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Religious freedom—a principle worth defending?

On 27 June 2012, a German court in Cologne ruled that the circumcision of young boys for religious reasons amounts to bodily harm. Male circumcision is the removal of some or the entire foreskin from the penis and practiced relatively frequently worldwide, not only for religious reasons but also for its health benefits.¹ The somewhat surprising ruling came in the case of the circumcision of a four-year-old boy, who had been circumcised by a doctor at the request of his parents. Circumcision for religious reasons had never before posed a legal problem in Germany. Unfortunately, the boy developed medical complications and had to be taken to hospital by his mother two days after the circumcision. This set the ball rolling: The doctor was charged with having abused the boy with a dangerous instrument, the scalpel, and thus having affected his health. Although he was initially acquitted, prosecutors appealed and the higher court ruled that in the case of circumcision for non-medical reasons, the welfare of the child outweighed the parent's religious rights.

The ruling has caused a significant stir not only within Germany, but also worldwide, and has prompted a discussion on circumcision. Human rights defenders, religious leaders, politicians, lawyers and medical doctors are now discussing the advantages and disadvantages of circumcision, and opinions are divided. While circumcision for medical reasons such as cancer or phimosis is not being put into question, those contesting circumcision on religious grounds argue that minors have the right to physical integrity, question its benefits and argue for the self-determination of the child.

¹ About one third of men worldwide are circumcised. Male circumcision is recommended by the WHO especially with regard to the prevention of HIV. See http://whqlibdoc.who.int/hq/2012/WHO_HIV_2012.7_eng.pdf. Female circumcision is rejected worldwide with the exception of a few African countries.

Circumcision is irreversible; it changes the body and influences the boy's prospective sexuality. When parents decide to have their son circumcised, they should be aware of the impossibility of its reversal as well as the fact that it involves surgery which, depending on the age and health of the child, may require a local anesthetic and a hospital stay and carries the risk of possible blood loss or infection.

It is generally acknowledged that circumcision has certain health benefits. It reduces the risk of penis carcinoma, urinary tract infections and other genital diseases in both the circumcised male as well as his sexual partner. These benefits are only relevant from puberty onwards.

The Muslim parents of the four-year-old in question requested his circumcision for religious rather than medical reasons. While circumcision is not explicitly mentioned in the Koran, circumcision is used in the Islamic tradition as a rite of religious affiliation. The Sunna—the traditional sentences of the prophet Mohammed—describes circumcision as a necessity for ritual purity. If the believer himself is ritually pure with his body, then he is able to undertake pure acts such as praying and doing good works. Therefore, for the majority of Muslims circumcision is a duty and is carried out before the age of thirteen. In the Islamic context, circumcision is even a sign of prophetism: the prophet Mohammed was born without a foreskin, so being circumcised means following the ideal of the prophet.

But circumcision is not only a duty in the Muslim tradition. For Judaism and the Jewish tradition circumcision is even more important. The first book of Moses speaks very clear about circumcision as a sign of the covenant which God made with Abraham:

God said to Abraham, "As for you, you shall keep my covenant, you and your offspring after you throughout their generations. This is my covenant, which you shall keep, between me and you and your offspring after you: Every male among you shall be circumcised. You shall circumcise the flesh of your foreskins, and it shall be a sign of the covenant between me and you. Throughout your generations every male among you shall be circumcised when he is eight days old, including the slave born in your house and the one bought with your money from any foreigner who is not of your offspring. Both the slave born in your house and the one bought with your money must be circumcised. So shall my covenant be in your flesh an everlasting covenant. Any uncircumcised male who is not circumcised in the flesh of his foreskin shall be cut off from his people; he has broken my covenant" (Gen 17:9–14).

