muslim faith communities are only organized in transient networks of rival associations. Such associations are sometimes still under the influence of the governments of immigrants’ countries of origin and cannot agree on forming joint representations; this will be illustrated further on in relation to the examples of Italy and Germany.

Recently, particular efforts in many European countries are being directed at developing a better understanding, and a closer grip, of *imams*, Muslim clerics, who preach in Europe.³⁵ This has partially been driven by findings according to which extremist Muslim clerics played and play a central role in radicalizing some European Muslim youth.³⁶ Young European Muslims of second or third generation who feel disenfranchised in a society that does not fully accept them and thus search for a new identity, seem to be particularly inclined to a notably radical Islam. This form of Islam serves as a badge of cultural identity and then they become easy

proposes to establish 2008 as the European Year of Intercultural Dialogue. The year is supposed to make Europeans more sensitive to questions of intercultural dialogue as well as to better use EU programs in promoting the positive values resulting from such a Dialogue.

³⁴ This difficulty is illustrated with regards to various European countries, see MUSULMANI IN ITALIA: LA CONDIZIONE GIURIDICA DELLE COMUNITÀ ISLAMICHE, *supra* note 4.

³⁵ For a tentative assessment of the debate on training imams in some European countries, see: Hans-Christian Jasch, *Insegnamento islamico e formazione degli imam in alcuni Paesi europei*, in 47-40 AMMINISTRAZIONE PUBBLICA 87 (GENNAIO/GIUGNO 2006).

³⁶ Leiken, *supra* note 21, pointed out, that Hofstad's Syrian *imam* mentored Bouyeri (the murderer of Dutch film-maker Van Gogh) and that the London *imam* Abu Hamza al-Masri coached Moussaoui . He also mentions that a decade ago in France, the Algerian Armed Islamic Group proselytized *beurs* (the French-born children of North African immigrants) and turned them into the jihadists who terrorized train passengers during the 1990s. According to Leiken post-September 11 recruitment appears more systematic and strategic with Al Qaeda's focus being on the second generation.

pray for extremist *imams* who may even guide some of them to become terrorists.³⁷ Egyptian-born Abu Hamza Al Masri at London's Finsbury Park Mosque, and Syrian-born Omar Bakri Mohammed, who once led the fundamentalist Al Muhajiroun youth movement, or the Muslim hate-preacher Metin Kaplan whom the German authorities extradited to Turkey, are examples of clerics who have long espoused violence in the name of Islam.³⁸

This situation is further complicated by the fact that the vast majority of faith community-leaders in Western Europe, Islamic clerics, hail from Turkey, Morocco or even Saudi Arabia.³⁹ These Imams have frequently been educated and trained abroad and are sometimes also paid by foreign institutions like the *Diyamet*, the Turkish religious authority. They are often unfamiliar with the morals and customs of their European host countries and only stay for a limited time before going back to their countries of origin. In many cases these *imams* remain "outsiders" with little interest to integrate into and understand the societies of their host-countries. Some are even beholden to foreign interests since the sending authorities and states consider these *imams* as a means of maintaining influence over Muslim immigrant communities in the West thus guaranteeing the flow of remittances that are still an important contribution to the economies of many countries of origin. Efforts at integration by European states are therefore also sometimes regarded in a critical manner. Instead of integration some countries of origin would favor minority rights being granted to "their" citizens in order to maintain a certain cultural autonomy within the host-countries.⁴⁰ It is therefore not surprising that efforts to "encourage

³⁷ The mechanism has been described by ROY, *supra* note 3.

³⁸ UK officials have been inclined toward "watchful tolerance" of such extremists claiming that freedom of speech must be protected and that cracking down on them would only drive them underground and deprive authorities of valuable intelligence information. See Elaine Sciolino and Don Van Natta, *For a Decade, London Thrived as a Busy Crossroads of Terror*, N.Y. TIMES, 10 July 2005; Steve Coll and Susan Glasser, *In London, Islamic Radicals Found a Haven*, WASHINGTON POST, 10 July 2005.

³⁹ In France e.g., home to approximately 5 million Muslims, 9 out of ten *imams* have been born abroad and half of them do not even speak enough French to preach in French. In the Netherlands and Germany many imams are trained, paid and sent by the Turkish religious authority *Diyamet*.

⁴⁰ See Sara Silvestri, *The Institutionalization of Islam in Europe: a Case Study of Italy*, COUNCIL FOR EUROPEAN STUDIES-NEWSLETTER, September 2005, points out that trans-national Islamic organizations (e.g. Organization of the Islamic Conference and the Islamic World League) together with the public authorities of some Muslim countries of emigration (e.g., Morocco, Algeria, and Turkey), often seek to intervene in the establishment and appointment process of Muslim authorities in Europe (as in the case of the *Exécutif des Musulmans de Belgique*). According to her "it is common knowledge that Turkey controls a number of mosques through the European branches of the Ministry for Social Affairs (the *Diyamet*) and that Saudi Arabia has financed the construction of major mosques (open to and used regularly for prayer by large numbers of Sunni Muslims of various traditions) in European capitals, such as Brussels, London, and Rome." A quick glance at the list of the officials and board of directors (often nationals, if not diplomats, of Muslim and Islamic countries) of these mosques and cultural centers and

the moderate” and “plant a home-grown Islam” have met some resistance among some Islamic clerics. The hope of many European policy makers is therefore, that European, home-grown *imams* will be more independent and will find it easier to reconcile their teachings of Islam with the liberal values of the western societies they live in and will thus also promote integration among their communities.⁴¹ This hope is reflected by initiatives like the establishment of an elected French Council of the Muslim Faith in 2003 by the French government.⁴² But also the Spanish (since 1992),⁴³ the British (since 1996)⁴⁴, the Belgian (since 1998)⁴⁵ the

at the activities that they sponsor – conferences, Arabic language and Quran classes, free distribution of religious publications does – according to Silvestri – provide an idea of how this subtle interference often works.

⁴¹ Several analysts suggest that mainstreaming Muslims into European society would not necessarily translate into an embracing of liberal values and some even question whether Islam itself is compatible with European political principles and values.

⁴² With consultations starting already in 1999 it was the French Minister of the Interior, Nicolas Sarkozy, who eventually managed to create in 2003 the “Conseil Français du Culte Musulman” (CFCM). The CFCM is supposed to become the official representation of French Muslims. It is designed as a discussion forum with government officials, where certain issues such as construction of mosques, observance of religious holidays, education of imams and ensuring for example, appropriate food for Muslims in the French prison system are to be addressed. The CFCM has a board which is elected for three years from delegates from mosques and establishes a *bureau exécutif* which then elects the CFCM-President. At the same time the 25 regional Muslim Councils are elected (CRCM). Despite all its efforts so far the French government has not succeeded in establishing a fully representative Council. While there are also alleged fundamentalists in the CFCM, reportedly some of the more radical currents of Islam have declined to participate in the elections for the CRCMs and the CFCM itself. Some Arab governments, wishing to maintain influence over their Diaspora, have reportedly also urged mosques and imams not to participate in the CFCM and the CRCMs. In part, this reluctance was also a product of rivalry among different Muslim groups. A French journalist recently described the CFCM as “*marriage forcé malheureux entre l’islam traditionnel et l’islam intégriste au sein d’un Conseil ni vraiment élu ni vraiment représentative, mais plutôt symptomatique du désir d’instrumentaliser l’islam de France à des fins de pragmatisme politique*”, see Caroline Fourest, *Où en est l’islam de France?*, LE MONDE, 1 February 2007. On the CFCM, see Protocol for the agreement to establish the CFCM, available at: <http://fides.ifrance.com/fides/html/islam7.html>, accessed: 3 April 2007.

⁴³ Augustin Motilla, *L’accordo di cooperazione tra la Spagna e la Commissione islamica. Bilancio e prospettive*, in MUSULMANI IN ITALIA: LA CONDIZIONE GIURIDICA DELLE COMUNITÀ ISLAMICHE, *supra* note 4, at 243-308.

⁴⁴ CRS-REPORT, *supra* note 4, at 10-21; M. DITTRICH, *supra* note 4, at 25.

⁴⁵ For further details on the “Exécutif des Musulmans de Belgique”, see Maria Luisa Lo Giacco, *La rappresentanza unitaria dell’Islam in Belgio*, LA CONDIZIONE GIURIDICA DELLE COMUNITÀ ISLAMICHE, *supra* note 4, at 289-300; M. DITTRICH, *supra* note 4, at 17, 23. Belgium is the only country which is considered to have managed to establish a truly representative Council through organized elections. Critics point out, though, that the council does not represent the Moroccan majority in a proportionate manner but favors the Turkish Muslims who participated more actively in the elections. On the integration of Islam in Belgium, see Jordane Carpentier de Changy, Felice Dassetto, Brigitte Maréchal, ISLAM EN BELGIQUE: SOCIÉTÉ MULTICULTURELLE ET CO-INCLUSION. CONCLUSIONS D’UNE RECHERCHE-ACTION, (Université Catholique de Louvain, Centre Interdisciplinaire d’études de l’Islam dans le Monde Contemporain-

Dutch,⁴⁶ and as will be shown further more recently also the Italian and the German governments have established such institutions in order to address specific integration problems faced by Muslims by way of an institutional dialogue.⁴⁷

Besides other very practical problems concerning the Muslim faith communities, such as the legal framework for building mosques or Islamic religious education in school, one of the prime targets of these efforts is the training of “home-grown imams” to minister to the needs of their Muslim communities and contain radicalism.⁴⁸

B. Muslims in Italy

I. Muslim Immigrants in Italy

In the last 10 years Italy has been undergoing a profound transformation from an emigration- to an immigration-society.⁴⁹ While in 1970 only 144,000 immigrants

CISMOC, February 2006).

⁴⁶ Magdi Allam, *Il master per gli imam moderati*, CORRIERE DELLA SERA, 25 April 2005.

⁴⁷ Austria was one of the first European countries to establish as early as in the early 90s an academy under state control in order to train *imams* and religious-teachers for Austrian state schools. This initiative is based on a legal framework which goes back to 1911 when the Austro-Hungarian Empire recognized Islam as a religion in order to facilitate integration of its new Muslim subjects in the territory of Bosnia-Herzegovina, annexed in 1908. For further details, see Jasch, *supra* note 35, as well as the homepage of the officially recognized *Islamische Glaubensgemeinschaft in Österreich*, available at: www.derislam.at, accessed: 12 August 2006. For more detailed information on the legal situation of the Muslim communities in Europe, see ALUFFI BECK PECCOZ /ZINCONE, *supra* note 4. For a critical assessment with a comprehensive presentation of the legal framework, see RELIGIONSFREIHEIT, INTOLERANZ, DISKRIMINIERUNG IN DER EUROPÄISCHEN UNION. ÖSTERREICH 2003-2004 (Human Rights without Frontiers International, ed.), available at: www.hrwf.net/religiousfreedom/publications/ext/Osterreich.pdf, accessed: 3 April 2007.

