Headnotes

to the Order of the First Senate of 26 June 2002

– 1 BvR 558/91 –

- 1 BvR 1428/91 -

1. **The provision of market-related information by the state will not impair the fundamental rights guaranteed by Article 12.1 of the Basic Law (*Grundgesetz – GG*) of the competitors concerned Article as long as the information's influence on competition does not distort market relations and the information is provided in accordance with the legal standards applicable to the provision of governmental information. The matters which are of significance under constitutional law are the existence of a governmental duty and the maintenance of the division of powers as well as compliance with the requirements that the information be accurate and objective.**

2. **Because it is the Federal Government's task to direct the state, it is justified in providing information wherever it has federative responsibility which can be fulfilled with the help of information.**

FEDERAL CONSTITUTIONAL COURT

– 1 BvR 558/91 –

– 1 BvR 1428/91 –

IN THE NAME OF THE PEOPLE

In the proceedings
on
the constitutional complaint

1. of C(…) GmbH, represented by its managing director,

authorised representatives: Rechtsanwälte Prof. Dr. Rüdiger Zuck und Partner, Möhringer Landstraße 5, 70563 Stuttgart –

against a) the judgment of the Federal Administrative Court (*Bundesverwaltungsgericht*) of 18 October 1990 – BVerwG 3 C 3.88 –,

b) the judgment of the Higher Administrative Court (*Oberverwaltungsgericht*) for the Land of North Rhine Westphalia of 5 June 1987 – 13 A 1273/86–,

c) the ruling of the Cologne Administrative Court (*Verwaltungsgericht*) of 14 April 1986 – 1 K 1228/86 –,

d) the publication of the “Preliminary comprehensive lists of wine and other products in which diethyleneglycol (DEG) has been determined in the Federal Republic of Germany” by the Federal Minister of Youth, Family Affairs and Health, last updated on 17 December 1985,

– 1 BvR 558/91 –,

2. of L(…) GmbH, represented by its managing director,

authorised representative: Prof. Dr. Fritz Ossenbühl,
Im Wingert 12, 53340 Meckenheim -

against the judgment of the Federal Administrative Court (*Bundesverwaltungsgericht*) of 18 October 1990 – BVerwG 3 C 3.88 –

– 1 BvR 1428/91 –

the Federal Constitutional Court – First Senate –

with the participation of Justices:

President Papier,

Jaeger,

Haas,

Hömig,

Steiner,

Hohmann-Dennhardt

Hoffmann-Riem

Bryde

held on 26 June 2002:

The constitutional complaints are rejected.

Facts: The constitutional complaints related to the question of the constitutional permissibility of consumer information provided by the state. The Federal Government had learned in 1985 of wines sold in Germany containing admixtures of diethylene glycol (DEG) in contravention of the statutory provisions. This was also the subject of reports in the press. Considerable disquiet prevailed among the population, especially since it was not known precisely which wines contained these admixtures or what health consequences consumption of this wine could have. The Federal Government thereupon published a list of those wines in which DEG had been found for the information of consumers. The complainant enterprises, and several products of each complainant, were also named in the list. They claimed that their reputation had been damaged by publication of the list and that they had lost turnover, and hence their fundamental rights to freedom to occupational freedom and to protection of property had been violated. Their actions before the administrative courts were unsuccessful. The First Senate of the Federal Constitutional Court has rejected their constitutional complaints as unfounded.

Reasons:

A.

[…] 1-33

B.

[…] 34-36

C.

The constitutional complaints are unfounded. The publication of the list of wines containing DEG and the impugned court rulings do not violate the complainants' fundamental rights under Article 12.1 sentence 1, Article 14.1 sentence 1, Article 3.1 and Article 2.1 of the Basic Law. 37

I.

