Headnotes

to the Order of the First Senate of 26 June 2002

– 1 BvR 670/91 –

1. **The fundamental right of the freedom of religion and ideology under Article 4.1 and 4.2 of the Basic Law (*Grundgesetz* – GG) does not offer protection against the state and its bodies seeking a public, including critical, debate with the subjects of this fundamental right and also on their objectives and activities. This debate must however maintain the principle of the religious and ideological neutrality of the state, and must hence take place with restraint. The state may not make defamatory, discriminatory or distorting portrayals of a religious or ideological community.**

2. **On the basis of its task of governance, the Federal Government is entitled to perform information work anywhere where it takes on overall state responsibility which can be undertaken with the aid of information.**

3. **For the information activity of the Federal Government in the framework of governance, there is also no need for a separate statutory mandate over and above the assignment of the task of governance even where it leads to indirect factual impairment of fundamental rights.**

FEDERAL CONSTITUTIONAL COURT

– 1 BvR 670/91 –

IN THE NAME OF THE PEOPLE

In the proceedings
on
the constitutional complaint

1. of D(…) e.V. (registered association),

2. of O(…) e.V.,

3. of L(…) e.V.,

4. of W(…) e.V.,

5. of O(…) e.V.,

authorised representatives: 1. Rechtsanwalt Christian Gambke,
Maria-Eich-Straße 52, 82166 Gräfelfing,

2. Rechtsanwalt Dr. Peter Becker,
Gisonenweg 9, 35037 Marburg –

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against

a) the order of the Federal Administrative Court (*Bundesverwaltungsgericht*)
of 13 March 1991 – BVerwG 7 B. 99.90 –,

b) the judgment of the Higher Administrative Court (*Oberverwaltungsgericht*)
for the *Land* (state) North Rhine Westphalia
of 22 May 1990 – 5 A 1223/86 –,

c) the judgment of Cologne Administrative Court (*Verwaltungsgericht*)
of 31 January 1986 – 10 K 5029/84 –,

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 judgment of the Higher Administrative Court for the *Land* North-Rhine/Westphalia of 22 May 1990 – 5 A 1223/86 – violates the complainants' fundamental rights under Article 4.1 and 4.2 of the Basic Law. It is rescinded where the complainants' action has been rejected with regard to the attributes "destructive", "pseudoreligious" and the accusation of the manipulation of members.

The order of the Federal Administrative Court of 13 March 1991 – BVerwG 7 B 99.90 – is therefore invalid in this respect.

The case is referred back to the Higher Administrative Court to the extent of the rescission.

In other respects, the constitutional complaint is rejected as unfounded.

Reasons:

A.

The constitutional complaint concerns statements by the Federal Government on the movement of Rajneesh Chandra Mohan and the communities belonging to it. 1

I.

Since the nineteen sixties, previously unknown groups have been appearing in the Federal Republic of Germany which soon attracted the interest of the public and were mostly referred to as "sects", "youth sects", "youth religions", "psychosects", "psycho groups" or the like. Because of what they themselves considered to be their largely religious or ideological objectives, their internal structure and their practices in dealing with members and followers, they soon became the subject of critical public debate. The named groups were accused here above all of isolating their members from the 2

outside world, in particular of alienating them from their own families, and of mentally manipulating and financially exploiting them. This was alleged to lead to training being discontinued, to breaches of labour and social law regulations, to the members' dependence on the respective group and to serious mental damage, above all to young persons.

Since the nineteen seventies, the phenomenon of these groups and of the movements behind them has also been causing concern to the governments in the Federation and the *Länder* (states), who provided answers to parliamentary interpellations several times on the problems related to these groups, and also provided information directly to the public on this matter in brochures, press releases and in lectures. In 1996, the German *Bundestag …* decided to establish a "So-called sects and psycho groups" Study Commission (see *Bundestag* document *(Bundestagsdrucksache – BT-Drucks)* 13/4477). In 1997, the latter submitted an interim report (see *Bundestag* document 13/8170) and in 1998 its final report (see *Bundestag* document 13/10950). Its foreword states the following amongst other things: 3

The Study Commission was confronted by citizens' fears ... regarding the dangers posed by "so-called sects", as well as by the concern expressed by many communities that they might be labelled as a "harmful sect" and treated accordingly. The Commission ... opposes ... blanket stigmatisation of such groups, and rejects the use of the term "sect" because of its negative connotation. Rejection of the term "sect" is also borne out by the outcome of the work of the Study Commission, namely that only a small number of those groups which have as yet been combined under the term "sect" cause problems. For this reason, it would be negligent to continue to apply the term "sect" to all new religious and ideological communities. 4

