

Article

Selective Secularism and the Governance of Religious Diversity in German Case Law: A Case-Illustrative Socio-Legal Analysis

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Abstract

This article offers a case-illustrative socio-legal analysis of five decisions of German ordinary courts concerning Muslim prayer and halal food in prison, Islam-coded public performance in urban space, minority community mediation in criminal justice and male circumcision as a ritual controversy involving Muslim and Jewish communities. Building on comparative work on “moderate secularism” and using cases identified through the CURED database, it develops a focused account of selective secularism by examining how courts translate minority claims into legal categories within Germany’s formally cooperative framework for governing religion. The analysis distinguishes this wider Christian-centred recognition architecture from the more specific legal and institutional baselines operative in the selected disputes. Within this framework, the argument examines how, in the selected decisions, minority practices are assessed through arena-specific legal standards and institutional routines presented within legal reasoning as neutral, administrative or secular, including security, public order, ordinary institutional diet, restorative justice, bodily integrity and child welfare. Non-religion is approached as an implicit baseline within disputes legally framed as religious. The article contributes to debates on Islam and religious diversity in Germany by analysing prison accommodation, urban public order, criminal mediation and bodily-integrity controversies together. It shows how each legal arena defines what counts as ordinary, which minority claims require justification, and which forms of accommodation or restriction become possible. It argues that, across these decisions, minority claims receive less restrictive legal treatment when they can be translated into goals legible to state institutions, such as order, repair, child welfare or regulated inclusion.

Keywords: selective secularism; governance of religious diversity; German case law; Islam in Germany; non-religion and law



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1. Introduction

Contemporary religious pluralism is best understood not as a narrow question of “church–state relations”, but as a dense field in which law, public policy and everyday practices jointly produce hierarchies of recognition between majority religion, minority religion and non-religion. Current debates increasingly converge on a shared problem: how legal, policy and administrative frameworks translate abstract commitments to freedom of religion or belief (FoRB) into stratified regimes of recognition (for a recent FoRB-centred global synthesis, see [Cesari 2025](#)). Across Europe, cooperative models of governance are being strained by pluralisation from below, by the politicisation and securitisation of

minority faiths, and by the growing salience of culturally dominant forms of non-religion as an implicit civic norm. Here, politicisation refers to the framing of minority faiths as tests of civic loyalty and integration, while securitisation designates their coding as potential risks to public order and national security. The central question is how courts translate minority religious and minority-coded claims into legal categories, and how those translations reproduce or modify the baselines against which such claims are judged.

The case analysis focuses on five selected decisions of German ordinary courts concerning Islam-related controversies and one ritual controversy involving Muslim and Jewish communities. Building on comparative work that presents Germany as a paradigmatic instance of “moderate secularism” (Sealy 2019, 2021; Modood 2017; Modood and Sealy 2024), it conceptualises the German case as a specific configuration of selective secularism. Analytically, this requires distinguishing Germany’s macro-level recognition settlement, historically organised around the major Christian churches, from the case-level baselines through which courts assess specific practices. The argument does not treat each legal arena as Christian-centred in the same way. In the prison and urban public-order cases, the operative baselines are primarily secular-administrative, including security, institutional manageability and public order. In the dietary and circumcision cases, culturally dominant assumptions about ordinary provision, embodiment and childhood become more visible. These decisions are treated as case illustrations of disputes in which the legal translation of minority claims and the operation of implicit baselines become especially visible across distinct institutional settings. In contemporary Germany, selective secularism becomes especially legible in controversies publicly framed around Islam, while non-religion enters the analysis chiefly as a background legal–cultural norm rather than as an explicit claimant position. Courts are therefore analysed as sites where minority claims and practices are translated into the legal vocabularies of rights, proportionality, equality and institutional order (Sajir 2025b).

The article’s focused contribution to debates on Islam and religious diversity in Germany lies in reading controversies usually analysed separately through the same socio-legal question: how do courts translate minority claims into ordinary legal categories, and what does that translation make possible or impossible? Scholarship on Islam in Germany has extensively examined securitisation, struggles over public recognition and specific controversies around prisons, public order, Islamic associations and circumcision (Koenig 2007; Sealy 2019, 2021; Amir-Moazami 2022; Riedel 2019). This article adds a court-centred comparison of selected ordinary-court decisions across different legal arenas. It shows how prison security, public-order reasoning, ordinary institutional diet, restorative justice, bodily integrity and child welfare each define what counts as ordinary, which minority claims require justification, and which forms of accommodation or restriction become legally available.

From the perspective of non-religion studies, the contribution lies in shifting attention from explicit non-religious actors to implicit legal–cultural baselines within religion-coded disputes. The analysis asks how assumptions about ordinary embodiment, diet, public order, institutional manageability and child welfare shape the legal assessment of minority religious and minority-coded claims. This keeps non-religion analytically present as an operative norm within legal reasoning, without turning the study into an analysis of explicit non-religious litigation.

The article uses selective secularism and legal translation as its main analytical tools. The secondary concepts of post-secularising agency, transcultural capital and networked governance are used only where the cases require them. They matter most in the Syrian mediation and circumcision sequences, where minority actors and their allies translate contested practices into state-legible goals such as repair, pacification, child welfare or

regulated inclusion. They play a more limited role in the prison and public-order cases, where the analysis centres on security, administrative manageability and public order.

The case material consists of five German ordinary-court decisions identified through the German entries in the Cultural and Religious Diversity under State Law across Europe (CURED) database. The selected decisions concern Muslim prayer and halal food in prison, Islam-coded public performance in urban space, minority community mediation in criminal justice, and male circumcision as a ritual controversy involving Muslim and Jewish communities. Read together, they allow the article to examine how minority religious or minority-coded claims are translated into arena-specific legal vocabularies, including institutional security, public order, restorative justice, bodily integrity and child welfare. Within the shared macro-institutional setting of German cooperative secularism, the analysis examines four governance outcomes, namely restriction, constrained negotiation, negotiated recognition without integration and legal recalibration after post-secular mobilisation. Restriction is analysed through two distinct mechanisms, carceral containment of Muslim prayer practice and public-order regulation of Islam-coded street performance. These outcomes are used as case-illustrative markers, not as a general typology of German religious litigation. The article shows how different legal arenas translate minority claims and define the limits of accommodation.

The article proceeds in three steps. Section 2 situates Germany within comparative debates on religious governance and defines the analytical vocabulary used in the article, with *selective secularism* as the central concept. Section 3 applies this vocabulary to five selected ordinary-court decisions, examining how minority claims are translated across different legal arenas. The conclusion summarises what these cases show about the uneven legal accommodation of religious diversity in Germany and indicates how the argument might inform more tightly bounded comparative work.