The complainants' fundamental right under Article 12.1 of the Basic Law has not been violated. 38

1. The occupational freedom contained in Article 12.1 of the Basic Law grants to all Germans the right to select and exercise their occupation freely. An "occupation" is any activity intended to last in the long term and which serves to create and maintain a livelihood (see Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts* – BVerfGE) 7, 377 (397 et seq.); 54, 301 (313); 68, 272 (281); 97, 228 (252-253)). According to Article 19.3 of the Basic Law, the fundamental right is also applicable to legal persons where they exercise an activity serving profit-making purposes which in line with its essence and nature is open in the same way to legal and natural persons (see BVerfGE 50, 290 (363); established case-law). This applies to the complainants. 39

2. In the prevalent economic system, the right to freedom contained in Article 12.1 of the Basic Law in particular concerns the occupation-related conduct of individual persons or enterprises (see BVerfGE 32, 311 (317)). The fundamental right however does not protect against the dissemination of correct, factual information on the market which may be significant to the competitive conduct of market players, even if the content has a negative impact on individual competitive positions. The Federal Government, however, has to adhere to the legal standards applicable to the provision of information. 40

a) If entrepreneurial professional activity on the market takes place in accordance with the principles of competition, the scope of the protection of freedom is also determined by the legal regulations which facilitate and restrict competition. Within this framework, Article 12.1 of the Basic Law ensures participation in competition in accordance with its functional conditions. The guarantee of fundamental rights hence does not cover protection against influences on factors determining competition. In particular, the fundamental right does not encompass a right to be successful in competition and to an assurance of potential future income (see BVerfGE 24, 236 (251); 34, 252 (256)). Rather, the competitive position, and hence also turnover and income, are subject to constant change, depending on the situation on the market. 41

b) An enterprise that is active on the market exposes itself to communication, and 42

hence also to criticism of the quality of its products or of its conduct. The enterprise in question can in turn defend itself against incriminating information as required by the market by providing information, for instance through its own advertising and by emphasising the quality of its product. Protection of the freedom to exercise an occupation namely includes the external portrayal aimed to promote the professional success of an enterprise, including advertising for the enterprise or for its products (see BVerfGE 85, 97 (104); 85, 248 (256); 94, 372 (389)).

The fundamental-right provision however does not provide an exclusive right to portray oneself to third parties, and hence to unrestricted self-portrayal of one's enterprise on the market. An enterprise may decide for itself how it would like to present itself and its products in competitive situations. Article 12.1 of the Basic Law however does not establish a right for the enterprise only to be portrayed by others as it would like to be seen or as it sees itself and its products. In contradistinction to the view taken by the complainants, such a right can also not be presumed to stem from parallels to the general right of personality, especially since this also does not cover such a right (see BVerfGE 97, 125 (149); 97, 391 (403); 99, 185 (194); 101, 361 (380)). 43

c) Well-functioning competition is based on as great a degree as possible of information for market participants regarding market-relevant factors. Only if the market players are informed is it possible to decide in one's own interest on the conditions of market participation, in particular on the supply of or demand for goods and services. The availability of corresponding information is also indirectly conducive to the quality and variety of the products offered on the market. If for instance consumers have no information relevant to decisions, they cannot sufficiently assess whether supply meets their demands. Informed action on the part of consumers also affects service-providers who as a result can adapt to consumers' demands. Shortcomings in the availability of information relevant to the decision hence threaten the ability of the market to regulate itself. 44

Having said that, the market as an institution does not guarantee that a certain level or indeed a high level of information always exists. The information available on the market is frequently incomplete. Information is disseminated selectively in many cases. What is more, not all the information available on the market has the same good chances of being taken up by its addressees and processed with far-reaching consequences. It fosters the functioning of the market if in such situations additional information, where appropriate also provided by the state, is used to set counterweights, or if the superior ability of individual market players to disseminate information is compensated for. 45

d) The legal order aims to facilitate a high degree of information relevant to the market, and hence market transparency. This is served for instance by the legal precautions taken to combat unfair competition, the laying down of rules on advertising and measures of consumer protection, which above all is achieved by providing information. In particular, § 1 of the Act Against Unfair Competition (*Gesetz gegen den un-* 46