⁴⁸ The Egyptian-born, Italian journalist, Magdi Allam, *supra* note 46 has pointed out that the newly established course for future imams in Morocco for 150 men and 50 women (sic!) – a fact which distinguishes the course from more fundamentalist Islamic schools – aims at educating moderate imams. Allam also explains that sermons of the Friday-prayers in Morocco, Egypt, Saudi-Arabia, Algeria and Yemen have to be approved by state authorities before being delivered and states that of the key-challenges will be the financing of the home-grown *imams* in Europe, since most Muslim Communities rely on imams which are financed by Turkey or Arabic countries.

⁴⁹ Interview with Paolo Ferero, Italian Minister of Social Solidarity: *En Italie, les clandestins ont afflué malgré des lois restrictives*, LE MONDE, 9 August 2006. For information on the overall phenomenon of immigration in Italy, see IMMIGRAZIONE, DOSSIER STATISTICO 2005, XV RAPPORTO SULL’IMMIGRAZIONE. IMMIGRAZIONE È GLOBALIZZAZIONE, (Caritas/Migrantes, ed., 2005) [hereinafter IMMIGRAZIONE, DOSSIER STATISTICO 2005].

were living in Italy and about 152,000 Italians were leaving their home-country today's situation has changed dramatically. In 2005 – according to numbers of the Ministry of the Interior and the Caritas⁵⁰ – approximately 2.8 million migrants lived legally in Italy. Given the low birth-rate of "native Italians" and growing influx of – regular and irregular – immigrants it is expected, that Italy's immigrant-population will double within the next ten years. Already today – besides Spain – Italy is the EU-member state with the fastest growing immigrant population in the EU. The percentage of foreigners in proportion to the general population has reached 4-8 per cent which is still lower than the average of the other fourteen "old" EU-member states. About one third or approximately 1-1.5 million of the immigrants, which have settled in Italy, are Muslims or of Muslim origin. Of these only about 50,000 hold Italian citizenship.⁵¹

The vast majority of Muslims in Italy are immigrants coming from various countries especially Morocco and Albania, Somalia, Egypt, Senegal, Nigeria and Pakistan.⁵² According to current estimates, persons coming from traditional Muslim

⁵⁰ IMMIGRAZIONE, DOSSIER STATISTICO 2005, *supra* note 49. For further information, see www.caritasitaliana.it, accessed: 3 April 2007.

⁵¹ According to Stefano Filippi, *Moschee, l'invasione silenziosa: in Italia sono già più di 600*, in *IL GIORNALE*, 24 December 2006, at 8 who refers to "conservative estimates" in the "Dossier Statistico" *supra* note 49, for 2006 more than 1.2 million people practice Islam as their religion in Italy. Many Muslims in Italy have only temporary stay-permits or even reside illegally in the country as so-called "clandestine." Italian citizenship law requires people to have resided legally in Italy for ten years or to be married to an Italian citizen in order to apply for Italian citizenship. For further details refer to law No.91 of 5 February 1992 (*Nuove norme sulla cittadinanza*), and DPR No.572 of 12 October 1993 (*Regolamento di esecuzione della Legge 5 Feb. 1992, n. 91 recante nuove norme sulla cittadinanza*) and DPR No.362 of 18 April 1994 (*Regolamento recante disciplina dei procedimenti di acquisto della cittadinanza italiana*). A proposal for a bill presented by the Minister of Interior Giuliano Amato on 4 August 2006 aims at reducing the time of legal residency to five years and give access to Italian citizenship to the children of immigrants born in Italy, see *Cittadinanza per gli immigrati*, *LA REPUBBLICA*, 5 August 2006, at 2-3. On irregular migration to Italy see *IMMIGRAZIONE IRREGOLARE IN ITALIA/IRREGULAR MIGRATION IN ITALY*, (European Migration Network, Punto Nazionale di Contatto in Italia, ed., 2005).

⁵² On Muslims in Italy see Silvio Ferrari, Filippo Corbetta, and Gianluca Parolin, *The Situation of Muslims in Italy*, in *MONITORING THE EU ACCESSION PROCESS: MINORITY PROTECTION VOLUME II. CASE STUDIES IN SELECTED MEMBER STATES*, BY OPEN SOCIETY INSTITUTE 227 (2002), available at: www.eumap.org/reports/2002/eu/international/sections/italy/2002_m_italy.pdf, accessed: 2 April 2007; Sara Silvestri, *The Institutionalization of Islam in Europe: a Case Study of Italy*, *COUNCIL FOR EUROPEAN STUDIES NEWSLETTER*, September 2005, Available at: www.ces.columbia.edu/pub/Silvestri_sep05.html, accessed: 20 February 2007; Andrea Pacini, *I Musulmani in Italia. Dinamiche organizzative e processi di interazione con la società e le istituzioni italiane*, in: *LA CONDIZIONE GIURIDICA DELLE COMUNITÀ ISLAMICHE*, *supra* note 4, at 19-105. See also the detailed review by Agostino Cilardo, *Musulmani in Italia: La condizione giuridica delle comunità islamiche*, a cura di Silvio Ferrari: *articolo recensione*, 3 *JOURNAL OF ARABIC AND ISLAMIC STUDIES* (2000), at 114-126. On efforts of dialogue to promote integration in Italy, see Hans-Christian Jasch, *State-Dialogue in Italy and Germany for Promoting Integration of Muslims*, in 3 *TURKISH POLICY QUARTERLY [TPQ]* 57 (2006). For detailed statistics see *IMMIGRAZIONE IRREGOLARE IN ITALIA/IRREGULAR MIGRATION IN ITALY*, *supra* note 49, at 67-71.

countries are the fastest growing immigrant group in Italy.⁵³ The majority of immigrants in Italy are clustered in low-skilled positions and reportedly experience difficulties in obtaining skilled positions despite professional and linguistic qualifications which often range above the average of the Italian population.⁵⁴

There are a number of rivalling Muslim organizations in Italy that are becoming increasingly active in articulating their concerns and the demands of their communities.⁵⁵ They are usually established as associations, without a public legal status.⁵⁶ One exception is the *Centro Islamico Culturale d'Italia* (Islamic Cultural Centre, CICI) which has been awarded public legal status by D.P.R., N° 712 of 21 Dec. 1974. The CICI is based in Rome and has played a leading role in the construction of the most important Mosque in Italy, the Grand Mosque of Rome, which was opened in 1995. Its Board is largely composed of the ambassadors of Islamic States to the Holy Sea. Besides serving as a spiritual and social focal point, organizing celebrations of religious holidays and observance of other religious rites, the CICI claims an important educational role. It provides Arabic language classes and religious instruction and has an extensive library on Islamic history, culture and contemporary affairs.

The largest Muslim organization in Italy seems to be the "*Unione delle Comunità e Organizzazioni Islamiche in Italia*" (Union of Islamic Communities in Italy, UCOII), a federation of mosques across the country which claims to control in total 80% of the mosques and prayer-rooms in the country.⁵⁷ It includes a number of mosques and Islamic associations located and operating mainly in the center and northern part of

⁵³ Although Muslims account only for ca. 2% of the total population, 14% of Italy's prison population is Muslim, 98 percent of whom are foreign nationals. Italian prisons are the most overcrowded in Europe, with an occupancy level of 131.5%, see IMMIGRAZIONE, DOSSIER STATISTICO 2005, *supra* note 49, and the 2005 World Prison Population List, available at: www.kcl.ac.uk/depsta/rel/icps/world-prison-population-list-2005.pdf, accessed: 3 April 2007.

⁵⁴ According to the Caritas, which is monitoring immigration to Italy 12.1% of the migrants have a college or university degree compared to 7.5% of the Italians, see IMMIGRAZIONE, DOSSIER STATISTICO 2005, *supra* note 49.

⁵⁵ For detailed accounts of the rivalries and alliances of the four main Italian Muslim associations and their relations with sympathizers and with the Italian state, see Stefano Allievi, *Organizzazione e potere nel mondo musulmano: il caso della comunità di Milano*, in I MUSULMANI NELLA SOCIETÀ EUROPEA 157 (Jacques Waardenburg, Sami A. Abu-Salieh, Mohammed Salhi, et al., 1994); Magdi Allam, *La mappa dell'islam italiano*, in ISLAM, ITALIA 41 (Roberto Gritti and Magdi Allam, ed., 2001).

⁵⁶ See Allam, *supra* note 55.

⁵⁷ Stefano Filippi, *supra* note 51, quotes the spokesman of UCOII, Hamza Piccardo, mentioning 160 mosques and Muslim prayer rooms which are associated to UCOII.

Italy.⁵⁸ Unlike CICI UCOII does not have public legal status but is part of a network which stretches all over Europe and is allegedly in contact with the "International Muslim Brotherhood."⁵⁹ It has sought recognition from the European Parliament as a confessional minority in Europe that supports "not individual but collective integration."

Other smaller organizations are the Association of Italian Muslims (AMI) and Coreis, which are composed predominantly of ethnic Italian citizens, who have converted to Islam. Both organizations are self-financed, and claim to promote inter-culturalism and tolerance. Apart from these organizations there are also a number of independent groups around local mosques which have neither claimed to be legitimate representatives of Islam in Italy, nor are allied with other larger organizations.

II. The Legal Condition of Islam in Italy

The Italian constitution guarantees for religious freedom. Every citizen has the right to practice her/his own faith and propagate it as long as its rites are not contrary to the public morale.⁶⁰ Other Religions and faith communities other than the Catholic Church⁶¹ are protected by Art. 8 of the constitution which states, that all religions are equal before the law and may organize themselves freely as long as their practices do not violate Italian law. Their relationship with the Italian State is regulated by laws on the bases of covenants, so-called "*intese*."⁶² The institute of the

⁵⁸ In 1998 UCOII and CICI made an attempt to unite (by forming the *Consiglio Islamico d'Italia*, or Islamic Council of Italy) and submitted a joint proposal for an *intesa* (an agreement) to the Italian government. The experience led immediately to a controversy over issues of representation and hegemony over the Muslims living in Italy. As a result, most members of the Council resigned. The Council has not been revoked, but it is de facto defunct. See Silvestri, *supra* note 52.

⁵⁹ UCOII is a sister organization of the French *Union des Organisations Islamiques de France* (UCOIF) which also claims to represent one third of French Islam and is also believed to be close to the "International Muslim Brotherhood" (IMB). On UCOIF, see Caroline Fourest, *Où en est l'islam de France?*, LE MONDE, 1 February 2007.

⁶⁰ Art. 19 of the Italian Constitution: *Tutti hanno diritto di professare liberamente la propria fede religiosa in qualsiasi forma, individuale o associata, di farne propaganda e di esercitarne in privato o in pubblico il culto, purché non si tratti di riti contrari al buon costume.*

⁶¹ The Catholic Church enjoys traditionally a special status. Art. 7 of the Italian Constitution specifies that State and the Roman Catholic Church are sovereign and independent and that their relationship is regulated by the Lateran treaty from 1929, which has been modified in 1984.