2. From Regime Models to Selective Secularism: Courts and the Governance of Religion and Non-Religion

2.1. State of the Field: Models of Religious Governance in Europe

Debates on the governance of religious diversity in Europe have long been organised around ideal-typical “regime” models. Classic typologies distinguish between strict secularism or *laïcité*, conventionally associated with France; concordatary or corporatist arrangements, attributed to countries such as Germany and Italy; more pluralist or multicultural approaches, often linked to the United Kingdom; and post-confessional Southern European systems, where Catholic legacies still structure law and policy despite formal commitments to neutrality (Ferrari 2012; Madeley 2009). These models have been useful for mapping the institutional architecture through which states regulate religion, yet in doing so they tend to stabilise historically contingent compromises as if they were stable regime features, underplaying both internal variation across regions and jurisdictions and the dynamic processes of transformation reshaping religious governance in real time. This is particularly evident in federal settings such as Germany, where historically Catholic and Protestant strongholds, together with sharply differentiated East–West patterns of secularisation, sit uneasily under a single “regime” label and generate regionally divergent configurations of cooperation, recognition and non-religious baselines. Triandafyllidou and Magazzini (2021) have significantly enriched the empirical picture of European religious governance through detailed country case studies, yet their approach emphasises comprehensive regional coverage rather than developing an overarching comparative typology.

Beyond these classic regime typologies, comparative scholarship has also shown that the governance of religious diversity is shaped by historically layered institutional arrangements, political struggles over public recognition, and differentiated forms of

institutional pluralism rather than by static church–state formulas alone (Koenig 2007; Bader 2007). This broader line of work reinforces the need to treat regime labels as heuristic starting points rather than as self-sufficient explanations.

Recent work within the GREASE project explicitly departs from static regime thinking and conceptualises “the governance of religious diversity” in terms of modes of political secularism and their operative norms (Sealy 2019; Modood and Sealy 2022, 2024). Rather than treating secularism as a single doctrine, this framework starts from a minimal definition of political secularism as the claim that the state has a *raison d’être* of its own and should not be subordinated to religious authority. On this basis, Modood and Sealy distinguish several modes of governance, including secularist statism, liberal neutralism, moderate secularism, majoritarian nationalism and pluralistic nationalism. Each mode is characterised not only by formal church–state arrangements, but by a constellation of “dominant” and “qualifying” operative norms that shape how religious and non-religious actors are actually positioned in public life (Modood and Sealy 2024).

Within this comparative landscape, Germany is considered as a good example of what has been named “moderate secularism” (see Sealy 2019, 2021; Modood 2017). The Basic Law re-enacts Weimar provisions that institutionalised this cooperation: even though the Weimar Constitution rejected a state church, it retained subsidies and corporate status (*Körperschaft des öffentlichen Rechts*) for the major churches, a framework that persists today (Hofhansel 2013). This Christian-centred architecture is visible not only in public-law corporation status and related fiscal arrangements such as church tax, but also in denominational religious instruction, chaplaincy structures in public institutions, and recognition criteria historically better aligned with church-like, territorially stable and hierarchical organisations than with the organisational forms of many Muslim associations (Hofhansel 2013; Sealy 2019, 2021).

At the same time, the German case illustrates why regime labels are insufficient. First, federalism produces a multi-level and territorially variegated governance of religion. While the constitutional template is shared, the criteria for public-law recognition, the organisation of religious education, and the regulation of religious symbols in schools and public buildings differ across *Länder*, and local authorities develop their own patterns of engagement through consultative bodies, interfaith platforms and ad hoc arrangements (Sealy 2019, 2021; Nagel 2025). This variation is visible in the governance of Islam itself. The city-state of Hamburg pursued a treaty-based route through its 2012 agreements with Muslim organisations (EUREL 2012), while the Land of North Rhine-Westphalia (NRW) relied on an advisory-board model for the introduction of Islamic religious instruction in public schools (Mende 2013). Governance of religious diversity is therefore intrinsically multilevel, with European norms, federal jurisprudence, *Länder* competences and municipal practices intersecting in ways that produce neither a single, coherent model nor a stable equilibrium, but rather a terrain of persistent contestation and jurisdictional variation.

Second, the recognition architecture of German moderate secularism is historically Christian-centred. Built around two *Volkskirchen*, it presupposes territorial, hierarchical and bureaucratic organisational forms that do not map easily onto newer minorities. Muslim organisations in particular encounter structural obstacles when attempting to fit an institutional template built for churches. As Sealy (2019) notes, public-law corporation status had been granted to an estimated 180 religious groups in Germany overall, yet by 2018 only two Muslim organisations had obtained that status. This mismatch is organisational as well as legal. The inherited recognition template was shaped around territorially stable, hierarchical corporate bodies, whereas Muslim religious life in Germany has often been dispersed across nearly 3000 communities that have struggled to coalesce into unified umbrella structures at *Land* or national level. As a result, many Muslim organisations remain

registered under private law and cooperate with the state through Land-level agreements or ad hoc arrangements, especially in fields such as education, rather than through the classic route of *Körperschaft* recognition. These arrangements render religion available as a public good, but they also entrench a hierarchy of recognition in which long-established Christian churches occupy structurally privileged positions.

Third, dynamics of pluralisation, secularisation and securitisation strain inherited models in ways that classic typologies barely register. Germany has seen a pronounced rise in the population with no formal religious affiliation, sharp regional contrasts between a highly secularised East and more institutionally religious West, and declining participation in the traditional churches (Großbölting 2016; Sealy 2021). At the same time, the visibility of Islam and Muslim-origin populations has been framed through an unstable mix of integration discourse and security concerns, exemplified by the German Islam Conference, debates over headscarves, mosque construction conflicts and the involvement of domestic intelligence services in monitoring “Islamism” and “extremism” (Sealy 2019). From the perspective of Modood and Sealy’s framework, the German variant of “moderate secularism” is increasingly inflected by qualifying norms that pull in different directions: some oriented towards liberal neutralism and equalising “downwards”—reducing religious privileges towards a more secular baseline—others towards forms of selective majoritarian nationalism and equalising “upwards”—reaffirming or extending institutional advantages for historically dominant churches (Modood and Sealy 2024).

Rather than refining regime classifications, this regime-level reconstruction clarifies the specificity and tensions of the German case: a formally moderate, cooperative system marked by federal variation, a recognition settlement historically shaped around the major Christian churches, and the recurring security framing of Islam-related controversies. The case analysis therefore treats Germany’s cooperative settlement as the wider context, not as a direct explanation for each outcome. Christian-centred refers here to the architecture of public recognition, including public-law status, church tax, denominational instruction and chaplaincy structures; it does not mean that every legal baseline examined below derives directly from Christian doctrine or church institutions. The analysis asks how particular courts rely on arena-specific legal and administrative baselines, and whether and where those baselines connect to longer Christian-centred institutional histories. The analysis now turns to courts as sites where minority claims are translated into arena-specific legal vocabularies and assessed against institutional baselines that appear neutral within legal reasoning.

2.2. Courts as Sites of Legal Translation

Courts are analysed here as sites of legal translation. This formulation keeps doctrinal reasoning central while asking how courts define the institutional problem before them, which baseline they treat as ordinary, and how minority claims are rendered legally intelligible, manageable or subject to restriction. The relevant legal vocabularies vary by legal arena, including security and institutional order in prisons, public order in urban space, restorative justice in criminal mediation and bodily integrity or child welfare in the circumcision controversy.

This is a governance-centred socio-legal reading in a specific sense. As a sociological study of legal reasoning, the analysis is not primarily concerned with whether the decisions are doctrinally correct or incorrect, as a conventional legal commentary might be. It examines legal reasoning as a mechanism of social regulation through which religious diversity is governed. It asks how court decisions authorise, limit or recalibrate the terms on which minority practices become legally intelligible. The focus is therefore on the social and institutional effects of legal reasoning, including how institutional problems are framed,

which baselines are treated as ordinary, and what forms of accommodation, restriction or recognition become available.

