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KING

Knowledge for INtegration Governance

Islamic Religious Instruction in the Schools in Hessen, Germany

Walter Kindermann

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KING - Knowledge for INtegration Governance

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The KING project's objective is to elaborate a report on the **state of play** of migrant integration in Europe through an interdisciplinary approach and to provide decision- and policy-makers with **evidence-based recommendations** on the design of migrant integration-related policies and on the way they should be articulated between different policy-making levels of governance.

Migrant integration is a truly multi-faceted process. The contribution of the insights offered by different disciplines is thus essential in order better to grasp the various aspects of the presence of migrants in European societies. This is why **multidisciplinarity** is at the core of the KING research project, whose Advisory Board comprises experts of seven different disciplines:

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The present paper belongs to the series of contributions produced by the researchers of the “Public Administration” team directed by Walter Kindermann.

The project is coordinated by the **ISMU Foundation**.

Contacts:

Guia Gilardoni, Project Coordinator – g.gilardoni@ismu.org

Daniela Carrillo, Project Co-Coordinator – d.carrillo@ismu.org

Marina D’Odorico, Project Co-Coordinator – m.dodorico@ismu.org

Website: www.king.ismu.org

Twitter: @KING_Project_EU

ISMU Foundation

www.ismu.org

Via Copernico 1

20125 Milano

Italy

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NON-DISCRIMINATION AS A BASIC PRINCIPLE IN EU-INTEGRATION-POLICY

In the past two decades, it was realized in Western Europe that it has become a destination for immigration. On the one hand, this development has repeatedly fueled xenophobic political groups in the top countries of immigration. On the other hand, it has strengthened the awareness of the necessity for an active integration policy. The topic is so common in Europe that it even became part of popular arts, for example the movie “Qu'est-ce qu'on a fait au Bon Dieu?” directed by Philippe de Chauveron. Approaches, programs and guidelines for immigrant integration have been developed on different state levels and by nongovernmental organizations. Civil society organizations also deal increasingly with their intercultural openness. Key words are “Diversity”, “Integration”, and “Inclusion”. The common basis of these approaches, the quintessence, is the conviction that all people should have the same rights and equal access to all scopes of social interest, regardless of their origin, their skin colour or their religion. The bottom line of integration is **non-discrimination**.

STRUCTURAL DISCRIMINATION – HIDDEN BARRIERS

Usually, there is unity concerning the design of approaches to immigrant integration which include the principle of equal rights. However, many factors contribute to the fact that access to public facilities and services is sometimes very limited for immigrants, e.g. because of detailed regulations governing the use of public services.



Figure 1: Cartoon - Source: found on the internet without any indication of copyright

In September 2014, a story was reported worldwide: “José Zamora, 32 years old, from Los Angeles, went online every morning to apply for up to a hundred jobs a day. After six unsuccessful months of search, he had an idea. He eliminated the “s” and the acute from his first name. Out of José he made Joe. He Americanized his Mexican name, washed it a little white, how he called it. A week later, he received dozens of job offers.” The story shocked the web although it was not really new. According to a study of the National Bureau of Economic Research in Massachusetts (“Do Emily and Greg Get a Job More Easily than Lakisha and Jamal? A Field Study”) this had already been confirmed in 2003: In the US, the world’s multicultural melting pot, people with a white sounding name have a 30% higher chance to obtain a job than a person with a black sounding name, despite the fact that both might have the same qualifications (s.n. 2014).

When one walks through a big city focusing on accessibility one notices how many obstacles a wheelchair user has to overcome. And one also notices that it would not cost much more to design cities in a disabled-friendly way. The only requirement is that planners have to consider different perspectives from people with a variety of handicaps. People tend to look at the world through their limited experience. They do not realize that a different perspective not only leads to a different image of the world around us but also requires a different behaviour.

The philosopher John Rawls developed a very vivid solution model for this problem: “The Veil of Ignorance”. His suggestion is: Those who make the laws and regulations for a society should imagine they did not know who or under which condition they would participate in the society: as male or female, short or tall, disabled or not, rich or poor, of black, white or yellow “race”, etc. Upon these criteria they would make rules they had to live with contently.