⁶² Art. 8 of the Italian Constitution: *Tutte le confessioni religiose sono egualmente libere davanti alla legge. Le confessioni religiose diverse dalla cattolica hanno diritto di organizzarsi secondo i propri statuti, in quanto non contrastino con l'ordinamento giuridico italiano. I loro rapporti con lo Stato sono regolati per legge sulla base di*

intesa allows for the "non-catholic" faith-communities to obtain similar rights and privileges as the Roman Catholic Church.⁶³ An *intesa* with the Italian State can only be requested by those faith communities, which have been officially recognized and awarded public legal personality according to law N° 1159 of 24 June 1929 (the so-called law of admitted cults). This law, which has been reinterpreted in the light of Italy's post-war constitution, restates the content of Art. 8 of the Constitution and allows other cults than the Roman Catholic to practice their religion as long as their rites do not contravene with public order or public morale (Art. 1 of the law). They can be awarded public legal personality by presidential decree on the basis of a recommendation from the Ministry of the Interior which also has to approve the nomination of ministers of religions other than the catholic.⁶⁴

Since the early 1990s various Muslim Organizations in Italy have attempted to stipulate *intese* with the Italian State but so far none of them has been successful.⁶⁵ This is due in particular to the following reasons: lack of a hierarchical organization and institutional leadership among Muslim Communities, which has also prevented official recognition as public legal personalities according to law N° 1159 of 24 June 1929 in all but one case;⁶⁶ the modest number of Italian citizens practicing Islam and involved in the negotiation process; the internal competition among Muslim associations (and between them and Muslim Countries of origin) for the social and political hegemony over Italy's heterogeneous Muslim Communities.⁶⁷

intese con le relative rappresentanze.

⁶³ For an official view on religious freedom in Italy, see *L'ATTUAZIONE DELLA LIBERTÀ RELIGIOSA IN ITALIA: NOTE ESSENZIALI DI LEGISLAZIONE E DOTTRINA* (Presidenza del Consiglio dei Ministri and Ministero dell'Interno, ed., 1995).

⁶⁴ Various initiatives/proposals have been introduced in Parliament to modernize this law, which has been upheld and reinterpreted by the Italian Constitutional court. See *Norme sulla libertà religiosa e abrogazione della legislazione sui culti ammessi*, d.d.l. N° 2531-1576-1902-A.

⁶⁵ A first draft for an *intesa* with the state was presented in 1992 by the U.C.O.I.I.; the next request was presented in 1993 by the CICI. In 1994 AMI proposed also a draft for an *intesa* and in 1996 Coreis has presented another draft. For a detailed account, see Renzo Guolo, *La rappresentanza dell'islam italiano e la questione delle intese*, in *MUSULMANI IN ITALIA. LA CONDIZIONE GIURIDICA DELLE COMUNITÀ ISLAMICHE*, *supra* note 4; Cilardo, *supra* note 52, at 114. The full texts of these *intese*-projects have been published in: *ISLAM EN EUROPE. LÉGISLATION RELATIVE AUX COMMUNAUTÉS MUSULMANES* (COMECE 2001) and Fouad Allam, *L'Islam contemporaneo in Europa e in Italia fra affermazione identitaria e nuova religione minoritaria*, in *SECONDO RAPPORTO SULL'INTEGRAZIONE DEGLI IMMIGRATI IN ITALIA* 577 (Giovanna Zincone, Ed. for Commissione per le politiche d'integrazione degli immigrati, 2001).

⁶⁶ The only Islamic Organization which has been awarded public legal personality in 1974 is the CICI (s.a.)

⁶⁷ Sara Silvestri, *supra* note 52 explains in her article that the most conspicuous reason why no *intesa* has been concluded with between the Islamic faith communities and the state are, that the Italian Muslims are mainly: "(a) non-citizens who are not entitled to become a 'recognized' religious association and thus

Some critics also argue that the institute of the *intesa* as such – being part of a corporatist tradition – privileges the “traditional” Judeo-Christian faith communities, which tend to have a uniform hierarchical structure with representative organs – a “proper representation” – which is able to negotiate with the State. The Muslim communities but also Orthodox Christians and the Hindu communities lack such structures, which make recognition as public legal personalities and the subsequent conclusion of *intese* with the Italian State difficult if not impossible.⁶⁸ On the other hand other observers have pointed out that these “newly present religions” can follow the example of the Valdese Table⁶⁹ and the Union of Jewish Communities in Italy which have also managed to found federations or Unions in order to stipulate *intese* with the Italian State.⁷⁰

So far a federation of the rivalling Muslim organizations in Italy is not in sight.⁷¹ Italian government Officials are therefore faced with a dilemma: once they recognize one of the faith groups as representing the entire Islamic community, with powers to appoint imams, administer and receive public funding, contributed to religious denominations etc., other Muslim groups may refuse to recognize that group on the basis that it lacks legitimacy (“representation”). Therefore Italian Officials have argued that it is too early to conclude an *intesa* with Muslims, until the Muslim community will be better rooted in Italian society and proper representation will emerge.⁷²

sign an agreement with the state and (b) the multitude of competing Muslim organizations that claim to represent the entire Muslim community. But hidden behind these obstacles lie much more delicate reasons for the failure to conclude an agreement; these can be linked to internal rivalries, mainly between Muslims, and Italian party politics that have little to do with the issue of Islam per se;” see also Renzo Guolo, *supra* note 65. The situation is somewhat similar to the situation in Germany where Muslim organizations are aspiring to become public entities in order to benefit from the same privileges as the Churches and the Jewish Community, see *infra*, III, 2.

⁶⁸ In the absence of an *intesa* with the Italian State the relationship of these faith-groups with the Italian state continues to be regulated by the law N° 1159 of 24 June 1929.

⁶⁹ The first *intesa* was signed after 8 years of negotiations with the Valdese Methodist Church (Valdese Table) on 21 February 1984 and was endorsed as a law on 11 August 1984 (Law N° 449/1984).

⁷⁰ For a detailed analysis, see MUSULMANI IN ITALIA. LA CONDIZIONE GIURIDICA DELLE COMMUNITÀ ISLAMICHE, *supra* note 4; Cilardo, *supra* note 52.

⁷¹ For detailed accounts of the rivalries and alliances of the four main Italian Muslim associations and their relations with sympathizers and with the Italian state see Allievi, *supra* note 55; Allam, *supra* note 55.

⁷² Silvestri, *supra* note 52 points out that Muslim representatives, for their part, complain that the entire Italian system is rigid and still shaped according to the former state religion, Catholicism but that strong opposition to the institutionalization of Islam in Italy also comes from certain political, religious, and intellectual circles that were obsessed with the possibility that Muslims would have undue influence on Italy once the *intesa* had been obtained.

Apart from presenting requests for *intese*, Muslims – who identify themselves primarily as a religious community – have articulated claims regarding the right to free practice of their religion. On the local level, they have requested permission to open mosques which in some parts of Italy has provoked public debate.⁷³ Another issue, which is under discussion in Italy, is the introduction of school-lessons on Islam for young Muslim pupils. Generally the curricula of public schools only include Catholic religious education. Pupils have the right to attend or not to attend such classes.⁷⁴ Although it is not uncommon for Catholic as well as non-Catholic students to choose to be exempted, some Muslim representatives have expressed dissatisfaction with this solution, as children who choose exemption are left to “loiter” during those class periods. The issue of Islamic education in public schools is likely to increase in importance as the number of Muslim students continues to grow. It is almost inevitable that in a short time, public school authorities will be confronted with a strong demand for classes in Islam and Arabic as a foreign language, according to the pattern already established for other religious groups and by older Muslim communities in other EU countries.⁷⁵

III. The Council for Italian Islam

The Italian EU-Presidency in 2003 was the first to actively promote and encourage interfaith dialogue on the EU-level. They brokered a “Declaration on interfaith dialogue and social cohesion,” adopted by EU- Ministers of Justice and Home

⁷³ Oriana Fallaci, a respected writer and famous political interviewer, who has died recently, has been rallying public opposition against the construction of Mosques. In her book “La Rabbia e l’Orgoglio” (The Rage and the Pride), in which she has claimed, that the West was superior to Islam, she used phrases such as “multiplied like rats” to describe Muslims immigrants, and called Muslims “vile creatures, who urinate in baptisteries.” Despite leading to a court case against Fallaci for insulting the Muslim communities, the book has sold at least 1.5 million copies and has caused a big debate also outside Italy. See C. Balmer, *Fallaci Charged in Italy with Defaming Islam*, REUTERS, 25 May 2005; *Italy Looks at Controlling New Mosques*, CBC NEWS, 25 March 2004, available at: http://www.cbc.ca/world/story/2004/03/25/italy_mosques040325.html, accessed: 2 April 2007.

⁷⁴ In accordance with the Constitution, the educational system does not provide separate public funding for religious education. However, according to Art. 33 of the Italian Constitution schools and “educational institutes” may be established at private expense, provided they guarantee equal access and equal educational treatment for all and observe standard curriculum requirements. Moreover, private schools, including those with a religious orientation, may receive direct or indirect State funding, mainly through regional governments. Numerous private Catholic schools operate on this basis. However, no legally-accredited Islamic schools have been established.

⁷⁵ In October 2006 a polemic has started on the opening of a Muslim school in Milan, which had not been granted public authorization by the Ministry of Education.

Affairs in Rome,⁷⁶ which was later endorsed by the European Council held in Brussels on 12 December 2003.⁷⁷ In the same year Italian Interior Minister Giuseppe Pisanu launched the idea of creating a Council of Muslims in Italy,⁷⁸ but it was only after the London bombings in July 2005 with successive raids⁷⁹ and after the trials against twenty alleged members of terrorist cells in Italy – some of them connected to Al Qaeda – that on 10 September 2005 the “Council for Italian Islam” was established by ministerial decree.⁸⁰

The role of the Council for Italian Islam is defined as a consultative body to which the Italian Minister of the Interior can refer in order to gain a more comprehensive

⁷⁶ EC-Doc. 15983/03 JAI 373.

⁷⁷ The principles of the Declaration were also taken into the 2004 EU-Action Plan for the fight against terrorism as well as in the joint EU-US-Declaration.

⁷⁸ Asked to comment on the search for a legitimate Muslim interlocutor, Minister Pisanu replied that compared to the “consolidated” French Muslim community, the Italian one is “shapeless, in an embryonic stage, thus unable to express today a democratic legitimacy.” The proposed Italian solution was to be “more modest and cautious.” The most crucial thing, Pisanu affirmed, is to “make this dialogue [between government and Muslims] start” and to help an “Italian Islam grow on solid foundations.” Quoted according to: Silvestri, *supra* note 47, also points out that Minister Pisanu believed that the whole of Europe should appreciate the importance of establishing official relations with the faith communities, and for this reason, had promoted the above mentioned European Charter of Interfaith Dialogue among the European Justice and Home Affairs ministers.