This socio-legal reading builds on scholarship showing that judicial and quasi-judicial settings regulate religion by recoding minority practices through apparently neutral legal categories and majority assumptions (Amir-Moazami 2022; de Galember and Koenig 2014; Riedel 2019). The present article applies that insight to five German case trajectories, asking how courts in each arena translate minority claims and what form of restriction, accommodation or recognition follows.

Malloy's notion of a "law of diversity" supports this account by showing that minority claims are negotiated across legal and institutional settings instead of being resolved through abstract neutrality alone (Malloy 2025). Selective secularism and legal translation provide the organising concepts for the analysis that follows.

Accordingly, judicial outcomes are read as situated acts of legal translation. Longer sequences are discussed where the material supports them, most clearly in the circumcision controversy.

In the analysis that follows, the relevant legal arenas are prison accommodation, public order in urban space, criminal mediation, and bodily integrity and child welfare. The article asks how each arena defines the ordinary baseline and how far it allows minority practices to become legally consequential.

2.3. Selective Secularism and Legal Translation

Selective secularism names an asymmetry in the legal governance of diversity. Majority religious arrangements and dominant secular standards are treated as ordinary, while minority religious practices and minority-coded cultural expressions become visible as claims requiring justification, accommodation or restriction. Earlier work has developed this concept through two connected movements: majority religious traditions are culturalised as heritage or civic common sense, while minority-coded practices, especially those associated with Islam, are religionised as claims requiring justification, accommodation or restriction (Sajir 2023, 2025a, 2025b, 2026a). A related socio-legal application to Spain shows how this asymmetry can also be traced through legal architecture, judicial reasoning and administrative practice (Sajir 2026b). In this article, the concept is specified for German ordinary-court analysis.

The article therefore treats institutional history as a contextual frame, not as a direct explanation for every outcome. Germany's recognition settlement is Christian-centred at the level of institutional history, while the selected decisions operate through more specific legal baselines. Some of these baselines are mainly secular-administrative, including prison security, institutional manageability and public order. Others, especially in the circumcision dispute and, more modestly, in the dietary case, involve culturally dominant assumptions about ordinary provision, embodiment and childhood.

Legal translation refers to the way courts render minority claims intelligible through arena-specific legal vocabularies. These vocabularies include security and institutional order in prisons, public order in urban space, restorative justice in criminal mediation, and bodily integrity or child welfare in the circumcision controversy. The article's contribution lies in showing how these vocabularies do more than apply neutral legal standards to religious claims. They define what courts can recognise, what institutions may be required to accommodate, and what can be restricted.

This focus also connects the article to post-secular and multicultural debates on translation. Sealy's discussion of religious language, asymmetrical burdens and the institutional translation proviso is especially relevant here because it shifts attention from abstract neutrality to the conditions under which religious reasons must be translated into publicly

authoritative language (Sealy 2025a, 2025b). The present article adapts that insight to court-centred analysis. It asks not whether religious language should be admitted into public debate in general, but how courts translate minority religious or minority-coded practices into the specific legal languages of security, order, repair, welfare and rights.

The connection to non-religion studies follows from this same focus on baselines. Non-religion is not analysed here as an explicit claimant identity in the selected cases. It is approached as an implicit baseline within disputes legally framed as religious. This becomes visible where ordinary diet, unobtrusive embodiment, institutional discipline, public order or child welfare are treated as self-evident standards against which minority practices must be justified.

The agency-oriented vocabulary, especially post-secularising agency, transcultural capital and networked governance, is used only where the material calls for it. It is most relevant in the Syrian mediation and circumcision sequences, where minority actors and their allies translate contested practices into terms recognised by state institutions. It plays a limited role in the prison and public-order cases, where the main issue is how institutions classify and restrict minority claims.

2.4. From Framework to Cases: Operationalisation, Case Selection and Analytical Strategy

The case analysis applies this focused analytical vocabulary to five German ordinary-court decisions identified through the German entries in CURED, a curated database of case-law analyses on cultural and religious diversity across Europe. The original judicial materials provide the primary basis for analysis, including the underlying decisions, available procedural sequences and the doctrinal reasoning at issue.

The relevant CURED material was screened as a curated corpus of German disputes on cultural and religious diversity, not as a statistically representative map of German litigation on religion and non-religion. The German entries consulted for this screening include disputes across several legal and institutional fields, including education, labour, family law, prison administration, public order and bodily integrity. The selection proceeded through three analytical filters: ordinary-court decisions in which religion-related or minority-coded claims were processed through legal reasoning; disputes centred predominantly on Islam-related controversies, with the circumcision case included because it concerns a ritual practice shared by Muslim and Jewish communities; and variation across legal arenas, namely prison work and religious objects, prison diet, urban public order, criminal mediation and bodily integrity.

The five cases are therefore used as analytically selected case trajectories rather than as representative instances of German religious litigation. Their value lies in allowing comparison of how different legal arenas translate minority claims into ordinary legal categories and how those translations shape the scope for accommodation, restriction or recalibration. The governance outcomes discussed below are not the sampling frame from which the cases were chosen. They are analytical labels used to describe the forms of legal translation that emerge from reading the cases through the guiding questions set out below.

To make the analytical procedure explicit, each case is read through five guiding questions:

1. Which religious or non-religious claims and practices, majority religious legacies, or dominant secular norms are normalised, problematised or rendered invisible in the dispute?
2. What institutional, cultural or legal baseline is treated as ordinary, and how is that baseline positioned as neutral or taken for granted?
3. Which legal criterion or justificatory standard structures the dispute, for example security, public order, proportionality, dignity, equality or child welfare, and with what justificatory vocabulary?

4. What room exists for translation, mediation or minority agency, including the deployment or blockage of transcultural capital?
5. How do judicial and, where relevant, political sites interact in shaping the outcome, and does that outcome primarily take the form of restriction, constrained negotiation, negotiated recognition without integration, or legal recalibration after post-secular mobilisation?

In this perspective, German jurisprudence is approached not as a series of isolated legal rulings, but as a set of governance nodes through which the hierarchy between majority religion, minority religion and non-religion is stabilised, selectively adjusted or, in rare cases, reconfigured.

These operational choices structure Section 3. The order of presentation in Section 3 is analytical rather than chronological. The following analysis proceeds case by case, examining how courts and litigants shape different trajectories of restriction, constrained negotiation, negotiated recognition and legal recalibration, and showing how these cases illuminate the dynamics of selective secularism and post-secularising agency in contemporary Germany.

3. Five Case Trajectories in German Case Law on Religious Diversity

The analysis now proceeds through five case trajectories. These trajectories are used as case illustrations of how different legal arenas translate minority claims into legal categories. The first two trajectories are two variants of the same restrictive pattern: the prayer-rug case illustrates restriction via Muslim orthopraxy under carceral security and manageability, while the “Shariah Police” case illustrates restriction via religionised culture and the securitisation of Islam-coded public performance. The remaining three trajectories are read as constrained negotiation in the halal-food case, negotiated recognition without integration in the Syrian mediation case and legal recalibration after post-secular mobilisation in the circumcision controversy. This organisation explains why the article discusses five cases while retaining four broader outcomes. It also clarifies what each case contributes to the central argument that courts assess minority practices through arena-specific legal standards, which shape the form of restriction, accommodation or legal recalibration that follows. The corresponding reports by Silvia Tellenbach provide the CURED identifiers and legal contextualisation for the decisions discussed below (Tellenbach 2024a, 2024b, 2024c, 2023a, 2023b).