Well, this is only a philosophical model. In a real existing society, powerful people actually exert more influence on the rules. The consequences are hidden structural discriminations to the disadvantage of less powerful people.

Structural discriminations can be found in all areas of society. Some laws or regulations privilege particular groups, others disadvantage certain groups. Some barriers are set up deliberately, some emerged and developed unintentionally. This paper will give you an example of a government’s successful attempt to overcome structural discrimination concerning the right to freely practice religion: The case the German Federal State of Hessen.

EQUAL RIGHTS CONCERNING THE FREEDOM OF RELIGION.

Eleven Common Basic Principles (CBPs) for Immigrant Integration Policy in the EU were adopted in November 2004. They compose the main pillars of EU initiatives in the field of integration (European Commission 2014).

Common Basic Principle 6 claims ‘Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration’. Additionally, Common Basic Principle 8 focuses on a special case - the freedom of religion: ‘The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law.’

This is the aspiration – but how can it be realized? In some member states of the European Union we still today find state churches. Is it possible to guarantee immigrants the practice of religion equal to citizens there?

In Germany years ago the church was separated from the state. Today, Germany is a secular state¹. The German constitution – called Basic Constitutional Law (“Grundgesetz”) – claims that the state has to have the same distance to every religious belief. The Basic Constitutional Law guarantees freedom of belief and free exercise of religion (Article 4). Otherwise the state authorities collect the church taxes for the two big Christian churches, the protestant and the catholic. These taxes are imposed on the church members and are collected to cover any church-related expense such as paying ministers; in Hessen the church tax is a portion of 9% of the income tax. Furthermore, state authorities supervise religious education for Catholics and Protestants (and other Christian groups as well as for Jews and Alevis) at public schools.

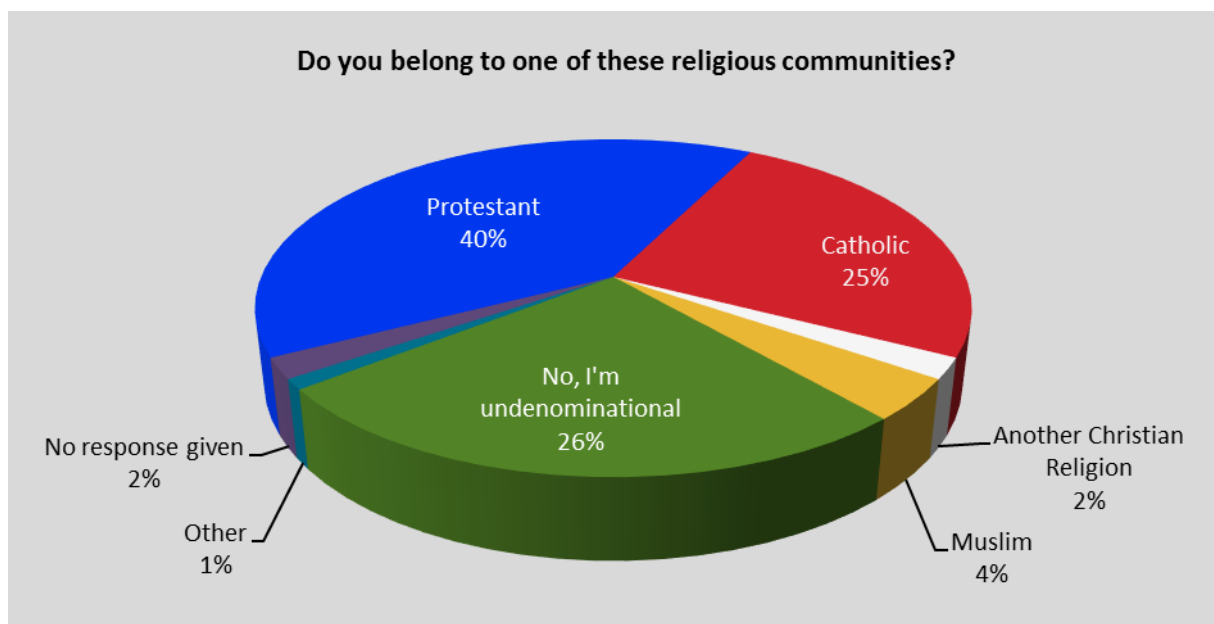


Figure 2: Affiliation with a religious community in Hessen
Source: Hessisches Ministerium der Justiz, für Integration und Europa 2013: 25