⁷⁹ On 12/13 August 2005 the Italian police forces carried out a country-wide raid in which 7,318 places which were known to be meeting points of the “Islamist scene” (Call- and Internetshops, Halal-butcheries and Money-transfer services) were searched; 32,703 people were checked, 141 arrested and 701 people were expelled. Two of the 141 arrests were on grounds of alleged terrorist activity. See *Italian Muslims say new terror measures fall short*, N.Y. TIMES, 26 July 2005; see Bittner and Mönninger, *supra* note 29. Muslim Organizations in Italy have condemned the London bombings publicly and advised their members to cooperate with the police. The biggest Muslim Organization, the Union of Islamic Communities and Organizations in Italy (UCOII), announced publicly that “Terrorism is incompatible with the teachings, the law and the culture of Islam.”

⁸⁰ Decree of 10 September 2005 (Decreto istitutivo della Consulta), published in the GAZETTE UFFICIALE, 26 OCT. 2005, 250 and press-communication of the Ministry of the Interior of 10 September 2005, published at: www.interno.it/news/articolo.php?idarticolo=22026 and www.interno.it/salastampa/comunicati/elenchiviminale/comunicato.php?idcomunicato=857, accessed: 3 April 2007. On the Council for Italian Islam see Maria Patrizia Paba, *Council for Italian Islam*, (contribution to the conference of the Ministers of Interior “Dialogue of Cultures and religions” in Vienna, 19 May 2005, published in Italian as *La Consulta per l'Islam italiano*, 47-49 AMMINISTRAZIONE PUBBLICA 107 (GENNAIO/GIUGNIO 2006); Antonella Ratti, *Nasce presso il Ministero dell'Interno la Consulta per l'Islam italiano*, in ASSOCIAZIONE ITALIANA DEI COSTITUZIONALISTI, CRONACHE, published at: www.associazionedeicostituzionalisti.it/cronache/attivita_organici/consulta_islam/index.html, accessed: 3 April 2007. Critical assessment: Nicola Colaiani, *La Consulta per l'Islam italiano: un caso di revisione strisciante della Costituzione*, OSSERVATORIO DELLE LIBERTÀ ED ISTITUZIONE RELIGIOSE (OLIR), published at: www.olir.it/areetematiche/85/documents/Colaiani_ConсультаIslam.pdf, accessed: 3 April 2007. See also Heinz-Joachim Fischer, *Eine Charta für die Muslime*, FAZ, 5 October 2006.

knowledge of the Islamic community in Italy.⁸¹ The Council is not an elected and representative organ with decision making powers. It is rather a forum which can be asked to formulate opinions and proposals with regard to particular topics concerning the social integration of the people of Muslim culture and religion who live in Italy.⁸² The officially proclaimed objective of this initiative is to create an "Italian Islam," which is respectful of Italy's identity, its legal framework and its cultural and traditional norms. In return Italian Islam shall be respected as far as its identity and diversity are concerned and insofar as it is compatible with the Italian legal system.⁸³ By offering such a covenant, based upon rights and duties for those Muslims who are willing to build a better future and contribute to the prosperity of Italy, the Ministry of Interior hopes to establish a basis for future integration.⁸⁴

Minister Pisanu chose sixteen people of Islamic culture/affiliation from various professional and ethnic backgrounds, nationalities, and confessional orientations to sit on the Council.⁸⁵ Among them are an imam from Salerno, two journalists of Muslim origin, a Professor of Islamic science from the University of Urbino, a student-representative of Moroccan origin, a writer of Iraqi origin, a social-worker of Senegalese origin, a Somali nurse and the former Italian ambassador to Saudi Arabia who converted to Islam. Only two of the members of the Council are women. The Minister of Interior selected people who had promoted initiatives favoring dialogue and integration, respected the democratic system and from whom he expected a pertinent contribution to dialogue.⁸⁶

Furthermore, particular attention was paid to the inclusion of representatives, who came to Italy from countries from which major immigration flows originate in order to reflect the diversity of Italian Islam. Half of the members of the Council have Italian citizenship whereas the others hold Albanian, Algerian, Jordanian,

⁸¹ Art. 1 of the Ministerial Decree of 10 September 2005, *supra* note 80.

⁸² *Id.*

⁸³ "Con l'istituzione della Consulta si compie il primo passo di un cammino, certamente non breve né facile, che dovrà condurci alla formazione di un islam italiano; e cioè di una comunità pacificamente inserita nel tessuto economico e sociale del nostro Paese, libera di professare le proprie convinzioni religiose e di salvaguardare la propria identità, ma al tempo stesso pienamente rispettosa dei nostri valori e dei nostri ordinamenti." PRESS-COMMUNICATION OF THE ITALIAN MINISTRY OF INTERIOR OF 10 September 2005, *supra* note 80.

⁸⁴ The Ministry has made it clear, that there is neither an intention of assimilating the Muslims in Italy, nor of taking away their identity, but that the aim is respect for diversity in view of a "participatory inclusion."

⁸⁵ See for names and functions: PRESS-COMMUNICATION OF THE MINISTRY OF THE INTERIOR OF 30 November 2005, published at: www.interno.it, accessed: 20 May 2006.

⁸⁶ Paba, *supra* note 80, at 109.

Iraqi, Libyan, Moroccan, Pakistani, Senegalese, Syrian, Somali and Tunisian passports. Regarding the religious aspect, two imams and a Shiite representative have been included. The top representatives of Islamic religious organizations and associations have also been selected to sit in the Council, but it was made clear that they were not chosen to represent their organizations, but that they were to serve in an individual capacity.⁸⁷

In 2006, the Council met three times, chaired by Minister Giuseppe Pisanu and three times chaired by his successor Professor Giuliano Amato. At the first meeting – which took place on February 8, 2006 members expressed their condemnation of the satirical Muhammad-caricatures published in Denmark and at the same time of the orchestrated violent and disproportionate reactions which followed the publication in the *Islamic World*⁸⁸ and agreed on a work-plan, which is to focus on the following topics: integration-related problems (housing-situation, schools, work sector *etc.*); issues concerning peculiarities of the Muslim religion and traditions with particular regard to women's rights, the use of the veil, observance of Islamic holidays, Islamic *Halal* butcheries, Islamic cemeteries *etc.*; problems related to preaching in Italian in the mosques and the education of imams; problems related to the location of mosques and other prayer rooms; initiatives to facilitate procedures for immigrants (Asylum, protection against deportation, concession of stay-permits, family reunion, citizenship issues); and problems related to the Islamic representatives' access to prisons and hospitals.

During the following meetings members of the Council tabled a “Manifest of Islam in Italy,” which contained a condemnation of any form of violence or terrorism but also of the ridiculization of religious symbols. The members of the Council also confirmed their commitment to building an Italian Islam, which would be united and pluralist, based upon common religious and cultural values, but also upon the complete acceptance of the Italian political system and its laws.

Under Minister Pisanu's successor, Professor Giuliano Amato, the Council was called upon in June 2006 to provide the new center-left government with an opinion on reform of the citizenship-law which was later taken into account when the ministry worked out a proposal for a new citizenship law which was approved by the Council of Ministers in August 2006.⁸⁹

⁸⁷ The decree for setting up the Council also allows the Minister to involve in its activities scholars, experts and representatives from other Ministries. For the coordination of the Council a technical secretariat has been set up in the cabinet of the Ministry of the Interior which communicates with the Council-members and is to involve them in the preparations of the sessions of the Council.

⁸⁸ On the cartoon-crisis, *see* Seidenfaden, *supra* note 6.

⁸⁹ The proposal aims to facilitate integration of immigrants by introducing elements of the *ius soli* into

An ad-hoc meeting of the Council was called by Minister Amato on 28 August 2006 in order to deal with an event, which had caught the attention of the Italian media: On 19 August 2006 the UCOII, had published an add in various Italian newspapers in which they stated, that the Israeli attacks on Lebanon and Gaza could be compared to the crimes of Nazi-occupation in Italy: "Marzabotto = Gaza = Fosse Ardeatine = Lebanon" and "Yesterday Nazi-massacres, today massacres by the Israelis." These ads have been met with unanimous condemnation in the media as well as by all political parties. The opposition even called for the exclusion of UCOII-leader, Mohamed Nour Dachan, from the Council. After a meeting with Jewish representatives Minister Amato eventually decided, that future membership in the council would depend on the endorsement of a "Charter of Italian Values." The first elements of the Charter, which contain a condemnation of war and unilateral aggression, a clear dedication to the founding values of the EU as well as the endorsement of the principle of non-discrimination, religious pluralism and mutual understanding, the freedom of conscience and choice and the equal rights of women and men, were discussed during the meeting of the Council on 28 August 2006. Since the president of UCOII refused to excuse himself for the ad, but distanced himself from Anti-Semitism, the matter had been deferred to the following Council meeting on 3 October 2006. In this meeting Minister Amato appointed a "scientific committee" which has the task of formulating a Charter which now is to be extended to all immigrants and not only to Muslims and members of the Council.⁹⁰

The institution of the Council has been welcomed by all political parties except the populist Lega Nord.⁹¹ For an assessment of the future success of the Italian efforts

Italian citizenship law in order to facilitate the acquisition of Italian citizenship by children of immigrants born on Italian soil. Apart from this the proposal provides for shortening the required time of (legal) residence for foreigners in order to make a claim to Italian citizenship (naturalization) from initially ten to five years. At the same time the proposal would establish the basis for taking an integration test by which the claimant would have to prove his ability to integrate into Italian society. For further discussion see "*Cittadinanza per gli immigrati*" - *Ecco il ddl del governo: basteranno 5 anni per diventare italiani di Caterina Pasolini*, LA REPUBBLICA, 5 August 2006, at 2.

⁹⁰ See press statement of the Italian Ministry of the Interior issued 3 October 2006, available at: www.interno.it/stampa.php?sezione=1&id=23045, accessed: 3 April 2007 and taken up by the Corriere della Sera on the 4 October 2007, "Carta dei valori riguarnerà ogni immigrato. Amato alla Consulta per l'Islam: il documento 'dovrà riguardare tutti coloro che vogliono vivere stabilmente in Italia'", available at: www.corriere.it/Primo_Piano/Politica/2006/10_Ottobre/03/amato.shtml, accessed: 3 April 2007. See also Fischer, *supra* note 80.