[...] Our society is characterised by religious pluralism. In addition to the communities of major world religions, there are ... smaller groups of a wide variety of faith-based orientations. This fact by itself ... does not cause the state to act. Rather, the state must respect the decision of each individual and the profession of the faith chosen by him or her. However: Where statutes are violated, where fundamental rights are breached, where indeed criminal acts are committed under cover of religiosity, the state may not stand aside. 5

Below this threshold of absolutely necessary state involvement, the state ... is called upon to provide broad assistance. Whilst it may not impose regulations as to how individuals may live their lives, it may however support its ... citizens in a world that has become highly complicated and quick-changing by providing information and education to help them to make decisions (loc. cit, p. 4-5). 6

The report itself reads as follows: 7

It became increasingly clear during the work of the Commission that a blanket approach using the term "sect" as an umbrella term for all forms of new ... kinds of religiosity and/or ideology cannot do justice to the diversity of the phenomena ... The use 8

of the popular but nebulous term “sect” ... can lead to stigmatisation. A religious or ideological group which was publicly categorised as a “sect” incurs a variety of problems because of the high degree of public attention towards the conflict presumed to emerge from “sects”**[**...**]** (loc. cit, p. 30).

The following final recommendation was made for educational writings of state agencies in particular: 9

In view of the … lack of clarity and possible misunderstanding of the term “sect”, the Study Commission considers it desirable that … the term “sect” should not be used in the context of the public debate on new religious and ideological communities and psycho groups. In particular in announcements from state agencies – be it in information brochures, judgments or legislative texts – … the term should be … avoided (loc. cit., p. 154 …). 10

II.

The complainants are – in each case in the legal form of a registered association under civil law – meditation associations of the so-called Shree Rajneesh, Bhagwan or Osho Movement of the Indian mystic Rajneesh Chandra Mohan, first named by his followers Bhagwan, later Osho … In the initial administrative-court proceedings they demanded that the Federal Republic of Germany should discontinue certain statements on this movement and the communities belonging to it. 11

1. The occasion to file the action arose from answers by the Federal Government to three minor interpellations which had been made in the German *Bundestag*, from a report by the Federal Government to the Petitions Committee of the *Bundestag*, from a speech which the then Federal Minister for Youth, Family Affairs and Health made at a meeting of the Junge Union Bayern [Translator’s note: youth organisation of the Christian Social Union], and from a “Parents’ initiative to help combat emotional dependence and religious extremism”. 12

In the answer of 27 April 1979 (*Bundestag* document 8/2790) on the topic “Newer faith and ideological communities (so-called youth sects)” amongst other things the “Shree Rajneesh movement” was counted among the so-called recent religious and ideological communities. As the Federal Government stated to the enquirers, these were characterised with generalising terms such as “youth sects”, “destructive religious groups” or “destructive cults”. The Federal Government itself referred to them as “youth sects”, “pseudoreligious and psycho groups”, as well as using the term “sect” in a great deal of instances (see loc. cit., in particular pp. 1-2). 13

In its report to the Petitions Committee of the German *Bundestag* on “Youth religions in the Federal Republic of Germany” of February 1980, published as Vol. 21 of the Series: entitled *Berichte und Dokumentationen des Bundesministers für Jugend, Familie und Gesundheit*, the Federal Government pointed out in the introduction that “youth religions” or “youth sects” referred to a highly varied number of groups (see loc. cit., p. 6). The “Group around ‘Bhagwan’ (i.e. God) Shree Rajneesh” was present- 14

ed as one of these groups, and was included as one of the “psycho movements” (see loc. cit., pp. 10-11).

In the answer which the Federal Government gave dated 23 August 1982 to a minor interpellation on the topic of “So-called new youth sects” (*Bundestag* document 9/1932), the “Bhagwan-Shree-Rajneesh movement” was named in connection with the question concerning the membership structure of the “so-called new youth sects” (see loc. cit., pp. 6-7). In the preliminary remark on the answer, over and above this, the term “so-called psychosects” was used, while in the answer itself “youth religions” was used right through (see loc. cit., pp. 1 et seq.). 15