lauteren Wettbewerb – UWG) helps competition on performance to work well and establishes barriers against information in commercial transactions the dissemination of which is contra bonos mores because market players are deceived. This is assessed by the legal order as anti-competitive (see namely §§ 2 et seq. of the Act Against Unfair Competition). Accordingly, the principle of truth, which is understood as a prohibition to mislead, is regarded as the prevalent guideline of competition law (see Baumbach/Hefermehl, *Wettbewerbsrecht*, 22nd ed., 2001, marginal no. 5 re § 1 of the Act Against Unfair Competition). The case-law has given greater detail to the requirements for protection to mislead, and hence to the correctness of statements in the framework of the Act Against Unfair Competition with regard to the requirements placed on competitive conduct in commercial transactions (see Federal Court of Justice (*Bundesgerichtshof* – BGH), *Neue Juristische Wochenschrift – NJW* 1987, pp. 2930 (2931); BGHZ 139, 368 (376)). The goal of securing market transparency, however, is also emphasised where information is not disseminated by competitors (see Decisions of the Federal Court of Justice in Civil Matters (*Entscheidungen des Bundesgerichtshofes in Zivilsachen* – BGHZ 65, 325 (332 et seq.)). It also characterises the framework conditions of competitive conduct on the part of the state if the state disseminates information that is relevant to competition without itself entering into competition.

e) The provision of market-related information by the state will not impair the fundamental rights guaranteed by Article 12.1 of the Basic Law of the competitors concerned as long as the information's influence on competition does not distort market relations and the information is provided in accordance with the legal standards applicable to the provision of governmental information. The matters which are of significance under constitutional law are the existence of a governmental duty and the maintenance of the division of powers (aa) as well as compliance with the requirements that the information be accurate and objective (bb). 47

aa) The dissemination of state information is conditional on the active agency being mandated (1) and adhering to the competence boundaries (2). 48

(1) If government or administration mandates can be carried out by means of public information, the task assignment in principle also includes an empowerment to inform. 49

This is the case when the government directs the state. This task aims to gain political legitimacy, which is important in a democracy, and covers participation in the performance of concrete public tasks outside the activity of the administration. Governance is not carried out solely through legislation and the guiding influence of law enforcement, but also by disseminating information to the public (see Order of the First Senate of 26 June 2002 – 1 BvR 670/91 – Osho). 50

The state's participation in public communication has become fundamentally altered in the course of time, and is subject to continual change under the current conditions. The increased role of the mass media, the expansion of modern information and 51

communication technologies, as well as the development of new information services, also impact the way in which the government carries out its tasks. Traditionally, public relations work carried out by government offices was particularly focused on the portrayal of government measures and projects, explaining its ideas on tasks to be carried out in the future and seeking support (see BVerfGE 20, 56 (100); 44, 125 (147); 63, 230 (242 and 243)). In many cases, information activity under today's conditions goes beyond such public relations work (see also Constitutional Court of North Rhine Westphalia (Verfassungsgerichtshof Nordrhein-Westfalen – VerfGH NW), *Nordrhein-Westfälische Verwaltungsblätter – NWVBl* 1992, p. 14 (15-16)). In a democracy, it is for instance a task of the government to also inform the public of important events that do not belong to their actual defining political activity, or which precede it by a long period. In a political system aiming to achieve a high degree of personal responsibility on the part of citizens in solving social problems, the task of government also includes disseminating information which enables citizens to help solve problems on their own responsibility. Accordingly, the citizens expect the government to provide information for their personal opinion-formation and orientation if this would otherwise not be available. This may in particular cover areas in which the supply of information to the population is based on information provided by interested parties, something with leads to a risk of bias, and where the powers active within society are not sufficient to create an adequate balance in terms of information.