3.1. Restriction via Orthodox Religious Practice: The Prayer Rug in the Prison Workroom (Regional Court Aachen)

This case exemplifies a restrictive outcome in which an orthodox religious practice is acknowledged in principle yet curtailed in practice through carceral logics of security and order. In an order of the Regional Court Aachen, a Muslim prisoner requested permission to keep his prayer rug in the prison workroom so that he could observe the prescribed prayer times regularly. The prison authorities refused, arguing that the rug could be used to conceal prohibited objects and would significantly increase the burden of control. The Regional Court Aachen upheld this refusal, accepting that Article 4(1) and (2) of the Basic Law (*Grundgesetz*, GG) apply in prison and that the inmate retains a right to pray and to own a prayer rug, while simultaneously affirming that this right may be limited where it conflicts with the purpose of sentence execution and the need to safeguard security and public order.¹

From the perspective developed in Section 2, the decision is instructive less for its doctrinal novelty than for the way it operationalises selective secularism through institutional routines. The court explicitly recognises that prayer, including the use of a rug, falls under the protected scope of Article 4 and that the inmate must be allowed to possess the rug.

However, it draws a sharp spatial boundary between possession in the cell and use in the workroom. Within the work context, the prayer rug is reframed as a security problem: an object whose material properties (thickness, seams, folds) render it difficult to control and therefore incompatible with the institutional requirement of surveillance. The balancing exercise is conducted at a high level of abstraction. Rather than assessing concrete risks or exploring less restrictive alternatives, the court generalises from the single rug to a hypothetical cascade of “numerous other religious objects” that would have to be admitted for reasons of equal treatment, and it deems the resulting control effort unreasonable.

Two features of this reasoning are central for the argument of this article. First, the decision exemplifies a procedural restriction outcome: the translation of abstract secular-neutral principles into a closed institutional environment where the logics of discipline and control systematically override minority religious practice. The court does not deny the religious character or importance of the practice. It renders it practically unenforceable by embedding it in a regulatory frame in which security and administrative manageability function as overriding considerations. In this sense, the inmate’s orthodox obligation, a form of orthopraxy rather than doctrinal belief, is recognised in principle as religious practice, but once its observance requires materially visible accommodation in the workroom, it is treated as secondary within the balancing exercise and made to yield to the institutional imperatives of surveillance, custody and work.

Second, the asymmetry at stake here concerns the institutional expectation that religious practice in carceral workspaces should remain low-visibility, spatially containable and materially unobtrusive. Prison security provides a legitimate administrative vocabulary; the analytical question is how broadly that vocabulary is allowed to define the limits of Article 4 GG when religious practice requires visible material accommodation. The court accepts that the claimant’s prayer falls within the protection of Article 4 GG, yet once its observance requires accommodation in the workroom, the practice is recoded through the languages of security, surveillance and administrative manageability. Muslim orthopraxy thus enters the workroom not as an ordinary manifestation of religious freedom but as a request for exception from carceral routine. In this sense, non-religion appears less as an explicit litigant position than as a background expectation of religious unobtrusiveness in carceral space.

The subsequent order of the Higher Regional Court Hamm, which dismissed the prisoner’s appeal as inadmissible but suggested that the control problem could be mitigated by allowing a thin, seam-free cloth, hints at the existence of alternative proportionality assessments within the same legal field. Yet this remark remains *obiter* and does not alter the outcome for the claimant. It functions as a minor fissure in an otherwise restrictive pattern: a reminder that even within the carceral setting, the balance between Article 4 and institutional security is not predetermined, but the result of specific interpretive and discretionary choices that are themselves embedded in non-neutral normative contexts.

Read through the framework developed in Section 2, this case illustrates a restrictive governance outcome. Minority agency remains structurally constrained, and the claimant has little room to reframe his religious practice in terms that the prison administration or the court is prepared to recognise as warranting more than the narrow formal protection already acknowledged. It therefore primarily illuminates a carceral form of legal translation within the article’s broader account of selective secularism, while providing a restrictive baseline against which the less restrictive trajectories examined in the subsequent cases can be understood.

3.2. Restriction via Religionised Culture: The “Shariah Police” Patrols (Regional Court Wuppertal)

This case exemplifies a restrictive outcome in which a culturally embedded, performative practice is reclassified as an illicit religious-political threat and criminalised under public order legislation. In the Wuppertal “Shariah Police” litigation, which culminated in the Regional Court’s 27 May 2019 judgment after the Federal Court of Justice had set aside an earlier acquittal, a group of young men walked through the city centre wearing high-visibility vests marked “Shariah Police”, addressing other young Muslims and urging them to avoid alcohol, prostitution and gambling venues. The Regional Court Wuppertal ultimately convicted the wearers of the vests for violating the ban on uniforms in Section 3 of the German Assembly Act (*Versammlungsgesetz*, VersG), treating the vests as “similar articles of clothing expressing political opinions” that created a suggestively militant and intimidating effect on their target audience.²

The procedural trajectory already signals how courts function as governance nodes within a multilevel field. An initial police assessment found no criminal offence, and the Regional Court first refused to open main proceedings for a uniform-ban violation, later acquitting the defendants on the ground that the action lacked the “suggestively militant” and intimidating character required by case law. The Federal Court of Justice (BGH), however, overturned this acquittal, criticising the lower court for assessing intimidation from the perspective of the general public rather than from that of the specific audience addressed, namely young Muslims. On remittal, another chamber of the Regional Court reconstructed the events in detail, heard an Islamic studies expert and convicted the defendants; the BGH then dismissed their appeal. What begins as a contested, borderline use of the uniform ban thus crystallises into a precedent that confirms criminal liability for this type of minority-coded street intervention.

From the perspective developed in Section 2, the core of the judgment lies less in the mechanical application of Section 3 VersG than in the interpretive work that renders the practice intelligible as a security problem. The court accepts that the vests do not constitute uniforms in the narrow sense, but qualifies them as equivalent political attire when combined with the group’s coordinated appearance and moralising discourse. Crucially, it interprets the label “Shariah Police” through transnational security imaginaries. Drawing on expert testimony, the judgment links the term to “religious police” formations in Saudi Arabia, northern Nigeria, Iran or the so-called “Islamic State” and concludes that the vests plausibly signal a claim to coercive authority over Islamic norms. On this reading, the action does not remain a localised, partly performative moral patrol; it becomes a symbolic assertion of para-police power that is presumed likely to intimidate its Muslim interlocutors into compliance.

Analytically, the case illuminates one mechanism through which selective secularism operates in urban public space. The underlying practice is not an orthodox rite or doctrinally prescribed ritual, but a hybrid performance combining moral entrepreneurship, youth signalling and public provocation. The judicial narrative does not invent its Islamic reference point, which the actors themselves make explicit in the label “Shariah Police”. It does, however, strip away much of that hybridity by recoding the performance through a security-inflected interpretive frame shaped by wider anxieties around sharia, coercion and extremism. The relevant asymmetry lies less in any demonstrated one-to-one contrast with an equivalent majority performance than in the speed with which an ambiguous minority-coded act is translated into a para-policing and security register. Here, the operative baseline is the court’s secular public-order framework, through which Islam-coded moral intervention becomes legally intelligible as para-policing. In this sense, non-religion can be read less as declared unbelief than as a taken-for-granted grammar of urban public space within the court’s public-order reasoning, helping to define which

forms of norm enforcement appear civic or ordinary and which are framed as illegitimate religious intrusions.