⁹¹ The Lega Nord is the only Italian party which opposes EU-accession of Turkey and has proposed to submit the construction of future Mosques in Italy to a referendum. The Party has called for banning the Burka in public and Lega-Nord Minister for reform and successor of party founder Umberto Bossi, Roberto Calderoli, had to step down from Government in February 2006 after having posed with a T-Shirt with caricatures of Muhammad- an event which was followed by violence against Italian

in promoting the integration of Muslims in Italy it is still too early. The experience which so far has been gathered with the Council for Islam shows however that the Council has already become an important instrument for dialogue between the State and its Muslim citizens. It reflects the different expressions of the Muslim community in Italy and focuses on emerging social issues. In the short time of its existence it has already served to formulate opinions on important issues of domestic policy such as the reform of citizenship. But also with regard to contentious foreign policy issues as the war in Lebanon it has been an important forum and instrument for channeling conflicts which otherwise might have led to (further) alienation and hostility between different faith communities in Italy. Although the Council cannot claim to be truly representative of the entire Muslim community in Italy, which could only be achieved through democratically elected representatives, it provides a forum with a privileged access to Government, which might serve to facilitate and clarify the formation of opinions within the Muslim communities in Italy and the articulation of an Italian Muslim identity in the future.

C. Muslims in Germany

I. *The General Condition of Muslims in Germany*

Until recently Germany has not considered itself as an immigrant-nation, although in fact there has always been migration into the principalities which today form Germany, including large groups such as the Huguenots from France in the 17th century or the Polish miners who settled in the Ruhr basin in the 19th century.⁹² Since World War II, millions of ethnic Germans from Russia and Eastern Europe have been repatriated to Germany as full citizens. The largest influx of foreigners resulted from Germany's policies in the 1950s and 1960s to address labor shortages during a period of rapid economic development by inviting in "guest workers" from less developed countries to perform the jobs for which Germans were not available. Under bilateral agreements with foreign governments,⁹³ these workers were expected to stay in the country for a fixed term and to leave the country once

representations in Libya. Another party-member, the Minister of Justice, Roberto Castelli, publicly denied the existence of moderate Islam and called the then newly instituted Council of Islam in the Ministry of Interior a "Monster", see *Castelli & Pisanu Consulta islamica, il compromesso impossibile*, Corriere della Sera 16 March 2006, www.corriere.it/Primo_Piano/Cronache/2006/03_Marzo/16/consulta.shtml, accessed: 3 April 2007.

⁹² For further information, see Herbert, *supra* note 23; Bundesamt für Migration, Flüchtlinge und Integration, in: www.handbuch-deutschland.de/book/en/002_004_001.html, accessed: 30 March 2007.

⁹³ The first recruitment-treaty was concluded with Italy in 1955. Today Germany has a population of approximately 600,000 Italian citizens.

their services were no longer needed. Many of the original “guest workers” (Italians, Greeks, and other southern Europeans) did return to their native countries. However subsequent groups of “guest workers,” mostly Turks, Yugoslavs, and North Africans stayed and eventually brought their families to join them. When recruitment of foreign labor stopped after the first oil-price crisis in 1973 family reunion and political asylum became the most important avenues for foreigners to come to Germany.⁹⁴ In all, over 7 million foreigners live in Germany, or about 9 percent of the population.⁹⁵ In recent years, some 800,000 people have moved to Germany annually, while some 700,000 have left each year. Currently this trend seems to change with more people leaving Germany than new people arriving.⁹⁶ Nonetheless Germany has become an immigration country with a recent micro-census showing that about 20% of today’s German population has a “migratory background.”⁹⁷ Despite such figures the issue of integration of foreigners into German society has been neglected for a long time. It was only in 1999, that the then centre-left Government adopted a new citizenship-law, which facilitated access to German citizenship especially for “second generation foreigners” born in Germany.⁹⁸ But it became obvious, that granting citizenship was

⁹⁴ Due to its Nazi-past post-war Germany assumed a special responsibility for those seeking asylum from political persecution. In 1949 the right to political asylum was enshrined in Art. 16 of the German Basic Law (Constitution). In the early years of the Federal Republic, mainly political refugees from Communist Eastern Europe sought asylum in Germany. However, in the mid-1970s, Germany began to receive an influx of asylum seekers from other countries. In 1992, a record 440,000 applications for asylum were submitted. While only a small percentage (4.25%) were granted asylum, many were able to take advantage of lengthy procedures to stay in Germany and receive housing and social benefits while their cases were adjudicated. With German reunification and rising unemployment came growing resentment from German taxpayers. In 1993, the Federal Government responded to rising social tensions by toughening asylum criteria and streamlining the process for adjudication of asylum cases. See http://www.zuwanderung.de/english/1_fluechtlinge.html, accessed: 30 March 2007. Until recently there was debate within the federal government and with the German Länder on how to deal with approximately 200,000 people which have remained in Germany as “tolerated” foreigners without a proper stay-permit (in many cases people who could not be sent back for humanitarian reasons).

⁹⁵ *Id.*

⁹⁶ See *Flucht aus Deutschland. Größte Auswanderungswelle der Geschichte*, in SPIEGEL-ONLINE, 22 June 2006, at: www.spiegel.de/wirtschaft/0,1518,423009,00.html, accessed: 22 June 2006.

⁹⁷ Lars Langenau, *Mikrozensus. Familie ist out, Zuwanderung in*, SPIEGEL-ONLINE, 6 June 2006 accessed: 6 June 2006.

⁹⁸ The initial German citizenship law, which was based on the Citizenship-law of Imperial Germany from 1913, was modified on 15 July 1999. The wide reaching changes went into force on 1 January 2000. Eligibility for German citizenship, prior to 2000, was based largely on German ancestry and not country of birth. According to the results of the micro-census by 2006 about 3 million foreigners have become German citizens, among those some 160,000 Muslims each year. It has been estimated that within a decade there might be over 3 million Muslim German citizens. For further information see www.einbuengerung.de and www.integrationsbeauftragte.de/themen/staats.html, last accessed 20 June 2006; Omer Taspinar, *Europe’s Muslim Street*, FOREIGN POLICY (March, 2003), available at:

not always sufficient to ensure integration. In fact many of those who came to Germany as well as their children did not integrate and remained segregated from German society, living in their own communities and sometimes having little contact with the host society. This is in particular regarded as a Problem concerning parts of Germany's Muslim population.⁹⁹

Germany is home to 3.3 to 3.5 million Muslims.¹⁰⁰ Turkish Muslims are by far the largest group, followed by Muslims from the former Yugoslavia, Arab States, and Muslims from Southeast Asia. Muslims now form the third largest religious group after Roman Catholics and Lutherans. The German Muslim community is composed of different faith directions: approximately 2.4 million of the Muslims living in Germany are Sunnis (80%), approximately 500,000 Alevites (17%), approximately 130,000 Shiites (3%) and a small percentage is part of the Ahmadiyya Muslim Movement.¹⁰¹ Of these only a small number of about 10-15 % are members of the approximately 2,500 mosque-associations (*Moscheevereine*) – out of which 140 are classical Mosques with Minarets – looked after by approximately 2,250 Imams. The majority of Germany's Muslims are considered as religious moderates, since the majority of the Turkish and Yugoslav Muslims have traditionally not been drawn to radical forms of Islam and in general only a relatively small percentage even belong to formal religious organizations. There are various rivalling associations who claim to represent Muslim interests on the national level. The five biggest are:¹⁰² the *Islamrat für die Bundesrepublik Deutschland*,

www.foreignpolicy.com/users/login.php?story_id=5&URL, accessed: 30 March 2007.

⁹⁹ Brandt and Meyer, *supra* note 11. To ensure, that those who were asking for German citizenship also embraced "western values" some of the German Länder – who have to enact the citizenship-law – have introduced "naturalization-tests" which were aiming in particular at Muslim citizens who were under suspicion of not accepting behavioral norms in Germany or were even considered to be potential supporters of fundamentalist ideas, see *OSZE prangert Gesinnungstest für Muslime in Deutschland an*, 27 April 2006, at: http://www.islam.de/5247_print.php, accessed: 3 April 2007; *Treffen der Innenminister: Einheitlicher Einbürgerungstest gescheitert*, SPIEGEL-ONLINE, 1 May 2006; *Integration. Einbürgerungskurse und Sprachtests werden Pflicht*, SPIEGEL-ONLINE, 5 MAY 2006.

¹⁰⁰ For an overview of Islam in Germany, see profile at: www.euro-islam.info/spip/article.php?id_article=84, accessed 3 April 2007. For an official portrait of Islam in Germany, see the reply of the German Federal Government to a parliamentary question of members of the CDU/CSU group, DEUTSCHER BUNDESTAG, 14. WAHLPERIODE, DRUCKSACHE 14/4530, 8 November 2000, at 1-93. The numbers are based on a statistic calculation which takes countries of origin into account and information given voluntarily during the last national census in 1987. On the problems related to these numbers and people being labelled as Muslims or in fact "cultural Muslims," see Spielhaus, *supra* note 1.

¹⁰¹ DEUTSCHER BUNDESTAG, *supra* note 100, at 7-8.

¹⁰² For a detailed list of the registered Muslim associations in Germany in 2000, see DEUTSCHER BUNDESTAG, *supra* note 95, at 9-13; "Germany," available at: www.euro-islam.info, accessed: 20 October 2007; Volker Beck, *Rechtliche Gleichstellung des Islam in Deutschland- aber wie?* at:

dominated by the *Islamische Gemeinschaft Milli Görüs* (IGMG) which allegedly has links with the radical International Muslim Brotherhood and is under supervision of the security services;¹⁰³ the smaller *Zentralrat für die Muslime in Deutschland*; the *Diyanet*, which is associated with the official Turkish Authority for religious affairs and the *Türkisch-Islamische Union* (DITIB) which manages various non-profit ventures; the *Verband islamischer Kulturzentren* (VIKZ e.V.); the *Föderation der Aleviten Gemeinden in Deutschland* representing the Alevites.

These organizations mostly have the status of registered associations (*eingetragener Verein*). So far there is no official umbrella organization of the Islamic faith, but recently four of the above/mentioned organizations (except the Alevites) have announced that they were working in order to found a national Federation already by summer of this year.¹⁰⁴

Germany's Muslims are generally considered religious moderates, since the majority of the Turkish and Yugoslav Muslims have traditionally not been drawn to radical forms of Islam and in general only a relatively small percentage even belong to formal religious organizations.¹⁰⁵

II. The Legal Condition of Islam in Germany

Article 4 of the German *Grundgesetz* (Basic Law, Constitution) grants extensive religious freedom to all religious groups and protects individual religious beliefs and convictions (*forum internum*) as well as the profession and propagation of faith (*forum externum*). Though Church and State are separate under German law and the German state considers itself a secular state, there exists a strong partnership

boell.de/web/integration/47_853.asp, accessed: 20 February 2007.

¹⁰³ On IGMG Milli Görüs, see Germany's annual REPORT ON THE PROTECTION OF THE CONSTITUTION 2005, at 215-222, available at: www.verfassungsschutz.de/de/publikationen/verfassungsschutzbericht, accessed: 23 December 2006.

¹⁰⁴ See *Geplanter Dachverband. Integrationsminister lobt die Muslime*, SPIEGEL-ONLINE, 5 March 2007, available at: www.spiegel.de/politik/deutschland/0,1518, accessed: 5 March 2007.