BACKGROUND: MUSLIMS IN GERMANY

Nowadays, a part of the population in Germany has a Muslim background. In Hessen about four to six percent define themselves as Muslim (see figure 2; Hessisches Ministerium der Justiz, für Integration und Europa 2013: 25; Fuhr-Becker 2013; Fuhr-Becker/Wilkens 2015). According to the Ministry's survey, Muslims in Hessen are more religious than Christians (Hessisches Ministerium der Justiz, für Integration und Europa 2013: 30). Another study shows that over the last years religion has gained importance for them (see figure 3; Stiftung Zentrum für Türkeistudien und Integrationsforschung 2014: 140).

¹ see in more detail: s.n. (2011)

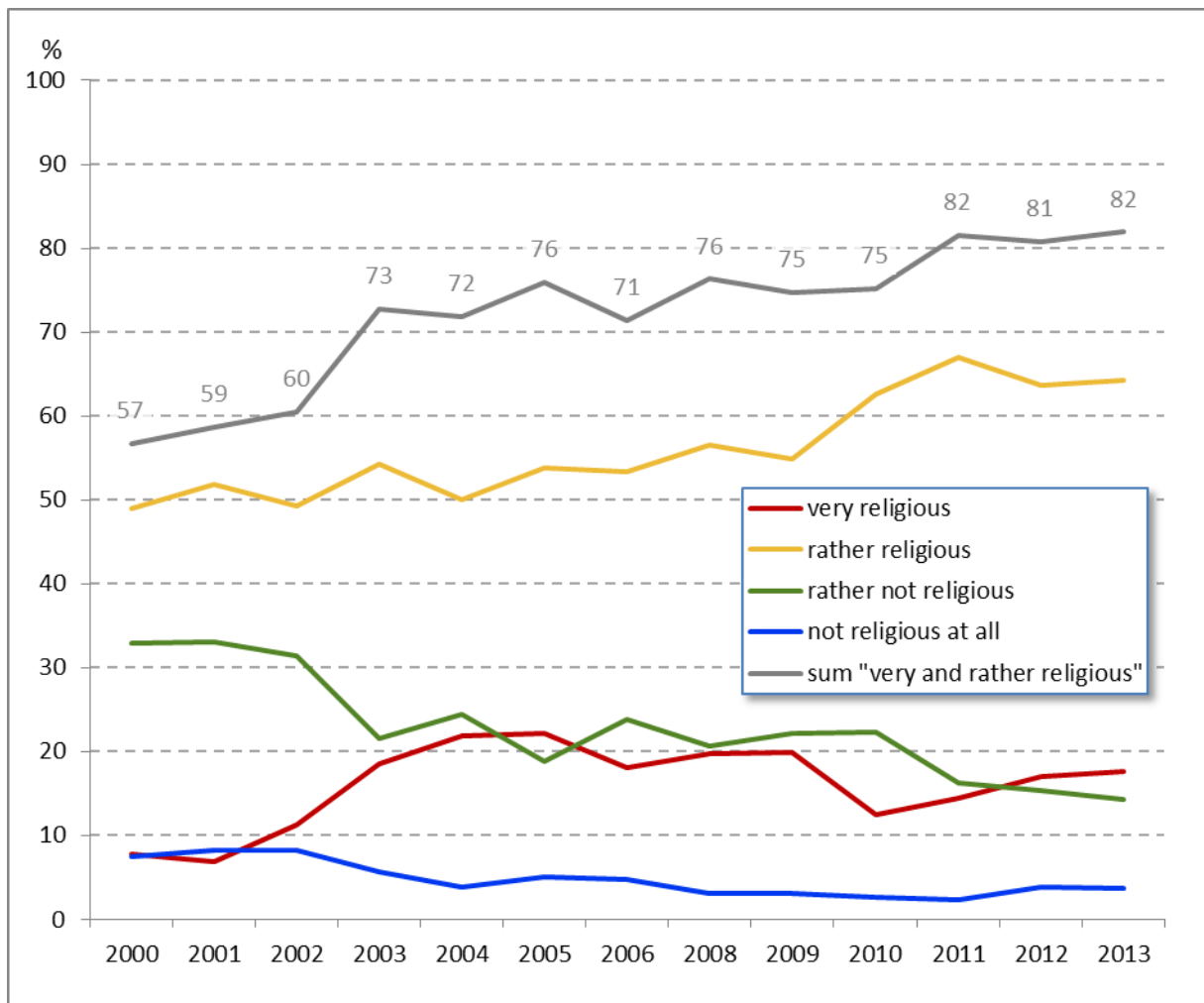


Figure 3: Increasing religiosity among Turkish migrants in North Rhine-Westphalia²
 Data source: Stiftung Zentrum für Türkeistudien und Integrationsforschung (2014: 143)

Of course it is empirically difficult to measure subjective features like religiosity and faith. Therefore, it is not possible to know for sure whether Muslims are more religious than others or not. Maybe among Muslims it is just more common to consider oneself religious. In contrast, it may be deemed old-fashioned to call oneself religious in a modern society in Western Europe. In any case - what matters is how a group defines itself. Yet it is problematic if a group that defines itself religious cannot attend religious education at school.

² North Rhine-Westphalia has about 18 million inhabitants and is Germany's most populous federal state.

THE DEBATE ON INTRODUCING ISLAMIC RELIGIOUS EDUCATION AT PUBLIC SCHOOLS

As a result there is a long-lasting public debate on introducing Islamic religious education at public schools in Germany. Around 91% of pupils in Germany attend public schools. To comprehend the debate on Islamic education, it is important to understand how article 6 of the German basic constitutional law regulates the relationship between state and religion for religious education at schools. In Germany, the state – precisely: the 16 federal states (“Bundesländer”) – are responsible for public schools and thus for religious education offered there. It has to be within the scope of the generally accepted education principles and in accordance with the constitution. That means that the religious lessons are part of compulsory education. As long as a child, belonging to a particular religious group, has not been formally unsubscribed it has to attend the classes of its religion.