The shift in the intimidation standard is important. After the BGH's intervention, the relevant perspective became that of the young Muslims addressed by the group. This move can be read as minority protection, since it asks how that audience experienced the performance. At the same time, it expands the reach of public-order reasoning, because ambiguity is resolved through a security-sensitive reading of "sharia", coercion and Salafism. The case therefore shows how criminal law can protect the addressed audience while also narrowing the space for Islam-coded public expression.

In contrast to the prayer-rug case, where Muslim orthopraxy is rendered logistically problematic and confined to invisible spaces, the "Shariah Police" patrols are hyper-visible and recoded as a coercive threat. In both instances, selective secularism yields a restrictive outcome, but through different mechanisms: bureaucratic containment in a carceral institution in the former, religionised securitisation of urban performance in the latter. The actors also occupy different positions. The detainee in the prayer-rug case is structurally disempowered. The Wuppertal group, by contrast, acted deliberately and publicised the "Shariah Police" intervention, drawing on transnational repertoires of Islamic moral activism. The legal outcome, however, leaves little room for that performance to be treated as a legitimate public claim.

Read together with the prayer-rug case, the "Shariah Police" decision illustrates a second restrictive trajectory. In the prison case, Muslim prayer practice is limited through security and administrative manageability. In the Wuppertal case, Islam-coded public performance is restricted through public-order reasoning and a security-inflected reading of intimidation. The case shows how an ambiguous minority-coded street intervention can be translated into a para-policing threat, thereby narrowing the space for Muslim actors to claim public moral authority.

3.3. Constrained Negotiation: Halal Food and the Limits of Positive Obligations in Prison (Higher Regional Court Berlin)

This case concerns the scope of prison authorities' duties under Section 21 sentence 3 of the Prison Act (StVollzG) and Article 4 of the Basic Law to enable compliance with Islamic dietary rules. In an order of the Higher Regional Court Berlin (Kammergericht) concerning Tegel Prison, a preventive detainee requested that the institution provide him with *halal* food in accordance with his religious convictions or, alternatively, pay him the money allocated for his food so that he could obtain halal products himself. The prison administration rejected the request. The detainee applied to the Regional Court to oblige the prison either to provide *halal* food or to pay him the relevant funds, and, after rejection, appealed to the Higher Regional Court Berlin (Kammergericht).³

The Kammergericht declared the appeal inadmissible on the basis that no unresolved legal question arose. It relied on Section 21 sentence 3 of the Prison Act (*Strafvollzugsgesetz*, StVollzG), according to which the prison must enable prisoners to follow the dietary rules of their religious community. In line with settled case law, the court interpreted this provision as establishing a right to self-catering where prison catering does not take special dietary rules into account, but not as imposing an obligation on the prison to actively procure religiously permissible food. Article 4 of the Basic Law was read as a classical defensive right: it protects freedom of faith, conscience and confession against state interference, but does not confer an enforceable entitlement to positive benefits, including the provision of specific religiously prescribed food. In light of this legal and institutional setting, the Kammergericht considered the existing arrangements in Tegel—a "Muslim diet" without pork, gelatine or pork-based sauces, vegetarian options, and the possibility of purchasing *halal* products from external suppliers—as sufficient to respect the complainant's religious

freedom “even beyond” what Section 21 StVollzG requires. The court thus recognised a duty to enable observance through self-catering and limited dietary accommodation, but not an enforceable positive obligation on the prison itself to provide *halal* food. The consequence of that narrow holding is a limited, state-defined form of accommodation.

Read in these terms, the decision illustrates what this article calls constrained negotiation under carceral conditions. Unlike the prayer rug case, the detainee’s claim is not dismissed outright. The legal framework explicitly recognises the relevance of religious dietary rules and imposes on the prison a duty to “enable” their observance. The detainee mobilises this framework to articulate a concrete demand, and the court acknowledges that Article 4 applies in prison and that Muslim dietary rules warrant some institutional response. There is, in this sense, genuine agency and legal navigation: a minority actor uses existing rights language to press for accommodation.

At the same time, the scope of that accommodation is narrowly delimited by a restrictive reading of positive obligations and by the institutional rationalities of the prison. The religiously specific demand for *halal* is recoded into a more generic category of “Muslim diet” that is operationalised through the removal of pork and certain problematic ingredients, but does not extend to the provision of ritually slaughtered meat. The complainant is left with a residual right: he may avoid prohibited foods within the standard catering system and may, circumstances permitting, purchase *halal* products at his own expense. The state’s duty is framed as providing the formal opportunity to comply with religious dietary rules, not as ensuring their substantive fulfilment.

Analytically, this configuration encapsulates constrained negotiation within a structural regime of selective secularism. On the one hand, the case is clearly distinct from pure restriction. The prison does not prohibit Muslim dietary practice, and the court affirms that the existing catering arrangements go “beyond” the minimum legal standard. On the other hand, the form of recognition remains limited and asymmetrical. The institutional menu is treated within the court’s reasoning as the administratively ordinary baseline. The case-level argument turns on how *halal* becomes legally intelligible as a modification of ordinary provision: pork and pork-derived ingredients are removed, vegetarian options are offered, and ritually compliant meat remains outside the prison’s positive duty. The “Muslim diet” is thus organised around administrative subtraction from the standard menu rather than around the internal normative logic of *halal* itself (Tellenbach 2024a). The religious claim is therefore acknowledged, but only after being translated into a bureaucratically legible and administratively manageable variant of accommodation.

In terms of the “law of diversity”, the judgment illustrates how minority claims can be absorbed into existing legal and administrative logics without altering underlying hierarchies. The *Kammergericht* does not dispute that *halal* has specific theological and normative content, but refuses to treat that content as generating a positive duty. The doctrinal distinction between defensive rights and benefit rights becomes the hinge through which selective secularism is reproduced: the prison’s obligation is limited to avoiding direct interference, while the burden of achieving full religious compliance is shifted back onto the prisoner, who is structurally constrained in his capacity to act. The possibility of regular shopping or ordering from specialised suppliers is presented as sufficient, even though it presupposes financial resources and organisational autonomy that many prisoners might lack. The point here is not that existing doctrine clearly required the active procurement of *halal* food, but that the narrow doctrinal distinction adopted by the court produces a thin and asymmetrical form of accommodation.

At stake here, then, is the legal status of ordinary provision. The standard menu functions as a secular-administrative baseline against which *halal* appears as a specific accommodation claim. In the case at hand, pork products and pork-based sauces are

treated as features of ordinary provision, while halal is made available through limited subtraction, vegetarian alternatives or external purchasing. This ordinary provision is not confessional, but it is also not culturally empty. In Lee's (2015) and Quack et al.'s (2020) terms, this baseline can be read not as organised non-religion but as a culturally dominant, nominally secular repertoire of ordinary food provision that structures what counts as reasonable accommodation. The denial of an enforceable right to halal food rests on the presumption that the existing menu constitutes an ordinary and administratively reasonable baseline, rendering religiously specific claims exceptional and discretionary. Non-religion thus operates here less through explicit advocacy than through the framing of existing institutional practice as neutral.