The answer of 10 October 1984 to a further minor interpellation related to “Economic activities by destructive youth religions and psychosects” (*Bundestag* document 10/2094). In accordance with this description of the topic, the terms “youth religions” and “psychosects” were largely used in the answer (see loc. cit., above all pp. 1-2). It was stated with regard to Question 6 that it appeared to be difficult to apply regulations of substantive labour law to associations “the conduct of whose members is manipulated largely excluding the public” (see loc. cit., p. 4). The Bhagwan movement was not explicitly named here. It was however the subject of the answers to Questions 16 to 19 (see loc. cit., p. 7). 16

In the speech which the Federal Minister held on 8 December 1984 at the above-named conference on the topic of “New youth religions – Protecting the freedom of the individual” and which was published in the brochure Sauter/Ach/Sackmann/Schuster, *JUGENDSEKTEN – Die Freiheit des einzelnen schützen*, 1985, pp. 11 et seq., the terms “youth religion”, “youth sect”, “sect”, “destructive religious cults”, “pseudo salvation teachings” and “pseudoreligion” were used with reference to the groups dealt with (see loc. cit., in particular pp. 14-15, 21). The Bhagwan Movement itself was not mentioned in the speech. In accordance with the findings of the judge hearing the facts in the initial proceedings, however, it was mentioned in the ensuing discussion. 17

2. By means of the action, the complainants moved for the Federal Republic of Germany to be sentenced to discontinue several statements contained in these portrayals. 18

The Administrative Court granted the relief sought by the action where it was aimed at prohibiting the defendants in all types of official proclamations […] from referring to the Rajneesh community as a “youth religion”, “youth sect” or “psychosect”, from attaching to it the attributes “destructive” or “pseudoreligious”, and further from claiming publicly that members of this community were being manipulated largely to the exclusion of the public. Against this, it rejected the action where furthermore it had been requested to also prohibit the defendant to use the designations “destructive cult”, “psychocult” and “sect”[…]: 19

[…] 20

The Higher Administrative Court rejected the action in full in response to the defendant's appeal on points of fact and law and the subsequent appeal on points of fact and law of the complainants re 2 and 4, with which the latter had impugned the rejection of the action as to the use of the term "sect"[…]. 21

[…] 22-23

The Federal Administrative Court has rejected the complainants' complaint against denial of leave to appeal on points of law only by the Higher Administrative Court (see Decisions in Church Law Matters since 1946, *Entscheidungen in Kirchensachen seit 1946* – KirchE 29, p. 59 = *Neue Juristische Wochenschrift* – NJW p. 1770[.] 24

[…] In accordance with the case-law already available, an encroachment on the freedom of religion or ideology had been justified through statements of the kind in question by the constitutional empowerment of the Federal Government to carry out public relations work and its obligation, stemming equally directly from the constitution, to protect citizens' human dignity and health. The empowerment to perform public relations work was said to include the right to give appellative statements (warnings). The Federal Government is therefore alleged to also be entitled to evaluate as dangerous the conduct of individual subjects of fundamental rights. 25

[…] 26-30

III.

With the constitutional complaint, the complainants oppose the court decisions referred to. They complain above all of the violation of Article 4.1 and Article 103.1 of the Basic Law[.] […] 31

[…] 32-39

IV.

In the name of the Federal Government, the Federal Ministry for Women and Youth made a statement on the constitutional complaint. It considers the constitutional complaint to be unfounded. 40

[…] 41-47

B.

The constitutional complaint is partly well-founded. It is found constitutionally unobjectionable, although just to a sufficient extent, that the designations "sect", "youth religion", "youth sect" and "psychosect", which the Federal Government used for these when providing information on the Osho Movement and the communities belonging to it were considered to be unobjectionable in the initial proceedings. By contrast, the appeal on points of fact and law judgment of the Higher Administrative Court cannot hold water in that it also regarded as constitutional the use of the attributes "destructive" and "pseudoreligious", as well as the accusation of the manipulation of members 48

of these communities.

I.

In this respect, the judgment is in breach of Article 4.1 and 4.2 of the Basic Law. 49

1. The complainants are subjects of this fundamental right. This is not opposed by their status as legal entities as registered associations under civil law pursuant to § 21 of the Civil Code (*Bürgerliches Gesetzbuch – BGB*). In accordance with Article 19.3 of the Basic Law, the fundamental right of the freedom of religion and ideology also applies to domestic legal entities if their purpose is to care for or further a religious or ideological creed (see Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts* – BVerfGE)19, 129 <132>; 24, 236 <247>; 99, 100 <118>). This applies to the complainants in accordance with the factual findings made in the initial proceedings by the Administrative Court and the Higher Administrative Court. Accordingly, as shown by their statutes the complainants pursue in each case the purpose of practising together the teachings of Osho-Rajneesh. These determined as has been expressed by the Higher Administrative Court, people's goals, approached them in the core of their personality and explained in a comprehensive manner the meaning of the world and of human life. It is constitutionally not objectionable for the Higher Administrative Court to have concluded from this that the goals and contents of the Osho Movement are certainly an ideology within the meaning of Article 4.1 of the Basic Law. 50