Governance in this sense covers not only the task to make it easier to solve conflicts in the state and in society by providing public information in good time, but also in this way to counter new challenges that frequently arise at short notice, to react quickly and correctly to crises and to help citizens to gain an orientation. Topical crises in the agricultural and foodstuffs area have shown in an exemplary fashion the importance of publicly accessible information that carries the authority of the government in order to be able to suitably master such tense situations. Were the government to distance itself from the task in such situations to give an orientation to the citizen by means of education, advice and recommendations for conduct, and instead of this restrict itself to legislative projects or wait for the administrative measures of other state bodies, an important element of fast, effective crisis resolution aimed at causing the least possible impairment to third parties would be lost. Moreover, many citizens would equate silence on the part of the government with failure. This can lead to a loss of legitimacy. 52

(2) The assignment of competences is also to be adhered to when it comes to information activity. At the level of the Federation, the competence in relations between the Federal Chancellor, the Federal Ministries and the Federal Government as a collegiate body emerges from Article 65 of the Basic Law. Over and above this, the federative division of competences between the Federation and the *Länder* (states) must be respected (see BVerfGE 44, 125 (149)). Here, the decision on whether the Federal Government or the state governments are entitled to act depends on whether the information task to be done is that of the Federation or of the *Länder*, or whether par- 53

allel competences exist.

The task of governance, and of the information work of the Federal Government covered by it as an integral element, is an expression of its overall state responsibility. There are no explicit provisions in the Basic Law for the government's competence for governance, in contradistinction to the legislative and administrative competences. The Basic Law however tacitly presumes corresponding competences, such as in the provisions relating to the formation and tasks of the Federal Government (Article 62 et seq. of the Basic Law) or on the duty incumbent on the Federal Government to inform the *Bundestag* and its committees; the same applies to the obligation of the government and its members to face questions from the *Bundestag* and to acquire for its Members the information necessary to exercise their mandate (see on the latter BVerfGE 13, 123 (125 and 126); 57, 1 (5); 67, 100 (129)). The Federal Government is justified in providing information wherever it has federative responsibility for governance which can be fulfilled with the help of information. Indications of such a responsibility can be obtained for instance from other provisions relating to competences, such as those on legislation, also independently of concrete legislative initiatives. The Federation is entitled to govern in particular if events or their national significance have a supra-regional character because of their foreign connection and the government's nationwide information work promotes the effectiveness of the resolution of the problem. In such cases, the Federal Government can seize on the event in question, present it to Parliament and the public and evaluate it and, where it considers this necessary to solve the problem, also make recommendations or issue warnings. 54

With this entitlement of the Federal Government to carry out information activity the Basic Law at the same time creates another regulation as regards the relationship with the *Länder* within the meaning of Article 30 of the Basic Law. Article 83 et seq. of the Basic Law is not relevant to the competence of the Federal Government in the area of information activity. Government activity is not administration as understood by these provisions. The Federal Government is not entitled to implement statutes by administrative measures in the course of its governance. In this respect, the information activity of the Federal Government is not affected by regulations, such as § 8 of the Product Safety Act (*Produktsicherheitsgesetz*) of 22 April 1997 (Federal Law Gazette (*Bundesgesetzblatt – BGBl*) I p. 934), § 69.4 of the Drugs Act (*Arzneimittelgesetz*) as promulgated on 11 December 1998 (Federal Law Gazette I p. 3586) or § 6 of the Appliance Safety Act (*Gerätesicherheitsgesetz*) as promulgated on 11 May 2001 (Federal Law Gazette I p. 866), which empower administrative authorities to inform and warn the public in the enforcement of statutes. 55

The information competence of the Federal Government does not end where action by state bodies with other competences is additionally considered in order to resolve the crisis, such as that of the *Land* governments in exercising their own governance mandate, or of the administration in measures to ward off dangers carried out by the police. The achievement of goals could be missed if the information activity of the 56

Federal Government were to be permitted to refer to everything else that is important to resolve crises, but not to contain an indication of the danger inherent in certain circumstances. The completeness of information is a major element of its credibility. The provision of information by the Federal Government as an adequate reaction to specific problems, and where appropriate overarching competences of other state organs, is unobjectionable from the point of view of the federal distribution of competences since this information activity rules out neither that of the *Land* governments for their area of responsibility, nor does it hinder the administrative authorities in carrying out their administrative tasks.