A key aspect of the discussion has to be considered: Although the religious lessons are part of state education state authorities cannot organise religious education in their own responsibility. Neither are they allowed to employ religious education teachers without consulting the churches/religious communities nor are they allowed to determine curricula for religious education. Because religious education has to be confession-orientated a religious community is required as a partner (see in more detail Deutsche Islam Konferenz n.d.). To put it simply, the Basic Constitutional Law is based on the following idea: The state itself is secular and therefore it does not offer religious education. But to guarantee the freedom of practicing religion it provides this service for citizens who believe.

As religious education is meant to be confession-oriented and not just religious education in general the procedure is as follows: In the beginning there is a religious community that shares religious views. This community applies to the state authorities to provide religious lessons for this confession. When the necessary conditions have been met, the state authorities start a partnership with the religious community. Both partners have clearly defined tasks and powers: The state authorities hire teachers, approve the curricula and control that the lessons are in line with the Basic Constitutional Law and education principles. Besides that they neither control the religious content nor the scientific accuracy of the lessons. It is none of the state’s business to consider whether religious contents like Resurrection, Reincarnation or the Immaculate Conception are plausible. But if the school or parents called attention to the violation of the constitution or the fundamental rights in religious classes, the state authorities would interfere.

Thus, the framework for religious education is set up by the state – the learning content is determined by the religious community. This means: According to the German Basic Law there will be no religious education without a religious community involved in it. Hence a structure like for instance in Turkey, where Imams are educated by a state authority which also organises the learning content is not intended in Germany.

AD-HOC ARRANGEMENTS AGAINST STRUCTURAL DISCRIMINATION?