Compared to the two preceding cases, this case therefore occupies an intermediate position within the article's analytical scheme. Like the prayer rug decision, it operates in a carceral environment where institutional discretion and security logics weigh heavily against minority religious practice. Unlike the prayer rug case, however, it does not limit Article 4 primarily through security reasoning; it articulates a more accommodating variant of restrictive secularism in which a minimum of accommodation is offered, while the substantive content of the religious claim is diluted. Unlike the "Shariah Police" case, there is no religionisation and securitisation of a cultural performance; the practice at stake is an orthodox dietary rule whose legitimacy is not questioned. Across the three instances, courts define how far institutional arrangements must move from established security, public-order or administrative baselines to accommodate minority normativities.

In this case, the agency-centred concepts have limited explanatory value. The detainee's mobilisation remains individual and defensive, no broader networked configuration emerges, and the case is most convincingly read as a thin, state-defined accommodation within a regime of selective secularism rather than as an instance of more developed post-secularising agency. It thus shows how, in institutionally dense and securitised environments such as prisons, minority actors may secure modest concessions without materially reconfiguring the terms under which religious and non-religious diversity are governed.

3.4. Negotiated Recognition Without Integration: Cultural Mediation Among Syrian Refugees (Regional Court Freiburg)

This case exemplifies negotiated recognition in which minority actors succeed in inserting their own reconciliation practice into the operation of German criminal law, yet only within a state-defined legal framework. In a judgment of the Regional Court Freiburg, a mediation process organised by other Syrian refugees following an incident of bodily harm was accepted as a victim–offender settlement within the meaning of Section 46a of the German Criminal Code (Strafgesetzbuch, StGB). Minority normativity is thus acknowledged and made legally consequential, but only insofar as it can be translated into the statutory framework of victim–offender mediation and aligned with its purposes. The case is included here not because "Syrian" is treated as a proxy for "Muslim", nor because the mediation is framed as a religious practice, but because it shows how a minority normative repertoire associated with refugee-community mediation becomes legally intelligible only through translation into the categories of a secular criminal-law order in a field already marked by anxieties over "parallel justice".⁴

The underlying conflict arose when, on New Year's Eve 2017, a young Syrian refugee struck another refugee on the head with a glass bottle, causing a bleeding wound several centimetres long. The offender appealed against both a summary penalty order and the subsequent judgment of the Local Court Freiburg, limiting his appeal to the amount of the sentence with particular reference to a mediation procedure that had taken place after the offence. Other Syrian refugees who knew both parties, concerned about an escalation that allegedly included threats of knife violence and demands for compensation, approached

the victim's uncle, a respected figure who had fled Syria with him. Over the following weeks, these mediators and the uncle met twice, and at least one of these meetings involved both perpetrator and victim. The parties agreed that the offender would apologise with a handshake in front of witnesses and pay €500 as compensation. Once this had occurred, the mediators and the uncle considered the matter resolved.

The Regional Court's legal task was to determine whether this private, culturally inflected mediation could fulfil the requirements of victim–offender mediation under Section 46a StGB. It focused on three elements: communication between offender and victim, acceptance of responsibility and compensatory acts by the offender, and the voluntariness of the victim's participation. The court held that these conditions were met. The offender had accepted responsibility for the assault, apologised publicly and paid €500. His residual belief that the victim had partly provoked the attack did not negate the confession. The victim, an adult who understood the meaning of the process, was found to have voluntarily accepted the apology and compensation, despite possible influence from his uncle. Crucially, the court also held that the absence of an official victim–offender mediation office did not disqualify the procedure. Other refugees, drawing on their “ideas of their culture,” could act as mediators in a way that was functionally equivalent, provided that the legal requirements of Section 46a StGB were satisfied. The decision explicitly insisted that the process was not an instance of “parallel justice,” without further defining that term.

From the perspective developed in Section 2, this configuration is best read as negotiated recognition without integration: the minority normative repertoire at issue acquires legal relevance only insofar as it can be translated into the statutory grammar of German criminal law. Minority actors initiate and carry out a reconciliation practice that is normatively meaningful within their own *milieu*. They do not attempt to keep the state out of the conflict. Instead, they present the outcome of their mediation to the court, which evaluates it against the statutory criteria of Section 46a StGB. The court does not recognise Syrian mediation as an autonomous source of legal validity within German criminal law. Rather, it accords the mediation legal relevance only insofar as the practice can be redescribed within the statutory logic of Section 46a StGB as a form of victim–offender settlement satisfying that provision's communicative, compensatory and voluntariness requirements. The minority practice is thus granted conditional legitimacy, not on its own normative terms, but insofar as it can be translated into the aims of German restorative justice.

Read through the lens of selective secularism, the decision is ambivalent. Its relevance to this article lies in showing that the minority practice at issue is not processed primarily through an overtly religionised security frame, but as a culturally marked form of mediation whose admissibility depends on its translation into the legal categories of German criminal law. On the one hand, it refuses a securitised reading of intra-minority mediation as a form of “parallel justice” that undermines the state's monopoly of legitimate norm enforcement. By emphasising that the mediation was not a form of parallel justice and that victim–offender mediation has long been recognised within German law, the court places the case within an accepted statutory framework rather than within the broader legal–public field where informal minority dispute resolution can be recoded as “parallel justice” and, on that basis, as a challenge to the rule of law. On the other hand, the very need to disavow parallel justice confirms that minority dispute resolution is initially perceived as a potential threat that must be carefully distinguished from unacceptable practices. German criminal law remains the governing framework: the Syrian mediation is acceptable only insofar as it can be shown to mirror the structure and purpose of Section 46a StGB. The very criteria that make the settlement acceptable—individual responsibility, communicative repair and formally voluntary participation—reflect non-religious legal and moral ideals that are

treated as culturally neutral benchmarks, even as they filter which elements of the Syrian repertoire become legible to the court.

The case also shows minority actors working across legal and community settings. The mediators and the victim's uncle used a culturally familiar repertoire of reconciliation, including apology, a handshake before witnesses and compensation, while also producing an outcome that could be recognised by a German court. Their significance lies in this translation work. They did not reject the secular legal framework; they made an internal communal settlement legible as contributing to the legal goals of pacification and reparation.

In terms of governance, this case sketches a modest instance of bottom-up and networked dynamics. The initiative to mediate comes from within the refugee community, not from probation services or formal mediation offices. The court, for its part, refrains from insisting on institutional monopolies. It accepts lay mediators and cultural repertoires as functionally equivalent to official victim–offender services, provided that the core legal criteria are met. This creates a small space in which non-state actors participate in shaping sentencing outcomes with the judiciary. At the same time, this networked moment of diversity governance remains thin and case-bound. There is no institutionalisation of minority mediation structures, no formalised cooperation between community actors and the justice system, and no doctrinal reworking of Section 46a StGB to incorporate culturally specific forms of reconciliation as such. Critical debates on cultural autonomy, religious arbitration, personal status regimes and victim–offender mediation have long underlined that community-led settlements can involve subtle pressure on victims and consolidate existing authority structures, including patriarchal authority, particularly where those positioned as a “minority within a minority”—often women, younger or dissenting community members—have limited exit capacity or bargaining power (Shachar 2008; Gaudreault-DesBiens 2010; Manea 2016; Topidi 2024). In the Syrian mediation case, the court's focus on formal voluntariness and functional equivalence under Section 46a StGB leaves these internal asymmetries largely implicit, even as it validates the settlement as compatible with German criminal law.