¹⁰⁵ According to the annual REPORT ON THE PROTECTION OF THE CONSTITUTION 2004 a small minority of less than 0.1 % or about 32,000 Muslim residents in Germany were members of 24 Islamic organizations with extremist ties, at: www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2003/Islamismus_Id_25235_de,templateId=raw,property=publicationFile.pdf/Islamismus_Id_25235_de.pdf, released on 17 May 2005, accessed: 3 April 2007. According to the President of the Bundeskriminalamt (Federal Criminal Investigation Agency) in November 2006 there were 220 ongoing investigations with an Islamist background in Germany; five attacks have been prevented, see REUTERS, 15 November 2006, <http://de.today.reuters.com>, accessed: 15 November 2006.

between Government and the dominant religious groups hold an official status as public entities (public corporations/organizations) which goes back to the Weimar Republic (1919-1933) and has been incorporated into Germany's post war *Grundgesetz* in 1949. Therefore today the Roman Catholic Church, several Protestant denominations, and the Jewish Community enjoy special rights and an elevated degree of autonomy from state intervention.¹⁰⁶ According to Art 140 GG in conjunction with Art 137, sec 5, S. 2 WRV the status of public entities is awarded by the German state- (*Länder*-) governments to religious communities which – according to their inner constitution and the number of their members – provide the conditions to be lasting and not just temporary organizations. These criteria are met by those communities which have their own constitution/charter; have a substantial number of permanent members indicating their importance in public life (about 1/1000 of the state/*Land* population); have already existed for some time (generally thirty years); have sufficient financial means in order to fulfil their tasks and maintain their organizations and advocate beliefs which respect the laws of the state and the constitutional democratic order. These cumulative criteria have made it difficult for Islamic organizations to obtain public entity status, since most of the Muslim Organizations in Germany are comparatively young and small and often do not have a "registered membership" (a concept which is also somewhat alien to the idea of the *umma*). Rivalry and competition among Muslim associations has not helped to convince authorities of the stability and societal importance of particular religious groups.¹⁰⁷ Apart from this there are concerns whether the

¹⁰⁶ The status of these religious denominations as of "public entity" is based on Art 136-139 and 141 of the German Constitution of 11 August 1919 (Weimar Constitution, WRV), norms which have been incorporated into the German Basic Law (*Grundgesetz*, GG) of 1949 in Art 140. The status of public entity grants faith communities special rights such as full independence in matters of employment ("*Dienstherreneigenschaft*"), recognition of the community's religious oath in a court of law, automatic membership of the followers with the community, fiscal protection and exemption from real estate taxes on property designated as belonging to the public domain, the right to receive a percentage of the national revenue based on tax payers' declarations of membership and access to public control boards such as the *Rundfunkräte*. For more see Beck, *supra* note 102, at 5-6; DEUTSCHER BUNDESTAG, *supra* note 100, at 33-38; CÉSARI (2004 A), *supra* note 4, at 229-230.

¹⁰⁷ In its reply to the German Parliament (DEUTSCHER BUNDESTAG, *supra*, note 100, at 33-38) the then-federal government but also Beck, *supra* note 102, at 7 also point to critical voices within the Muslim community who consider an incorporation of Islam into the *Grundgesetz* as artificial and difficult to reconcile with the essence of Islam. The German Federal Interior-Minister Schäuble stressed that there is further need for explaining the German model of "separation" between the religious communities and the State to the Muslim population in order to integrate Islam into the existing system. See Wolfgang Schäuble, *Muslims in Deutschland*, FAZ, 27 September 2006, available at: www.faz.net/s/RubBF7CD2794CEC4B87B47C719A68C59339/Doc~E268337CD8D8940F19D87988EB8071591~ATpl~Eco~mmon~Scontent.html, accessed 3 April 2007. In its reply to a recent question from the opposition in Parliament (DEUTSCHER BUNDESTAG, 16. WAHLPERIODE, DRUCKSACHE 16/3758, 7 December 2006, at 10) the federal government evaded the question whether the incorporation of Islam into the *Grundgesetz* as a public entity was a goal of the German Conference on Islam (*see infra*, C. III) but concedes that it would be helpful for government to have one or more legitimized partners for cooperation in fields such as

contents of Islam can be reconciled with liberal western-style democracy.

In line with Art. 7 sec. 3 of the German *Grundgesetz* in most of the German states (*Länder*) – which are in charge of public schools – religious teaching is included in the standard curriculum. Generally the denominational religious instruction in public schools is provided by religious communities under state- (*Länder*-) government supervision. By law, any community with a sufficient number of students may take part in the program. However, attempts to establish Islamic religious instruction in public schools have been complicated by the lacking recognition of Islam as a public entity.¹⁰⁸ In order to sidestep controversy, so far teaching about Islam is mainly included in comparative courses on world religions. Where different forms of Islamic education are explored,¹⁰⁹ some of the above mentioned Islamic organizations have been called upon to participate in providing instruction in the schools, as the Protestant and Roman Catholic Church generally do.¹¹⁰ So far extra-curricular Islam education has been provided mainly by three major institutions: the *Muslimische Akademie für Religiöse und Soziale Bildung*, DITIB,

Islamic religious education. A "central partner" would therefore be desirable but in the limits of the constitution there was no way that government could constrain religious groups to organize in such a manner, since all religious communities enjoy the freedom to organize themselves within the limits of the law. The government would therefore limit itself to "constructively support" the process of self-organization of Muslims in the country.

¹⁰⁸ Over the last years, only some of Germany's 16 states have come to agreements with various Islamic groups for some forms of religious instruction. For an overview of the state of play in 2000, see DEUTSCHER BUNDESTAG, *supra* note 100, at 40-44. For a recent commentary see Arnfried Schenk, *Allah an der Tafel. Die 700.000 muslimischen Schüler in Deutschland sollen islamischen Religionsunterricht bekommen. Doch nur langsam kommen Schulversuche in Gang*, DIE ZEIT, 9 June 2004, available at: www.zeit.de/2004/25/C-Islamunterricht?page=all, accessed: 30 March 2007; Diana Zacharias, *Access of Muslim Organizations to Religious Instruction in Public Schools: Comment on the Decision of the Federal Administrative Court of 23 February 2005*, 6 GERMAN LAW JOURNAL [GLJ] 1319 (2005), available at: www.germanlawjournal.com/pdf/Vol06No10/PDF_Vol_06_No_10_1318-1337_Developments_Zacharias.pdf, accessed: 30 March 2007.

¹⁰⁹ The most populated Land of Germany, Northrhine Westfalia, has offered Islamic education in the context of "mother-tongue lessons" in Turkish, Arabic and Bosnian since the 1980s. In 1999 an experimental teaching (*Modellprojekt*) of Islamic education in German has been offered as an individual subject on ca. 100 schools with the objective to reach all of the approximately 282,000 Muslim pupils in the Land. These "experimental lessons" are organised in cooperation with various Islamic associations.

¹¹⁰ In Berlin, which as a *Land* enjoys a special historical status and where religious education is not taught as a normal school-subject, an Islamic association, the "Islamische Föderation" (www.islamische-foederation.de), has won a lengthy court case against the state government and is now allowed to provide Islamic religious education in Berlin schools. See *Bundesverwaltungsgericht* [BVerwG] [Federal Administrative Court] 23 Feb. 2000, 110 *Entscheidungen des Bundesverwaltungsgerichts* [BVerwGE] 326. The Federation remains a controversial partner for the state partly because of its relationship to Milli Görüs, the Turkish Islamic movement which is reported to have ties with the radical International Muslim Brotherhood. See Schenk, *supra*, note 108.

and the *Institut für Islamische Bildung*. There are several other smaller institutions. With fears rising that students who are not in supervised religious courses may be exposed to extremism in unsupervised Koran classes, there has been some impetus for authorities to act.¹¹¹ In 2004-2005, a teacher training program started at the Universities of Münster and Frankfurt/Main, which is expected to help with shortages of competent instructors and lead towards more equal treatment of Muslims theologians relative to Christians.¹¹²

The wearing of headscarves (the *hijab*) in schools has become an issue for teachers in some states.¹¹³ While there is no Federal Law against the wearing of headscarves in schools, the federal courts have upheld laws taken in some *Länder* banning teachers from wearing headscarves in public schools.¹¹⁴ The state of Hessen has

¹¹¹ According to the Central Institute of Islamic Archives in Germany, about 18% of all Muslim school children attended Koran schools in 2003. Many German politicians also complain, that female Muslim pupils boycotting mixed school lessons in sports, swimming and sexual education or class trips thus promoting the creation of parallel societies and hindering integration; see Brandt and Meyer, *supra* note 99. According to Martin Spiwak, *Ins Schwimmen geraten: Politiker klagen*, DIE ZEIT, 7 December 2006, available at: www.zeit.de/2006/50/B-Schulverweigerung, accessed: 30 March 2007, this is not the case. He is of the opinion that it is easy to blame immigrants and their religion for pupils failing in school, which might help to exculpate German politicians but does not solve the often significant educational problems of immigrants in Germany.

¹¹² For a long time there has been hardly any training of *imams* in Germany. Most *imams* are “imported” from outside of Europe. They are usually trained in Turkey or sometimes even in Saudi Arabia and have little familiarity with Germany or the West. They often even come to Germany with negative and sometimes even hostile views of Western institutions and values. In 2004, two chairs have therefore been established in Germany for the education of teachers of Islam: The *Centrum für Religiöse Studien* (CRS) is situated in Münster and another chair has been established at the Johann-Wolfgang-von-Goethe University in Frankfurt/Main. While the first is financed with (German) state money, the second receives funding from Diyanet, the official Turkish Authority for religious Affairs – a fact which has caused public debate since some critics are afraid that Turkey will use the funding in order to influence the training of Islamic scholars in Germany. See *College Launches Disputed Islamic Program*, DEUTSCHE WELLE, 27 March 2005. On CRS, see <http://www.uni-muenster.de/ReligioeseStudien/Islam/index.html>, accessed: 30 March 2007.

¹¹³ For an overview, see DEUTSCHER BUNDESTAG, *supra*, note 100, at 26-30.

¹¹⁴ In 2003, the Federal Constitutional Court has ruled against the *Land* of Baden-Württemberg in its effort to ban a Muslim teacher wearing the headscarf, but left the door open for state level bans of the *hijab*. See *Bundesverfassungsgericht* [BVerfG] [Federal Constitutional Court] 24 September 2003, 2 BvR 1436/02, available at: www.bverfg.de/entscheidungen/rs20030924_2bvr143602.html, accessed: 30 March 2007. For a commentary see Matthias Mahlmann, *Religious Tolerance, Pluralist Society and the Neutrality of the State: The Federal Constitutional Court's Decision in the Headscarf Case*, 4 GLJ 1099 (2003), available at: www.germanlawjournal.com/pdf/Vol04No11/PDF_Vol_04_No_11_1099-1116_Public_Mahlmann.pdf, accessed: 30 March 2007. A few months earlier the Federal Constitutional Court had upheld a decision of the Federal Labour Court which had ruled that it is impermissible to dismiss an employee in a department store because of wearing a head scarf, see BVerfG 30 July 2003, 1 BvR 792/03, available at: www.bverfg.de/entscheidungen/rk20030730_1bvr079203.html, accessed: 30 March 2007. The defendant had argued that he would incur financial losses because costumers were not accustomed

banned wearing the *hijab* for all public officials.