The Jewish rite of circumcision goes back to the times of Abraham, over 4000 years ago. The Jewish people attach the greatest importance to the circumcision of a male child. Since circumcision is one of God's commandments, the act of circumcision (*brit*

mila) is a time for commemorating the covenant with God as well as the entry of the child into this holy covenant. Through circumcision the child will be admitted into the Jewish community. Each circumcised Jew is in a bond to this community of the Jewish people. As stated in the verses of Genesis, circumcision is usually performed on the eighth day of a boy's life. It can be postponed to another date if there are compelling reasons for doing so. If Jewish parents neglect to circumcise their son or, as an adult, the man does not undergo circumcision, then God's commandment is not fulfilled. This then constitutes the clear refusal of the covenant between God and God's people. The person is placed outside of this covenant.

Since, in the Jewish faith, circumcision is vital, the rite of circumcision is even allowed on the Sabbath, which according to the Jewish is a day of rest where all work should be avoided. While traditionally it was performed in the synagogue, today it is carried out in the family home. The mohel, a person trained in the Jewish ritual of circumcision who is often a doctor or surgeon, performs the circumcision. Another aspect of circumcision is the Jewish naming tradition. At the ceremony of circumcision, the boy receives his Jewish name, which will be important at the time in his life when he chooses his religious affiliation. At his bar mitzvah the boy will be called by this name to read a passage from the Torah, the five books of Moses.²

In light of the importance of circumcision for the Jewish and the Muslim communities, the outcry from religious leaders in Germany and worldwide are comprehensible. From their perspective, circumcision is an integral part of Jewish and Muslim identity and cannot wait until the child's maturity. At stake are the succession of the prophet in Islam and God's commandment in Judaism. It constitutes the introduction into their respective religion and is therefore to the benefit of the child.

Critics of the Cologne court's verdict regard it as violating religious freedom and the educational rights of parents. Especially for Jews who, throughout their history, have experienced persecution because of their traditions and belief, the court's decision is particularly threatening. Since the governance of king Antiochus IV Epiphanes (165 BCE), governments have attempted on several occasions to diminish or delegitimize Jewish religious practice through the prohibition of circumcision. The fact that a German court made a ruling on an important Jewish ritual—even if the case involved a Muslim boy—brings back many terrible memories of what happened

² See www.zentralratjuden.de/de/topic/205.html and www.religionfacts.com/judaism/cycle/circumcision.htm. Girls have never been circumcised in the Jewish tradition and girls are named at the first celebration of the Sabbath the mother participates in after having given birth.

to the Jewish people during years of state-imposed anti-Jewish measures under the Nazis that preceded the Holocaust.

The issue of religious freedom and parental rights compelled also church leaders³ to make a statement on the court's verdict. Even if since the Council of Jerusalem (or Apostolic Conference)⁴ around 50 CE Christians no longer adhere to the tradition of circumcision, the principle of religious freedom must be defended vigorously. As Christians we have Baptism that introduces us into our faith; it is a necessary ritual for our religious affiliation. We baptize our children before they have reached maturity. Even if Baptism does not change us physically, it cannot be undone, because we believe Baptism to be the entry into the Christian community, a gift from the Holy Spirit, and to constitute the forgiveness of sin (cf. Acts 2:37). How would we feel if a court were to prohibit Baptism?

For the time being, Jewish and Muslim parents circumcising their children do not need of fear accusation since the ruling is not precedent setting for other courts in Germany. Nonetheless, we need to ensure that other courts in Germany or elsewhere (e.g., Switzerland, Finland) do not follow this decision in the future. The prohibition of circumcision would have severe consequences: circumcision would be carried out without control in other countries or in the underground, Jewish and Muslim life would be expelled from society, religious freedom would no longer be guaranteed and religious traditions would be dictated by states.

In order to clarify the legal situation, lawmakers should as soon as possible make a decision without playing religious freedom off against the physical integrity of the child: educating in and introducing a child into religious matters benefits the child.⁵

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³ See the statement by the EKD, at www.ekd.de/presse/pm130_2012_beschneidungsurteil_koeln.html

⁴ At the Council the Jerusalem community decided with the Apostles Paul and Peter that pagans did not need to be circumcised. We are saved by God's grace alone (cf. Acts 15:11).

⁵ See www.zentralrat-der-juden-in-deutschland.de/down/Dossier-Beschneidung.pdf