This presumption is not countered by the fact that the complainants, and the Osho Movement as a whole, are also economically active. As the trial courts in the initial proceedings have also found, the complainants and their followers do not merely use the non-materialistic objectives of this movement as a front for economic activities. Complainants' activities are alleged to be not even mainly aimed at making a profit. The Administrative Courts have rightly accorded the protection of Article 4.1 and 4.2 of the Basic Law to the complainants on the basis of these factual findings. 51

2. In addition to the freedom of the individual of the private and public profession of their religion or ideology, the fundamental right of the freedom of religion and ideology also covers the freedom to associate with others for reasons of shared faith or ideological conviction (see BVerfGE 53, 366 <387>; 83, 341 <355>). The association formed by the combination itself enjoys the right of religious or ideological activity, to proclaim the faith, to disseminate the ideology, as well as to care for and further the respective creed (see BVerfGE 19, 129 <132>; 24, 236 <246-247>; 53, 366 <387>). Protection is also afforded to the freedom to publicise one's own belief and one's own conviction, and the right to take others away from their religion or ideology (see BVerfGE 12, 1 <4>; 24, 236 <245>). 52

The significance and scope of these guarantees are especially expressed in the fact that the state in accordance with Article 4.1 of the Basic Law, but also in accordance with Article 3.3 sentence 1, Article 33.3 and Article 140 of the Basic Law in conjunc- 53

tion with Article 136.1, 136.4 and Article 137.1 of the Weimar Constitution (*Weimarer Reichsverfassung – WRV*) is obliged to act in a neutral manner in matters related to religious or ideological creed and not for its part to endanger the religious peace in society (see BVerfGE 19, 206 <216>; 93, 1 <16-17>; 102, 370 <383>). Article 4.1 of the Basic Law hence protects against defamatory, discriminatory or distorting portrayals of a religious or ideological community. The state and its bodies are however not prevented from tackling such questions at all. Nor is the neutral state prevented from judging the actual conduct of a religious or ideological group or that of its members in accordance with secular criteria, even if this conduct is ultimately religiously motivated (see BVerfGE 102, 370 <394>).

Equally, those bearing responsibility within the state are not prevented from the outset from informing Parliament, the public or interested citizens of religious and ideological groups and their activities. Article 4.1 and 4.2 of the Basic Law does not provide protection, by contrast, against state bodies seeking a public debate with the subjects of the fundamental rights – including expressions of criticism. Only the regulation of genuinely religious or ideological questions, only biased intervention in the convictions, the actions and in the portrayal of individuals or of religious and ideological communities are prohibited to the state (see BVerfGE 93, 1 <16>; 102, 370 <394>). Neither may it place at an advantage certain creeds – such as by identifying with them – nor may others be placed at a disadvantage for the sake of the content of their creed – such as by means of marginalisation. In a state in which followers of different religious and ideological convictions live together, peaceful coexistence can only be possible if the state itself remains neutral in matters of faith and ideology (see BVerfGE 93, 1 <16-17> with further references). It must hence respect particular restraint in dealing with religious and ideological communities, the concrete degree of which is determined in accordance with the circumstances of the individual case. 54

3. These principles are not fully met by the statements of the Federal Government which in the initial proceedings and its communities were still to be adjudicated in relation to the Osho Movement by the court of appeal on points of fact and law. 55

a) aa) The impugned rulings are however to be accepted in that these statements do not give rise to any constitutional objections in referring to the Osho Movement and the communities belonging to it as “sect”, “youth religion”, “youth sect” and “psychosect”. These statements already do not affect the area protected by the fundamental right of the freedom of religion or ideology. They do not contain defamatory or distorting portrayals, but are within the framework of a relevant information-providing activity on the communities in question, and hence adhere to the restraint which the state and its bodies are obliged to respect in accordance with the principle of religious and ideological neutrality. 56

(1) Having said that, in accordance with the recommendation of the German *Bundestag’s* “So-called sects and psycho groups” Study Commission the designation “sect” should be discontinued in statements by state agencies when referring to 57

groups of the type in question. Its use in the topical context was however not constitutionally objectionable.