Halal slaughter was challenged legally for many years in Germany. However, the Federal Constitutional Court ruled in 2002 that Muslims have the right to exemption from animal protection legislation in respect of their religious beliefs.¹¹⁵

III. The German Islam Conference (DIK)

In Germany – as in Italy – “dialogue with Islam” was for a long time limited to the local or at most the Länder level, where practical matters as Islamic instruction in schools or the construction of mosques were discussed. However, since the attacks on 11 September 2001 in the United States, and other recent terrorist incidents public suspicions of extremist activities by Muslims residing in Germany have also been heightened. With Germans falling victim to terrorist attacks and German soldiers being dispatched in Afghanistan and the Horn of Africa in the “war against terror” and more recently German naval forces in an UN-mission to stabilize Lebanon, radical Islamic terrorism is considered as one of the primary security threats.¹¹⁶ The fact, that three of the 9/11 hijackers had lived and plotted in

to such a sight. The BAG had not engaged in a principled discussion of the role of fundamental rights like the freedom of religion in this case but argued simply that there was no evidence for the economic losses given. Compare *Bundesarbeitsgericht* [BAG] [Supreme Labour Court], 10 October 2002, 2 AZR 472/01, available at: <http://lexetius.com/2002,3160>, accessed: 30 March 2007. Achim Seifert, *Federal Labor Court strengthens religious freedom at the workplace*, in 4 GLJ, 559 (2003), available at: www.germanlawjournal.com/pdf/Vol04No06/PDF_Vol_04_No_06_559-569_Private_Seifert.pdf, accessed: 30 March 2007. In an *actio popularis* the Bavarian Constitutional Court has ruled that the Bavarian law on public education does not discriminate against Muslims by banning symbols which might be seen in contradiction with “Christian occidental values”, compare the decision of the *Bayerischer Verwaltungsgerichtshof* [Bavarian Administrative Appeals Court - BayVGh], 15 January 2007, Vf. 11-VII-05, résumé available at: www.bayern.verfassungsgerichtshof.de, accessed: 20 February 2007. See also *Kopftuch bleibt verboten*, SÜDDEUTSCHE ZEITUNG, 16 January 2007, at 5.

¹¹⁵ See the decision of the BVerfG, 15 January 2002, 1 BvR 1783/99, available at: www.bundesverfassungsgericht.de/en/decisions/rs20021030_1bvr178399.html. On this decision: *The Constitutional Court's "Traditional Slaughter" Decision: The Muslims' Freedom of Faith and Germany's Freedom of Conscience*, 3 GLJ (2002), available at: www.germanlawjournal.com/article.php?id=128, accessed: 30 March 2007. The Federal Administrative Court followed this decision in a recent judgment, see BVerwG, 23 November 2006, 3 C 30.05, available at: www.bverwg.de/media/archive/4732.pdf, accessed: 30 March 2007, despite constitutional changes which have given more weight to the protection of animals.

¹¹⁶ After 9/11, Germany adopted new anti-terrorism laws that limited the protection accorded to Muslim extremists. Legislation approved in November 2001, targeted loopholes in German law that permitted terrorists to live and raise money in Germany. The immunity of religious groups and charities from investigation or surveillance by authorities was revoked, as were their special privileges under the right of assembly, giving the government greater freedom to act against extremist groups. Under the legislation, terrorists could now be prosecuted in Germany, even if they belonged to foreign terrorist

Hamburg and other parts of Germany for several years and that terrorists saw Germany as one of the easier places in Europe from which to operate, has increased the sensitivity of German authorities – on the federal and the Länder level.¹¹⁷ They have also started to pay greater attention and scrutiny to Germany's Muslim communities and became increasingly concerned about radical Muslim clerics who may be preaching in German Mosques. Therefore major efforts have been launched to identify and eliminate radical Islamic extremist cells.¹¹⁸ Shortly after the 9/11 attacks the government moved against twenty religious groups and conducted more than two hundred raids.¹¹⁹ Three radical Islamic organizations were banned in Germany (Kalifatstaat, Al-Aksa e.V., and Hizb-ut-Tahrir). Authorities have placed about three hundred suspects who are thought to have links to international terror-networks under surveillance.¹²⁰

German authorities have realized at the same time that repressive measures are not enough to deal with the root-causes of extremism but that it is necessary to put more emphasis on the integration and participation of Muslim communities in Germany.¹²¹ Following a general consensus in German politics which is also reflected in the coalition-treaty of the two governing parties, according to which the increasing social and emotional segmentation especially of young Muslims

organizations acting only in other countries.

¹¹⁷ Bundesamt für Verfassungsschutz: Aufgaben, Befugnisse, Grenzen (2002) at 62. Available on the website for the German Federal Bureau for the Protection of the Constitution, www.verfassungsschutz.de/de/publikationen/allgemeine_infos/abg/abg.pdf, accessed: 23 December 2006.

¹¹⁸ Under the anti-terrorism laws of 2001 (Gesetz zur Bekämpfung des internationalen Terrorismus vom 9. January 2002, Bundesgesetzblatt Jahrgang 2002 Teil I Nr. 3, 11 January 2002, available at: www.bmi.bund.de/Internet/Content/Common/Anlagen/Gesetze/Terrorismusbekaempfungsgesetz__pdf,templateId=raw,property=publicationFile.pdf/Terrorismusbekaempfungsgesetz_pdf.pdf, accessed: 30 March 2007, security authorities enjoy extended powers.

¹¹⁹ Peter J. Katzstein, *Same War – Different Views: Germany, Japan, and Counterterrorism*, 57 INTERNATIONAL ORGANIZATION, 731 (2003).

¹²⁰ This is based on remarks of Jörg Zierke (Director of the BKA) during a press conference on 21 July 2005.

¹²¹ In 2006 both of the major German political parties CDU and SPD but also some of the Länder-Governments have published "action-plans" for integration policy. See e.g. the CDU position paper *Für einen nationalen Aktionsplan Integration*, 4 April 2006 at: <http://www.cducusu.de/upload/fvintegration060404.pdf>, accessed: 3 April 2007, and the SPD- *Leitlinien zur Integrationspolitik*, published 10 July 2006 at: www.spd.de/show/1682982/110706_FB_integration_NCI.pdf, accessed: 3 April 2007, as well as the "20-Punkte-Aktionsplan Integration" of the government of North-Rhine Westfalia published on 27 June, www.politikerscreen.de/index.php/Common/Document/field/document/id/41240, accessed: 3 April 2007.

belonging to the second and/or even third generation of immigrants has to be stopped, in order to contain the danger of radicalization, the Federal Minister of the Interior, Dr. Wolfgang Schäuble, initiated in September 2006 the German Islam Conference (*Deutsche Islam Konferenz*, DIK) which is to serve as a negotiation and communication process between representatives of the German state and representatives of the Muslim Communities.¹²² With the DIK the Federal Minister of the Interior intends – in cooperation with the German States/*Länder* – to alleviate existing integration problems and create a forum for dialogue with the Muslim Communities which is to develop concrete recommendations on central issues such as Islamic education, training of imams, use of the hijab *etc.* In the course of this conference-process representatives of the state and the Muslim communities are also to explore common ground for improving the integration of Islam – as a “religion without church” – into the constitutional framework of Germany. The proclaimed objective of the DIK though is not only to involve representatives of the Muslim communities in dialogue with the state but explicitly also containing Islamist extremism.¹²³

The Motto of the DIK “Muslims in Germany– German Muslims” can be seen as an illustration of the idea of incorporating the Muslim communities in Germany into the German nation.

The DIK is composed of thirty representatives: fifteen state-representatives (federal level, *Länder* and communes) and fifteen Muslim representatives (five of the biggest Muslim organizations and ten individuals from different fields of Muslim life in Germany). As in Italy the members of the DIK have been selected personally by Minister Schäuble after a series of intensive meetings and consultations. By choosing representatives of organizations and individual representatives, Minister Schäuble reportedly intended to achieve a certain degree of legitimacy (representation) that will go beyond “organized Islam.”¹²⁴ Since the leaders of the biggest Muslim organizations only represent at most 15% of the Muslim population in Germany (the members of these associations) the Minister also selected ten individuals which reflect the diversity of the Muslim community in Germany and last but not least gave a voice to the female Muslim population which otherwise is

¹²² See the homepage of the German Federal Ministry of the Interior, “Deutsche Islamkonferenz”, at: www.bmi.bund.de/chn_028/nm_122688/Internet/Navigation/DE/Themen/Deutsche__Islam__Konferenz/deutscheIslamKonferenz__node.html__nnn=true, accessed: 30 March 2007; Wolfgang Schäuble, *The German Conference on Islam*, TPQ WINTER 15 (2006-07); Jasch, *supra* note 52, at 67-71; DEUTSCHER BUNDESTAG, 16. WAHLPERIODE, DRUCKSACHE 16/3758, 7 December 2006, at 10-15.

¹²³ See the homepage of the German Federal Ministry of the Interior, “Deutsche Islamkonferenz”, *ibid.*

¹²⁴ See also DEUTSCHER BUNDESTAG, *supra* note 122, at 11-12 (answer to questions 33-34).

scarcely represented by the official associations (all led by men).¹²⁵

Like in Italy, the DIK will not have decision-making powers but is to elaborate recommendations, which are to be based on broad consensus. The results achieved by the DIK will be subject to evaluation every six months in order to ensure that its objectives will be reached within a timeframe of two to three years. The first meeting of the DIK took place in Berlin on the 27 September 2006 in the historical castle of Charlottenburg, which is linked to the memory of the Great Prince Elector Frederic William of Brandenburg and Prussia (February 16, 1620 – May 9, 1688), who in 1685 had invited the Huguenots to come to Prussia in order to repopulate his lands which had been devastated during the thirty-year war (1618-1648) between Protestant and Catholic fractions in Central Europe.

The meeting was attended by fifteen state representatives¹²⁶ as well as three representatives from the communal and district associations. The Muslim community was represented by the Secretary General of the *Türkisch-Islamische Union der Anstalt für Religion e.V.*, the head of the Central Muslim Council, the President of the Federation of Islamic cultural centres, the Secretary General of the Allevite Community and the head of the Islam Council for Germany. Individual Islam is represented by number of “cultural Muslims” including outspoken critics of organized Islam.¹²⁷

¹²⁵ This strong element of individual representatives has met with strong criticism by the representatives of institutional Islam who also threatened to boycott the conference. Other critics remarked that the DIK was scheduled at the beginning of the *Ramadan*, see *Yassin Musharbash, Islamkonferenz. Lob für Schäuble-erste Konflikte zwischen den Muslimen*, SPIEGEL-ONLINE, 27 September 2006, at: www.Spiegel.de, accessed: 27 September 2006; *Verbände kritisieren Zusammensetzung der Islamkonferenz*, AFP 16 September 2006.