bb) Article 12.1 of the Basic Law does not protect against the dissemination of information by a holder of state power where its content is correct and adheres to the principle of objectivity, as well as being phrased with suitable caution. 57

The correctness of the content of a piece of information is in principle a precondition for it promoting the transparency, and the functionality, of the market. The holder of the state power can however be entitled to disseminate information subject to specific prerequisites if its correctness has not yet been finally clarified. In such cases, the lawfulness of the state information activity depends on whether the facts have been as carefully investigated as possible prior to their dissemination using available sources of information, where appropriate also by hearing those concerned, as well as in an effort to maintain the reliability that can be achieved under the circumstances. If uncertainties of a factual nature remain, however, the state is certainly nevertheless not prevented from disseminating the information if it is in the public interest for the market players to be educated with regard to a fact that is important for their conduct, such as a risk to consumers. In such cases, it will be suitable to indicate to the market participants remaining uncertainties as to the correctness of the information in order to enable them to decide for themselves how they wish to deal with the uncertainty. 58

As any state activity, information is subject to the principle of objectivity (see BVerfGE 57, 1 (8)). With market-related information, the requirements also correspond to the functional requirements imposed by competition. Judgments may not be based on irrelevant considerations. The form of the information may also be neither unobjective nor disparaging in its phrasing, even if its content is correct. Moreover, the dissemination of information is to be restricted to what is necessary to give information, taking account of potential disadvantageous effects on the competitors involved. 59

cc) The guarantee area of the fundamental right under Art. 12.1 of the Basic Law is however impaired by the state's activity if such activity is not restricted to providing relevant market information to the market players on the basis of which these can take decisions of their own as to their conduct on the market orientated in line with their interests. In particular, the state's information activity may constitute an encroachment on the guarantee area of the fundamental right if in its goal and effect it is a replacement for a state measure which would need to be qualified as an encroach- 60

ment on fundamental rights. The special ties of the legal order cannot be circumvented by selecting such a functional equivalent of an encroachment; rather, the legal requirements applying to encroachments on fundamental rights must be met.

Equally, the guarantee area is impaired if a piece of information subsequently proves to be incorrect, but nevertheless continues to be disseminated, or is not corrected although it continues to be important for market conduct. With the determination of the impairment of the protected area, the unlawfulness is also determined in such cases since a justification of the continued dissemination of information that has been recognised as incorrect is ruled out. 61

3. In accordance with these standards, the impugned publication of the list of DEG-containing wines is unobjectionable. The publication of the list with indisputably correct information on DEG-containing wine also did not impair the guarantee area of the fundamental right of the complainants' occupational freedom in that it is alleged to have impacted the chances to sell non DEG-containing wine. Publication of the list does not constitute an encroachment. The government has adhered to the legal boundaries imposed on information activity. 62

a) The publication of the list as a measure of governance fell within the aegis of the Federal Government. According to its goal, content and impact, it was conceived as an aliud to administrative action. 63

aa) The Federal Minister of Youth, Family Affairs and Health exercised a task of governance of the Federal Government. By providing information, the objective of his conduct was to deal with a crisis which caused public disquiet and endangered the national wine market in the framework of Government's responsibility. 64