The Administrative Court has considered the term “sect” to be unobjectionable amongst other things because it covers all smaller religious communities irrespective of their origin, and hence certainly referred to a group of such communities going far beyond the new religious and ideological movements. No constitutional objections can be made against this judgment. The same applies to the view taken by the Higher Administrative Court that the term “sect” was generally used typically in the religious area and indicated a minority role not infrequently by pointed distinction in teaching as against the large faith communities, which was expressed in the case of the Osho Movement amongst other things in that the latter primarily targeted juveniles and young adults. 58

That the use of the designation “sect” in state proclamations against this background in light of the principle of neutrality and restraint in religious-ideological questions does not meet with any major constitutional objections is not questioned by the fact that this term is understood in some cases as having negative connotations with regard to the newer religious and ideological groups. This understanding emerges of necessity from the broad scope and the content distinctions of the term “sect” itself. Moreover, the state is not prevented by the duty to exercise religious and ideological neutrality from using in the public debate on religious or ideological groups the designations for these which correspond in the current situation to the general linguistic usage and are understood as such by the addressees of the respective statement. 59

(2) The same applies to the use of the terms “youth religion” and “youth sect”. The Higher Administrative Court also categorised them as unobjectionable with regard to the Osho Movement and its adherent organisations because the latter primarily addressed young adults and these individuals could still be referred to in a broader sense as “youth” who in general usage and practice within society also included members of age groups far beyond 20. 60

As the information contained in the interim report of the German *Bundestag’s* “So-called sects and psycho groups” Study Commission shows, this assessment reflects the state of the public debate on the new religious and ideological groups and movements as it was carried out in accordance with the information possible at the time in the years in which the statements in question were made. Accordingly, the groups in question were perceived almost exclusively as a new problem for society which largely affected juveniles or young adults (see *Bundestag* document 13/8170, p. 52). It does not violate the principle of neutrality and restraint of the state in religious and ideological matters if the latter through its bodies in the framework of such a debate uses the designations and terms which in the current situation describe the object of the debate in a manner that is easy to remember and understand for the addressees of their statements, as long as the statements are not defamatory or otherwise discriminatory per se. This precondition was met with the terms “youth religion” and 61

“youth sect” in the circumstances described, especially since their use was frequently linked with addenda and expressions which restricted this effect and placed it in perspective (“so-called”, placing the terms in inverted commas).

(3) Finally, also the use of the term “psychosect” still maintains the neutrality in religious and ideological matters prescribed to the state. The Higher Administrative Court has explained this term relating to the Osho Movement such that the latter offers therapeutic meditation courses on a grand scale and itself refers to its teaching as a synthesis of Eastern wisdom and Western psychology – which is uncontroversial according to the Federal Administrative Court’s assessment. 62

This finding also correlates to the knowledge which was obtained by the German *Bundestag’s* “So-called sects and psycho groups” Study Commission for the time in which the statements were made, against the further use of which the complainants object. Accordingly, meditatively orientated movements such as the Bhagwan/Osho Movement were also part of the so-called psychomarket with its many psychological and pseudopsychological offerings of assistance, orientation and personality development outside the specialist psychology and healthcare system (see *Bundestag* document 13/10950, p. 19) (seeibid., pp. 48, 86-87). It was not discriminatory against this background for the groups in question and their members, but rather kept the constitutionally required neutrality if these groups were also referred to by the state as “psychosects” in the public debate on them, particularly since this frequently took place such that the term was added to by the restrictive addendum “so-called”. 63

bb) By contrast, the attributes “destructive” and “pseudoreligious” are no longer neutral in the constitutionally required sense with which the communities belonging to the Osho Movement were referred to, and the allegation that their members were being manipulated by the respective community – largely to the exclusion of the public. 64

(1) As the Administrative Court has already understandably presumed in its judgment which has not been impugned in this respect, the defamatory character of the attributes “destructive” and “pseudoreligious” is evident. On this, it found furthermore that the qualification of the Osho Movement and the groups belonging to it as destructive relates not to individual conclusions of membership of such communities assessed as dangerous, but that the movement named is also defamed across the board by use of this designation, and also the use of the term “pseudoreligious” defamed the content of the Osho Movement and did not have any meaning over and above this. The Higher Administrative Court also found the named attributes to contain a derogatory judgment of the Osho Movement. That it considers it to be justified changes nothing about the fact that this no longer respected the neutrality and restraint necessary in dealings with religious and ideological communities. 65

(2) The same thing applies to allegations determined in the initial proceedings of the Federal Government that members of the Osho Movement and its communities were being manipulated largely to the exclusion of the public. In accordance with the interpretation by the Administrative Court, this statement – which it referred to as negative 66

– is not based on specific activities of the movement, such as in the area of labour law and the law on collective agreements, but on the totality of the associations belonging to it. The statement is alleged to have been intended to express that the Osho Movement as a whole used unfair methods to exert an influence on its members. The Higher Administrative Court shared the evaluation of the statement as a general statement, and also did not deny the strongly defamatory meaning of the term “manipulation” … Constitutionally, this assessment is not objectionable.