Two thirds of the Muslims living in Germany originate from Turkey (Bundesamt für Migration und Flüchtlinge 2009: 12). Because there religious education in schools is organized by the state, they expect the German state authorities to organize Islamic religious education as well.

This was the starting point to a long discussion. Especially two arguments were put forward many times against Islam religious education at public schools: Islamic communities would differ from Christian

communities in their organization because they were no churches. Furthermore, an agreement between groups of different Muslim beliefs could not be reached because they were too divergent. The public debate ended up at the point from which it started: **Because** Islam is not institutionally organized like Christianity and **as long as** Muslims were not able to come to an agreement, Islamic religious education in accordance with the Constitution could not be offered.

These arguments crop up again and again but only few checked their correctness. And: Because around four million inhabitants of Germany are Muslims, Islamic religious education was considered to be of great importance – regardless whether it was completely in accordance to the Basic Constitutional Law or not. Some assumed a structural discrimination hidden in the articles of the Basic Constitutional Law which deal with religion: De jure Muslims had the same rights to exercise their religion but de facto they could not due to the structure of their organization. (Besides, the Basic Law dates back more than 60 years. The late 1940s were a period when only German refugees migrated to Western Germany.)

Politicians searched for alternatives. A paper of the German Islam Conference chaired by the German Minister of the Interior offered the idea of “a possible interim solution: Due to the special meaning of religious education for the religious freedom of pupils and parents the introduction should not fail because the qualification of an organization has not yet been ascertained. In such cases and with reference to §7 (3) of the Basic Constitutional Law it is possible to cooperate together with organizations, that actually undertake tasks that are essential for the religious identity of their members as an interim solution. Thereby, it is expected that these organizations will fulfil all characteristics of a religious community within a reasonable time.” (www.deutsche-islam-konferenz.de) At the German Islam Conference no agreement could be reached about this passage.

Nevertheless, the German federal state of North Rhine-Westphalia used it as a basis for a construction that allowed confession-oriented Islamic education - at least on an interim basis - although there was no institutionalized religious community within the meaning of the Basic Constitutional Law. Therefore the education law of North Rhine-Westphalia had to be adjusted. The federal state government appointed a commission of (not elected) “representatives” of the different Muslim groups (among others) and treated this commission as a substitute for the religious community (see in more detail Kaddor 2013).

This construction has been highly criticized, because this commission established by the state stood in contrast to the separation of state and religious communities as it is claimed in the Basic Constitutional Law. Furthermore, there was a convincing political argument against this workaround: If a commission that was appointed by the state acts as a spokesman for „the Muslims“ as a substitute for self-determined religious groups, social pressure upon all who had immigrated from Muslim countries could affect parents to sign up their children for these lessons. This might also apply to people who call themselves secular or (Kemalist-) laical and are content to live in a non-religious Western society.

THE HESSEN GOVERNMENT'S SOLUTION

At the beginning of the legislative period in 2009, the Hessen government aimed to consider seriously if there was a way to find an agreement with a legitimized partner to grant Islamic lessons in German. It should be in accordance with the Basic Constitutional Law:

“ARTICLE 7 - [SCHOOL SYSTEM]

- (1) The entire school system shall be under the supervision of the state.
- (2) Parents and guardians shall have the right to decide whether children shall receive religious instruction.
- (3) Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction.”

Some assumed that the coalition of conservatives (CDU) and liberals (FDP) used the Basic Constitutional Law to prevent Islamic religious education. But in fact, the Hessen State Minister for Integration emphasized the “political will for integration and a common constructive coexistence” (Hessisches Ministerium der Justiz, für Integration und Europa/Hessisches Kultusministerium 2012). He was convinced that the two main counter-arguments – “an institutional agreement between the different Muslim groups is impossible” and “Islam is no religious organization” (see above) could be refuted by legal examination and negotiations.

With regard to the first counter argument: The different Christian communities do not have to agree on common religious education. Yet in Hessen there is Protestant, Catholic, Syrian Orthodox, Greek Orthodox, Mennonite, Old-Catholic, Adventist, Unitarist and free religious education next to lessons for Jewish and Alevi.