The publication contained information that was relevant to the market on the breach of quality requirements with wine from certain regions and bottlers. The information created transparency and enabled suppliers and consumers on the wine market to take their market decisions using knowledge which was important to them, but to which they otherwise would not have had access. The content and design of the publication showed that it served a variety of other goals over and above this. The Federal Government wished to fulfil a public expectancy of effective measures to overcome the crisis and to stabilise the national wine market, which had largely collapsed. In this context, by providing information it wished to enable both suppliers and consumers to deal in an informed and hence self-determined manner with the undesirable, possibly even dangerous situation. Wine dealers were to be able to orientate their supply and private consumers adapt their purchasing conduct to the information that had been provided. The list opened up to wine dealers in particular the possibility where appropriate to remove the wines in question from their own range of wines, but also to make clear by means of advertising the limited involvement of the German wine industry and the restricted impact on German wines. The dissemination of the information aimed to restore the confidence of the market players in other wines. Whilst the content of the list as regards the DEG-containing wines constituted a warn- 65

ing for consumers, it was also an “all-clear” signal with regard to other wines. It was however left to the market players to achieve corresponding effects; the Government limited itself to communicating the findings of the study.

The list was an information contribution in a situation of uncertainty among the population for the resolution of which political responsibility also fell to the Federal Government. The publication aimed to deal with the crisis in a complex manner, in particular to restore confidence in the national wine market. It was concerned – in contradistinction to administrative measures of the protection of legal interests by combating dangers – not with dealing with concrete individual cases and removing resultant disadvantages for individual persons or groups of individuals. The intended impact of the list was in particular not that the competent administrative authorities would omit to take steps towards warding off dangers – such as prohibiting the sale of DEG-containing wines and the implementation of such a prohibition. This did not prevent the *Länder* from taking measures to ward off dangers, as well as any information activity carried out by the *Land* governments themselves. 66

bb) The Federal Minister of Youth, Family Affairs and Health was acting within his remit as defined by Article 65 sentence 2 of the Basic Law. The combined competence of the Federation to govern was given. As the courts have also found, the “glycol scandal” had attracted attention among the general public and required a reaction at national level. The events even led outside Germany to Austria, where admixtures of DEG had first been found. Initially, information had to be acquired there by diplomatic means and questions as to customs checks on wine imports had to be dealt with. In the unclear situation on the impact of DEG in wine it was proper to consult the Federal Health Office. National coordination including the Federation was also required to deal with the crisis situation. Also, a reaction was expected from the Federal Government. This was confirmed by many interpellations in the Federal Parliament as to the activities of the government on this question. Over and above this, the media demanded information and measures of the Federal Government. It reacted to the extremely strong national public interest in information. The Federal Government was able to presume that the need for information could not have been met with the same degree of success were action to be taken by only the governments of the *Länder*. For this reason, also the aspect of the effectiveness of dealing with the different aspects of the problem supported the need for the Federation to act. 67

b) The publication of the list did not breach the principle of correctness and objectivity. 68

The information contained in the list was undisputedly correct. The details contained in the list were restricted to the communication of DEG contents not statutorily permitted in the wines studied that was important for the market conduct. Under the caption „Important Advice“, it was emphasised clearly that wine of the same designation and design from the same bottler could be in circulation which is not mixed with DEG. It was further stated that one could not conclude from the statement of a vineyard site 69

that all wines of this site could contain DEG, but that this could only be concluded in connection with the name of the bottler and the official test number stated.

The list was also not incorrect because the question of the saleability of and the health risks concerned with wines with a low DEG content had not been clarified. There was a need to inform the public, large sections of which had become disquieted. The government communicated the state of knowledge on DEG-containing wines that was accessible to it. The correctness of this information did not depend on whether there was a danger in the administrative-law sense. Also, there was no duty of confidentiality as to the results obtained by tests of the wines named which the state had carried out. Moreover, the correctness and objectivity of the information was not called into question by the fact that it was not possible to test all wines for reasons of capacity. 70

4. Since the complainants' fundamental right under Article 12.1 of the Basic Law has not been violated by the publication of the list of DEG-containing wines, the impugned court rulings at least in their result also do not breach this fundamental right. It is also not constitutionally objectionable for the courts to have presumed that the consumer would not have been able to gain a quick approximate orientation if the names of the bottlers had not been stated, and hence the usefulness of the information for self-determined management of the problem would only have been possible to a restricted degree. 71

II.