¹²⁶ The state representatives are: the Federal Minister of Interior, Dr. Wolfgang Schäuble; the Federal Minister of Justice, Brigitte Zypries; the special Chargé for integration, Dr. Maria Böhmer; the State-Secretary in the Foreign Office, Georg Boomgaarden; representatives of the Federal Chancellery, the Federal Ministry of Labour and Social affairs and the Office of the Chargé for Culture and Media; the Bavarian Minister of Interior and current president of the standing Conference of the Interior Ministers of the *Länder* (“*Innenministerkonferenz*,” IMK), Dr. Günther Beckstein; the Berlin Senator for the Interior, Dr. Erhardt Körting; the president of the standing *Länder*-conference on Culture and Public education (*Kultusministerkonferenz*, KMK) and Minister of Culture of Schleswig-Holstein, Ute Erdsiek-Rave; the Minister of Culture and public education of Bavaria, Siegfried Schneider.

¹²⁷ For short portraits of the participants, see *Islamkonferenz-Teilnehmer. Von radikal bis liberal*, SPIEGEL-ONLINE, 27 September 2006. The representatives are: the president of the Turkish community, Kenan Kolat; the economist and development expert from the public Kreditanstalt für Wiederaufbau (KfW), Nassir Djafari; the sociologist and women’s rights activist, Dr. Necla Kelek; the Secretary General of the European Centre for Integration, Badr Mohammed; a special chargé of the Holtzbrinck-Gruppe (Editor’s), Walid Nakschbandi, a school-teacher Havva Yakkar, the doctor and President of the German-Turkish club, Dr. Ezhar Cezairli; the lawyer and women’s rights activist, Seyran Ates; the writer Feridun Zaimoglu and the oriental scientist and writer Dr. Navid Kermani. See commentary by Wolf Günter

Although the meeting has been overshadowed by the cancellation of Mozart's "Idomeneo" at the *Deutsche Oper* for fear of attacks by Muslim extremists, it had a very positive echo in the German media.¹²⁸ All Islamic organizations and the individual members pledged allegiance to the German Basic Law in the beginning of the meeting thus neutralizing concerns which had been uttered in the media that some elements of the DIK were not willing to respect the values of liberal democracy as a condition for dialogue. The day after the conference meeting Minister Schäuble pointed out in a speech in Parliament, that he had abandoned his initial project of reaching a "social-contract" with the Muslim Communities since there had been the general understanding that Islam in Germany would be professed within the limits of the German constitution.

The DIK adopted without contradiction a set of rules in which the working methods and the aims of the conference are laid down. According to these rules there are to be two plenary meetings a year under the presidency of the Minister of the interior who is also in charge of the preparation of the meetings. The meetings and the contents of the discussions held during the meetings are confidential. The members of the DIK have to participate personally. Conclusions can be taken by more than half of the members present; recommendations are taken unanimously.

The technical work of the DIK will be conducted in three working groups and a discussion circle which are to meet at least six times a year. The work of the DIK is supported by a secretariat at the Bundesamt für Migration und Flüchtlinge (Federal Agency for Migration and refugees BAMF) in Nuremberg.¹²⁹ The first meeting on the working level was organised on November 7, 2006 at the seat of the secretariat behind closed doors.

Lerch, *Mit dem Islam erst am Anfang*, FAZ, 28 September 2006, at 1.

¹²⁸ Minister Schäuble even invited the members of the DIK to see the presentation of *Idomeneo* together which had been criticized for showing the beheaded heads of Jesus, Buddha, Muhammad and Poseidon together. Most of the Muslim representatives followed Schäuble's invitation, see Musharbash, *supra* note 125; Bernadette Schweda, *Jetzt wollen (fast) alle in die Oper*, DAS PARLAMENT, 5 February 2007; Katharina Schuler, *Der Wohlfühl-Gipfel*, DIE ZEIT ONLINE, 27 September 2006, available at: www.zeit.de/online/2006/39/Gipfel-2, accessed: 30 March 2007.

¹²⁹ For further information, see the BAMF's homepage at: www.bamf.bund.de, accessed: 30 March 2007.

The working areas which are to be addressed during the working sessions reflect contentious issues which have hampered integration in the past:¹³⁰

(1) The German social system and German values

Equality between men and women
 Developing an informed political opinion
 Family/education/self-determination of young people
 Accepting the diversity of democratic cultures
 Secularization (international comparison of criteria and trends)

(2) Religious issues and the German understanding of constitution

Separation of the state and church as a basic principle
 Dealing with religious symbols
 Mosque-building
 Islamic religious instruction in German and under state control of the Länder
 Providing/expressing the intention to take German lessons (policy of give and take); pre-school instruction/models at Länder level
 Equality of girls and boys, co-education (physical education and swimming lessons, school trips, sex education, attitude of Muslim boys to non-Muslim girls of their own age, etc.)
 Training of imams/chairs for Islamic studies (universities/colleges)

(3) The private sector and the media as bridge-builders

Young people on the job market (e.g. training)
 Recruitment policy in the private sector and public sector/self-employment
 Information policy to overcome prejudices in the Turkish media
 Information policy to overcome prejudices in the German media
 Religious and cultural identity of select personalities/role models
 Secular forms of Islam

(4) Security and Islamism

Additional issues of internal security, Islamist activities against the free democratic basic order and the prevention and exposing of Islamist acts of violence will be debated in a discussion group assigned to the Conference.

Since the DIK has only just started its work with one meeting with Minister Schäuble it is impossible to assess whether it will play a similar role as the previously discussed Council on Islam in Italy. The response in the media and

¹³⁰ See www.bmi.bund.de/clin_012/nn_1026710/Internet/Content/Themen/Deutsche__Islam__Konferenz_/DatenUndFakten/Islamkonferenz__Kurzinfor__en.html, accessed: 30 March 2007.

especially among the Muslim population in Germany has generally been very positive. The initiation of the DIK by Minister Schäuble is considered by many observers as a positive sign, that there is growing awareness in Germany that the integration of its Muslim population is one of the greatest challenges faced by the country. It also shed a light on the rivalling Muslim Associations in the country who seem to feel encouraged to aspire for closer and more transparent cooperation.¹³¹ There has been some critique about the rather restrictive information policy of the Federal Government especially during the selection process of the members of the DIK and overlapping with broader initiatives as the “integration summit” organized by Chancellor Merkel in summer 2006.¹³²

D. Conclusion

While the German and the Italian governments view integration as a social need beyond combating terrorism, it is clear that terrorist acts have spurred further action by state authorities to encourage integration. In both countries greater state involvement in and observation of Muslim life in their societies started in particular after the 11th of September 2001. But there also seems to be more awareness among decision makers in both countries that the Muslims are there to stay and that they will – given current demographic trends – become growing segments in both societies even without further migration.¹³³ In addition, in order to take care of their aging populations, Germany and Italy may eventually have to expand their younger work force substantially, which at this point seems possible only through immigration. A large portion of those wanting to immigrate to Germany and Italy are likely to be Muslims from developing nations. Another factor for pressing Muslim integration is that, given the growing security threat of terrorism, neither country can afford to have an increasingly hostile and alienated population, among whom some might even be susceptible to terrorist recruitment. Therefore Germany – as an “old” immigration country – and Italy – as a country with a very rapidly growing new Muslim population – face similar challenges: They have to promote an “institutionalization of Islam” which above all involves finding and “building-

¹³¹ On recent efforts of four of the main Muslim organizations in Germany to create a federation, *see supra* note 104.

¹³² DEUTSCHER BUNDESTAG, *supra* note 122.

¹³³ The birth rate among the German Muslim population is 3 times higher than for non-Muslims and the population is expected to roughly double by 2015, *see* www.pbs.org/wbgbh/pages/frontline/shows/front/map/de.html, accessed: 20 July 2006. Also in Italy persons coming from traditional Muslim countries are the fastest growing immigrant group. Although Muslims only account for ca. 1% of the total population 14% of Italy's prison population is Muslim, 98 percent of whom are foreign nationals, *supra* note 53.

up” legitimized partners for dialogue among the Muslim communities in order to create a common understanding on how Islam can be reconciled with the national legal framework and with “western values.” For decision makers it will be important to find/create such true partners, which are backed by their Muslim communities and with whom commonly shared solutions for practical issues such as teaching Islamic religion in schools, building mosques, training imams which are familiar with the values and customs of western societies etc. can be sought.

The absence of true legitimation or representativity, which could only be achieved through democratically elected representatives, is a common feature of both, the Italian Council and the DIK. The underlying thought in both countries is that the Muslim communities have to somehow further “mature” into national faith groups, a process which is to be promoted by the Council and the DIK. The privileged access to Government might serve to facilitate this process and promote the formation of moderate, democratic leaders within the Muslim communities. It might as well support the articulation and development of new, European Muslim identities by truly incorporating Islam into the societal framework of the “host-“ countries. On the other hand Italy and Germany which both have a corporate system when it comes to the relationship between the state and the faith communities might have to face up to the future challenge of reforming their existing constitutional frameworks in order to reflect the needs of a changed, more multicultural population. The American philosopher and political scientist Francis Fukujama has argued in a recent publication¹³⁴ that “islands of corporatism,” in which the state maintained a special relationship with the Christian Churches and the Jewish communities are today confronted with such a need for change. Not having been controversial prior to the arrival of large Muslim communities, since most European societies had become – like German society – thoroughly secular, these religious holdovers seemed quite harmless but have now become obstacles to the maintenance of a wall of separation between religion and state, since Muslim “newcomers” would consider them as important “precedents.” Fukujama therefore concludes that if in Europe the liberal principle of pluralism based on individuals rather than groups is to be preserved, then it must address these corporist institutions inherited from the past. The institutionalisation of the Council in Italy and the DIK in Germany might therefore also engender such reform of existing constitutional frameworks.

While the institution of the Council on Italian Islam and the Islamkonferenz in Germany have been welcomed by the media throughout the political landscape, it is still too early for an assessment of the future success of these efforts in promoting

¹³⁴ See *supra* note 12.

the integration of Muslims. The experience which so far has been gathered with the Council for Islam in Italy shows however that the Council has already become an important instrument for dialogue between the State and its Muslim citizens. It reflects the different expressions of the Muslim community in Italy and focuses on emerging social issues. In the short time of its existence it has already served to formulate opinions on important issues of domestic policy such as the reform of citizenship. But also with regard to contentious foreign policy issues as the war in Lebanon it has been an important forum and instrument for channelling conflicts which otherwise might have led to (further) alienation and hostility between different faith communities in Italy.

The avenue of dialog is the only option in order to address integration problems and build bridges of mutual understanding between government authorities, the Non-Muslim majority and the Muslim communities in Germany both countries. The first step has been made and an ambitious programme for the future activities of both fora has been presented.