Referring to the second even more weighty counter argument: A religious community does not have to be organized like a church to be able to assume responsibility for the implementation of religious education as a partner of the state. Therefore the government of Hessen initiated the analysis of the legal situation and deduced ten requirements based on Heinrich de Wall's³ path breaking expert advice for the German Islam Conference.

1. There has to be an Islamic **religious community** dedicated to the comprehensive **care of their members' common religious confessions**.
2. The religious community needs a minimum of institutionally organized structure: A **greater number of people** have to **unite to practice their religion together** for a **longer period of time**.
3. The religious community defines its fundamentals which are consistent with the principles for religious education.
4. It designates entities or people which represent these principles towards authorities. Therefore the community has **clear rules governing their representation** so that authorities can recognize the negotiating partner as a **legitimated spokesman of the religious community**.

³ Professor for Church Law, Constitutional Law and Administrative Law at the University of Erlangen-Nürnberg.

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5. Leaving the possibility of the un-subscription mentioned in the Basic Constitutional Law (Art. 7 (2)) aside, religious education is **obligatory** for confession-oriented pupils. Therefore **clear regulations on membership** are needed in the religious community (at least for one parent). It is necessary to ensure that no one is forced by a religious community to be a member.
 6. A religious community **does not have to be organized on a democratic basis** on the inside, **but the assurance is required that the religious community abides by the law and the constitution.**
 7. A religious community has to **assure the permanency on the basis of the condition and number of their members.** (This is also necessary to guarantee a minimum number of pupils now and in the future that require this religious education.)
 8. **Complete confession homogeneity of the religious community is not necessary.** Inversely, it is possible to offer different Islamic ways of religious education for different confessions.
 9. Art. 7 of the Basic Constitutional Law claims that the state is religiously and ideologically neutral and does not define the content of religious confessions. Therefore it is not possible that a foreign state has the right to define the principles of a religious community because then the German state would grant sovereign rights to a foreign country that it does not own itself.
 10. **Religious education is supervised by the state.** The state is allowed to determine the pedagogical and scientific standards for the qualification of teachers and ensure its compliance. **Religious education has to correspond to the general educational goals.** This is one of the reasons **why Islamic religious education has to be taught in German.**

ROUND TABLE CONFERENCE FOR THE IMPLEMENTATION OF ISLAMIC RELIGIOUS EDUCATION

The Hessen Government invited several groups to discuss the task at a "round table". The choice of the groups was a challenge, as there are many partly competitive Islamic groups. A good solution seemed to be to invite not all groups but at least one of each relevant religious persuasion (Sunnis, Shiites, Alevis, Ahmadiyya).

Members of the round table were: Türkisch-Islamische Union der Anstalt für Religion DITIB e.V., Ahmadiyya-Muslimische Jamaat Deutschland e.V., Föderation der Aleviten in Deutschland, Islamische Gemeinschaft der schiitischen Gemeinden Deutschlands e. V., Verband der Islamischen Kulturzentren (VIKZ) e.V., Marokkanische Muslime, as well as various experts.

In the first meeting, the members agreed that those groups among them who had the best chances of being recognized as a religious community under the criteria of the Basic Constitutional Law, should start immediately. All stated that they would send their children in the tuition of the "successful" group then. All members were glad that the Hessen government was seriously interested in a successful outcome. Above all, they were excited about the precise description of the requirements of the Basic Constitutional Law using the "10 points" described above. Two groups (DITIB Sunni, and Ahmadiyya) finally reached (with support of constitutional experts) the status of a religious community. The two curricula were developed by

all members of the "round table" in cooperation with experts and the Hessen Ministry of Education (Hessisches Kultusministerium 2013b and 2013c).

TODAY'S SITUATION

Islamic education in Hessen started in the academic year 2013/2014 in 27 basic schools. Thus, up to now, it is not offered all over the federal state. Since the beginning of the academic year 2014/2015 Islamic Religion has been taught in 38 schools to 1180 children. As mentioned before it is taught in German to groups which consist at least eight children (Hessisches Kultusministerium 2014). Female teachers who usually in Hessen are not allowed to wear a headscarf at school can do so while giving religion lessons (Schenk 2014). Islamic religious education at public schools is intended to be extended (islamiq 2014).