The other fundamental-right complaints are also unsuccessful. 72

1. Article 14.1 of the Basic Law is not violated already because the protected area of the constitutional guarantee of property is not affected by the publication of the list. 73

The guarantee of property is to ensure the holders of the fundamental right a degree of freedom under property law and hence to enable them to lead their lives on their own responsibility. It protects the concrete existence of assets against unjustified encroachments by public authority. A general value guarantee of asset legal positions does not follow from Article 14.1 of the Basic Law (see Federal Constitutional Court, Order of the Second Senate of 5 February 2002 – 2 BvR 305/93 and 2 BvR 348/93 –,preliminary print p. 19). Article 14.1 of the Basic Law only covers legal positions to which a legal subject is already entitled, but not opportunities or potential earnings still to come (see BVerfGE 68, 193 (222) with further references). 74

The consequence of this is that the impairments submitted by the complainants of their potential sales as a result of the publication of the list do not concern interests protected by Article 14.1 of the Basic Law. The constitutionally protected property is characterised by the owner's fundamental power of disposal with regard to the object of ownership. This in principle also covers the right of the owner to sell their property. However, the complainants' right to offer wine on the market has not been restricted by the publication of the list. According to their statement, the factual possibility to 75

continue to sell the products was impaired, and hence the potential for a profitable sale constituted by supply. Whilst the legal entitlement to offer articles for sale is included in the acquired status quo which is protected via Article 14.1 of the Basic Law, the actual potential sale is not part of what has already been acquired, but falls under profit-making activities.

No other evaluation ensues from the point of view of the protection of the operation of an established, practised commercial enterprise. The Federal Constitutional Court has so far left open the question of whether and to what degree the operation of an established, practised commercial enterprise is separately covered by the property guarantee as the actual summary of the articles and rights belonging to the assets of an enterprise (see BVerfGE 51, 193 (221-222); 68, 193 (222-223)). The constitutional complaints do not provide an occasion to decide this question. Even if the mere turnover and profit opportunities or actual circumstances are of considerable significance to the enterprise, in terms of property law, they are not assigned by the Basic Law to the protected status quo of the individual enterprise (see BVerfGE 68, 193 (222-223); 77, 84 (118); 81, 208 (227-228)). 76

The same applies to the reputation of the enterprise which the complainants complain has been violated. This is not protected by Article 14 of the Basic Law, at least where it refers to changes and favourable opportunities. Also where the reputation of an enterprise constitutes the result of previous services, it is not a property item of the enterprise protected within the meaning of Article 14.1 of the Basic Law (see Philipp, *Staatliche Verbraucherinformation im Umwelt- und Gesundheitsrecht*, 1989, pp. 175 et seq.). On the one hand, the enterprise of the enterprise continually re-establishes itself on the market by virtue of its services and by its self-portrayal, as well as through the evaluation by the market participants, and is hence subject to constant change. Article 14 of the Basic Law only protects legal positions assigned by statute, but not the result of situative assessments on the part of the market players, even if these have major economic consequences. 77

2. In contradistinction to the view taken by the complainant re 1, Article 3.1 of the Basic Law has not been violated because no warnings were given to the public when monobromoacetic acid or homogeneous acetic acid had previously been found in wine or in sparkling wine. The fact that a different procedure has been followed in other potentially comparable cases does, however, not result in a lawful measure breaching equality. The complainants do not claim that arbitrary actions were taken in the concrete case, for instance with motives that are to be factually disapproved of. 78

3. Article 2.1 of the Basic Law does not apply as a standard because the questions arising as a result of the constitutional complaints relating to the protection of market players in competition are covered by the factually more specific fundamental-rights standard contained in Article 12.1 of the Basic Law (see BVerfGE 25, 88 (101); 59, 128 (163); established case-law). 79

Papier	Jaeger	Haas
Hömig	Steiner	Hohmann-Dennhardt
Hoffmann-Riem		Bryde

Bundesverfassungsgericht, Beschluss des Ersten Senats vom 26. Juni 2002 - 1 BvR 558/91, 1 BvR 1428/91

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