Read against the preceding cases, this case illustrates the outcome the article terms negotiated recognition without integration. Unlike the prison cases, it does not reduce minority practice to administratively manageable fragments or confine it to invisible spaces. Unlike the “Shariah Police” decision, the minority practice at issue is not read through an overtly religionised security frame. Instead, it offers a controlled opening in which a culturally specific mediation process can mitigate punishment, signalling that minority actors may be recognised as contributors to pacification and repair. Yet the terms of that recognition are tightly framed by existing law. What the court recognises is not an autonomous Syrian normative order, but a minority-led settlement insofar as it satisfies the statutory criteria of Section 46a StGB. The result is a negotiated accommodation that slightly widens the repertoire of legitimate practices within German criminal justice, while leaving intact a legal structure in which state law remains the final arbiter of which elements of minority normative ordering become intelligible and acceptable within the criminal justice process.

3.5. Legal Recalibration After Post-Secular Mobilisation: The Circumcision Controversy (Regional Court Cologne)

This final case exemplifies legal recalibration after post-secular mobilisation: an initially restrictive judicial reading of a minority religious practice triggered public, legal and political contestation through which Jewish and Muslim actors translated religious claims into secular constitutional vocabularies, culminating in statutory reform. In its judgment on non-therapeutic male circumcision, the Regional Court Cologne had to decide whether

the circumcision of a four-year-old boy, performed *lege artis* by a physician for religious reasons at his parents' request, constituted bodily harm and, if so, whether parental consent could justify it. The court held that the intervention did amount to bodily harm and that parental consent was invalid because it violated the child's right to physical integrity and future self-determination. The physician was acquitted only because the legal situation was deemed so unclear that he had acted under an unavoidable mistake of law. The judgment nevertheless destabilised the previously taken-for-granted legal status of religious circumcision and provoked a political and societal backlash that eventually led to the introduction of Section 1631d of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), explicitly permitting male circumcision under regulated conditions.⁵

The facts themselves are relatively straightforward. In 2010, a physician circumcised a four-year-old boy in accordance with medical standards, following the parents' request for religious reasons. After post-operative bleeding required hospital treatment, the public prosecutor charged the doctor with bodily harm. The Local Court Cologne acquitted him, accepting that circumcision constituted bodily harm but treating the parents' consent as a valid justification, given their constitutional rights to religious freedom and to direct the religious and moral upbringing of their child. On appeal, the Regional Court confirmed the acquittal but reversed the constitutional balancing. It agreed that circumcision is bodily harm and rejected the idea that parental consent could justify it. In the court's view, the parents' rights under Articles 4 and 6 of the Basic Law are limited by the child's rights to bodily integrity and self-determination under Article 2. A permanent, irreversible alteration of the child's body for religious reasons was disproportionate, particularly because the child could later decide for himself whether to undergo circumcision as a sign of belonging. The parents, the court argued, could reasonably be expected to wait. Since no clear precedent or statutory regulation existed at the time, the physician was acquitted for lack of culpability, but the message on the substantive unlawfulness of non-therapeutic circumcision was unambiguous.

In terms of selective secularism, the court effectively reclassifies a long-standing minority ritual as a bodily intervention whose permissibility is assessed against an ideal of the "intact" child who postpones irreversible religious commitments. That ideal is better read not as a context-free universal but as a historically situated conception of childhood, bodily integrity and autonomy, shaped by European legal, moral and religious histories and made operative here as a secular legal standard. In this sense, it can be read as the reference point against which minority religious practices are scrutinised and problematised.

Scholarship on the German circumcision controversy has shown how ostensibly universal legal vocabularies of bodily integrity and child welfare can recast minority ritual practice in line with majority norms of legitimate religious belonging, while the German controversy has also been entangled with longer anxieties about the place of Jewish life in Germany (Riedel 2019). The present analysis builds on that insight by situating the controversy within a broader account of selective secularism and by tracing how post-secularising agency, exercised through legal, political and public mobilisation by actors who moved across and renegotiated the secular-religious boundary, helped partially displace an initially restrictive judicial reading and contributed to subsequent legislative recalibration.

The political and societal reaction to this framing shows how minority actors and their allies moved the dispute beyond the courtroom. The Cologne judgment did not remain a marginal lower-court decision. Jewish and Muslim communities, religious leaders, medical institutions and segments of the legal academy rapidly coalesced in opposition. Public statements framed the decision not only as a technical misreading of constitutional rights, but as an existential threat to the continued possibility of Jewish and Muslim life in Germany. References to historical persecution, to Germany's responsibility towards Jewish

communities and to the symbolic meaning of circumcision as a sign of covenant and belonging were mobilised alongside legal arguments about religious freedom and parental rights. The controversy quickly spilled over from the courtroom into parliaments, professional associations and mainstream media. The relevant actors were not only religious authorities but also jurists, physicians, politicians and intellectuals who translated minority concerns into a language of constitutional identity, anti-discrimination and historical responsibility that resonated with broader publics.

Institutionally, the decisive move came when the *Bundestag* urged the federal government, within weeks of the judgment, to propose legislation that would remove the legal uncertainty and safeguard religiously motivated circumcision under specified conditions. The resulting Section 1631d BGB, adopted in December 2012, explicitly authorises parents to consent to the circumcision of a male child for non-therapeutic reasons, provided that the procedure is carried out *lege artis*, with appropriate pain management, by a physician or, in the first months of life, by a specially trained ritual circumciser. The provision maintains a reference to the best interests of the child: circumcision remains unlawful where it endangers those interests, and its permissibility is framed as one component of parental care rather than as an unlimited religious prerogative. Yet the overall effect is a clear statutory recognition that religious circumcision, performed under regulated conditions, is compatible with German constitutional law.

Analytically, this sequence marks a qualitative shift from the patterns observed in the preceding cases. In the prison and “Shariah Police” decisions, courts acted as governance nodes that applied and adjusted existing norms within a structural regime of selective secularism, yielding outcomes of restriction or constrained negotiation without altering the underlying legal architecture. In the cultural mediation case, minority actors managed to insert their practices into the criminal justice process, but only by fitting them into pre-existing categories such as victim–offender mediation. By contrast, the circumcision controversy shows how conflict around a minority religious practice can lead to statutory recalibration. The Regional Court’s restrictive reading of bodily harm and parental consent exposed a latent fault line between a secularised understanding of child welfare and the normativities of minority religious communities. The ensuing mobilisation did not simply seek a more generous application of existing doctrines; it demanded a clarification and adjustment of the legal framework itself. The adoption of Section 1631d BGB is therefore more than a pragmatic “fix”: it constitutes a re-drawing of the boundary between bodily integrity, parental rights and religious freedom.