An opinion poll revealed that Islamic Religious Education is in line with the majority of Germany's population. More than 50 percent without and with migration background approve of this sort of education. 55 percent of the Germans without migration background and 71 percent of people with Turkish origin asses this positively while 62 percent of ethnic German immigrants do not approve of it. (Sachverständigenrat deutscher Stiftungen für Integration und Migration 2014: 37; for more detail see figure 4.)

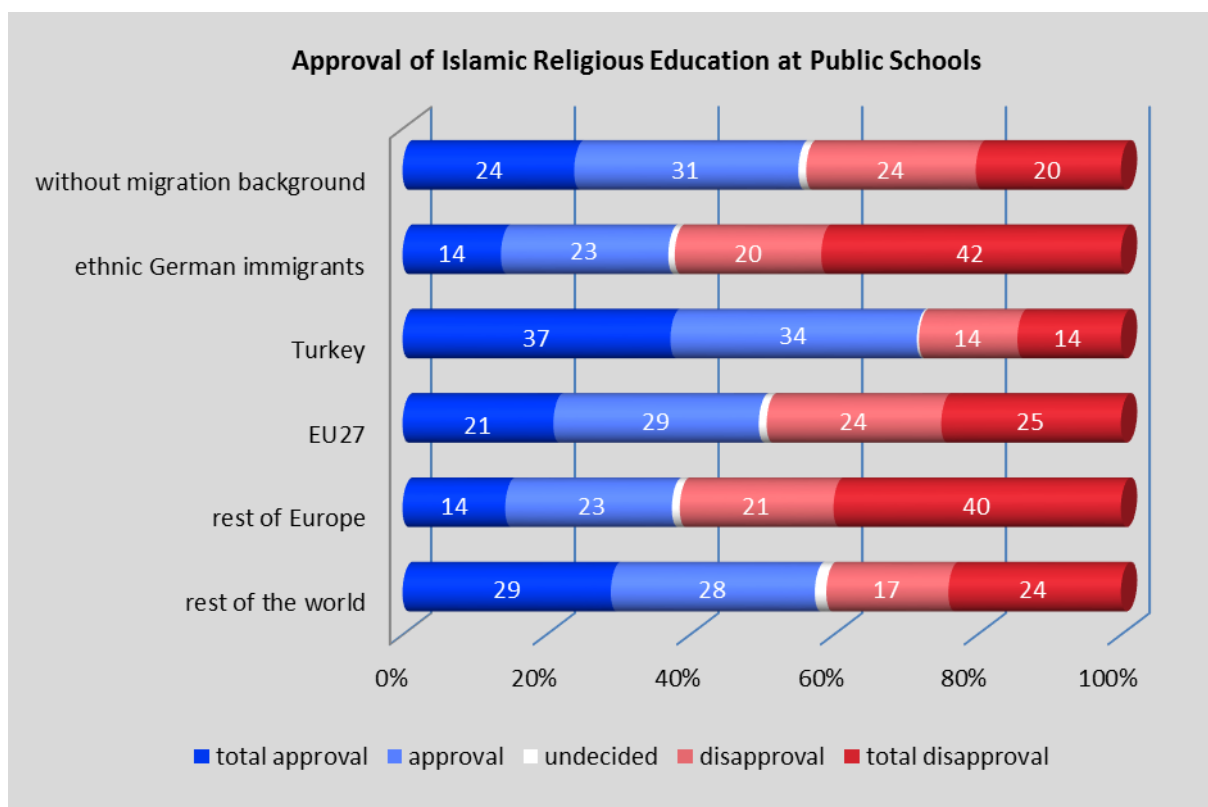


Figure 4: Approval of Islamic Religious Education at public Schools by different migrant groups in Germany
Source: Sachverständigenrat deutscher Stiftungen für Integration und Migration (2014: 37; weighted data)

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