At the same time, the recalibration is partial and ambivalent. The new provision embeds circumcision within a medicalised, regulatory frame that leaves intact the state’s ultimate authority to define the conditions of permissibility. It does not incorporate Jewish or Muslim normativity as an independent source of law; rather, it accommodates the practice within a state-defined statutory framework governed by criteria of medical safety and child welfare, framed in secular legal terms. The legislative response is therefore better understood as a moderated accommodation under state-defined conditions than as either full deference to minority ritual claims or an outright rejection of them. Critics in criminal and constitutional law continue to question whether the best interests of the child can be squared with irreversible bodily interventions for non-therapeutic reasons, while others view the provision as a necessary accommodation to prevent the exclusion of religious minorities from the German legal community. The law recalibrates rather than abolishes the asymmetry: minority normativity is no longer treated as presumptively impermissible, but its recognition is channelled through state-defined standards of medical safety and child welfare.

Read against the broader analytical scheme adopted here, this case illustrates legal recalibration after post-secular mobilisation. It shows how courts, minorities and legislatures interact in longer sequences of normative change in which restrictive secularism can be both asserted and subsequently modified. This sequence also illustrates how minority actors and their allies can press a secular legal order to revisit background assumptions about embodiment, autonomy and religious belonging, and how those assumptions can be partially revised under political pressure. The result is neither a simple restoration of religious privilege nor a straightforward victory of secular child rights, but a reconfigured legal settlement that inscribes a contested minority practice into the Civil Code while reaffirming the state's role as arbiter of legitimate religious and non-religious normativity.

4. Conclusions

This article has offered a case-illustrative socio-legal analysis of five German ordinary-court decisions concerning Muslim prayer and halal food in prison, Islam-coded public controversy, minority community mediation and male circumcision as a ritual controversy shared by Muslim and Jewish communities. Its central argument is that the claims at issue in these decisions are assessed against baselines that, in the selected cases, appear neutral, administrative or secular, while remaining embedded in historically specific institutional and cultural arrangements. Selective secularism has been used as the main concept for analysing this uneven process of legal translation.

The wider conceptual vocabulary is used selectively. Post-secularising agency, transcultural capital and networked governance have explanatory value where the material shows minority actors translating practices into state-legible terms or where courts interact with wider community, political or legislative mobilisation. This is clearest in the Syrian mediation and circumcision sequences, while these concepts play a more limited role in the prison and public-order cases.

Three conclusions follow from the case analysis. First, formally cooperative arrangements can still produce restrictive outcomes when minority practices are assessed through security, public order, institutional manageability or child welfare. Second, non-religion can be analysed as an operative baseline within legal reasoning, especially where ordinary embodiment, diet, public space or child welfare are treated as self-evident standards. Third, minority practices become legally consequential in less restrictive ways when they can be translated into goals already recognised by the legal order, such as repair, pacification, child welfare or regulated inclusion. Together, these conclusions specify what the selected cases show about legal translation under selective secularism.

Rather than converging on a single evaluative verdict, the findings expose a structural tension. Restriction, constrained negotiation, negotiated recognition and legal recalibration do not form a linear progression towards more inclusive pluralism, but coexist and interact within the same legal and institutional landscape. The circumcision reform modifies but does not dissolve the asymmetries traced in the article; it reinscribes a contested minority ritual within a medicalised, child-protection frame that leaves state authority intact. Cooperation between courts, community actors and, where relevant, political institutions appears in fragile, case-bound forms. It depends on actors able to move between legal and minority-community settings, and on judicial or political openness to their contribution. Intra-minority power asymmetries and gendered vulnerabilities surface in cultural mediation and other informal settlements, where the language of reconciliation can obscure pressure on victims. The analysis is also bounded in two respects. It is confined to German ordinary courts within the CURED dataset and to religion-coded conflicts centred predominantly on Islam-related controversies, with the circumcision sequence as the sole exception involving a ritual shared by Muslim and Jewish communities. Because the five

decisions were selected from the German CURED I corpus to compare legal translation across different ordinary-court arenas, the article does not claim to map the full German litigation landscape on religion and non-religion or to estimate the frequency of particular outcomes. A fuller account would require systematic inclusion of cases involving explicit non-religious litigants and a broader range of religious traditions beyond the predominantly Islam-related corpus examined here. Yet this boundedness is also analytically productive, because it is precisely in such conflicts that the analysis can reconstruct how culturally dominant norms and arena-specific legal baselines may function as largely unmarked standards within legal reasoning, and how some of those baselines relate to longer Christian-centred institutional histories.

By treating case law as a site in which structural regimes, institutional routines and everyday disputes intersect, the article opens a comparative agenda beyond Germany. The four outcomes discussed here may offer a provisional vocabulary for examining other cooperative and post-confessional settings, but any extension would need to ask how different church–state settlements, territorial arrangements and institutional histories shape ordinary legal baselines and the scope for minority agency. The point is therefore not that the German configuration travels intact, but that the framework may help organise a more tightly bounded comparative inquiry.

Future research should examine how proportionality reasoning, child-welfare assessments and public-order disputes rely on secular, administrative or civic norms that remain largely unmarked within legal reasoning. Some of these norms may be historically entangled with Christian institutional and cultural legacies. Others may operate as secular-administrative baselines. Both can become explicit targets of contestation by non-religious actors and organisations. Pursuing this agenda would link socio-legal analyses of selective secularism more tightly to the broader movement from religion-centred freedom claims towards freedom of religion or belief and belief pluralism in international FoRB debates. Future comparative work should therefore distinguish between non-religion as an implicit legal–cultural baseline and non-religion as explicit legal or political mobilisation. That distinction would allow a more precise analysis of pluralism under selective secularism across European contexts.

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Notes

- ¹ Regional Court Aachen, Criminal Division with Jurisdiction over Execution of Sentences, Order of 25 June 2014, 33 I StVK 924/13, ECLI:DE:LGAC:2014:0625.33I.STVK924.13.00; subsequent stage: Higher Regional Court Hamm, Order of 27 November 2014, 1 Vollz (Ws) 425/14, ECLI:DE:OLGHAM:2014:1127.1VOLLZ.WS425.14.00; identified via CURED I033DE027.
- ² Regional Court Wuppertal, Judgment of 27 May 2019, 26 KLS 20/18, ECLI:DE:LGW:2019:0527.26KLS8209.50JS180.00; Federal Court of Justice, Judgment of 11 January 2018, 3 StR 427/17, ECLI:DE:BGH:2018:110118U3STR427.17.0; subsequent stage: Federal Court of Justice, Decision of 29 April 2020, 3 StR 547/19, ECLI:DE:BGH:2020:290420B3STR547.19.0; identified via CURED I033DE031.
- ³ Higher Regional Court Berlin, 2nd Criminal Division, Order of 14 July 2011, 2 Ws 248/11 Vollz, ECLI:DE:KG:2011:0714.2WS248.11VOLLZ.0A; previous stage: Regional Court Berlin, 13 May 2011; identified via CURED I033DE026.

- ⁴ Regional Court Freiburg, 10th Small Criminal Chamber, Judgment of 18 June 2019, 63/17 10 Ns 130 Js 3000/17, ECLI:DE:LGFREIB:2019:0618.63.17.10NS130JS30.00; previous stage: Local Court Freiburg, Judgment of 20 September 2017, 26 Cs 130 Js 3000/17; identified via CUREDIO33DE019.
- ⁵ Regional Court Cologne, Judgment of 7 May 2012, 151 Ns 169/11, ECLI:DE:LGK:2012:0507.151NS169.11.00; previous stage: Local Court Cologne, Judgment of 21 September 2011, 528 Ds 30/11; identified via CUREDIO33DE001.

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