The terms “manipulation” and “manipulate” not only create the idea, in accordance with the general usage, of people being influenced by others. Rather, the use of these words also expresses the concept of controlling and steering people without their consent or against their will, of their use as an object, and of the acquisition of advantages by fraudulent or apparently legal means Hence, the boundary of a restrained and neutral evaluation of religious and ideological events and modes of conduct is certainly exceeded if – as here – this is not based on hard facts. 67

b) The use of the attributes “destructive” and “pseudoreligious”, and the allegation of the manipulation of members, accordingly impair the right guaranteed by Article 4.1 and 4.2 of the Basic Law for the complainants to be treated in a religiously and ideologically neutral and restrained manner. However, this does not reach the level of an encroachment on fundamental rights in the traditional meaning. Accordingly, an encroachment on fundamental rights in the general sense is understood to be a legal-form act which leads directly and deliberately (finally) to a reduction in freedoms guaranteed by fundamental rights through an imperative or prohibition which is ordered by the state, which where necessary is implemented by force, and in other words is mandatory. None of these characteristics applies to the statements which are to be evaluated here. 68

Labelling the Osho Movement and the communities belonging to it as “destructive” and “pseudoreligious”, and the assertion that these communities were manipulating their members – largely to the exclusion of the public – took place not in legal form, but were contained in parliamentary answers and were the object of contributions to speeches and discussions outside Parliament. They were also not directly addressed to the organisations of the Osho Movement and their members, but sought to inform Parliament and the public about the groups belonging to this movement, as well as about their goals and activities. Furthermore, it was not the purpose of the statements to do harm to the said communities and their followers; the intention was, rather, only to demonstrate to Parliament, the public and here above all interested and affected citizens the risks which in the view of the Federal Government could result from membership of a group belonging to the Osho Movement. Disadvantageous effects on the individual community were however accepted. If they took place, they were however not based on a state imperative or prohibition which could be implemented by force where necessary, but on the individuals drawing conclusions from the information they had received and remaining outside the group in question, leaving it, exerting an influence on members or other persons to do likewise, or refraining from (continuing 69

to) support the community financially.

This however does not prevent statements of the type in question being measured according to the standard of Article 4.1 and 4.2 of the Basic Law. The Basic Law has not linked protection against impairments of fundamental rights to the term encroachment, nor has it provided a content definition. The statements named had an indirect factual impact on the complainants. As impairments of the fundamental right under Article 4.1 and 4.2 of the Basic Law, however, they too are constitutionally unobjectionable only if they can be constitutionally adequately justified. 70

c) This is not the case. By making the impugned statements, the Federal Government acted within the framework of its competence to provide information (aa). However, the complainants' fundamental rights under Article 4.1 and 4.2 of the Basic Law have been disproportionately impaired thereby (bb). 71

aa) The Federal Government was permitted to inform Parliament and the public of the Osho Movement, the groups belonging to it and their objectives and activities. In doing so, it was able to rely on its direct constitutional task of governance without there having been need of an additional statutory empowerment. 72

(1) (a) The empowerment to issue such information stems from the task assigned to the Federal Government in the framework of its public relations work to also study currently disputed questions considerably affecting the public, and hence exercise governance. This task, which is about political leadership and the responsible direction of domestic and foreign policy as a whole, and which the Federal Government shares with the other constitutional bodies called upon to do so (re governance as a task of government see already BVerfGE 11, 77 <85>; 26, 338 <395-396>), is not carried out solely with the means open to legislation (on governance by law see BVerfGE 70, 324 <355>) and the path-breaking impact on the implementation of legislation. Governance by the Federal Government is rather also carried out by means of the daily information activity in interaction with Parliament in particular, but also with the interested public and the citizens affected by individual cases. 73

State participation in public communication has fundamentally changed in the course of time, and is continually changing in the current conditions. The increased role of the mass media, the expansion of modern information and communications technologies, as well as the development of new information services, also impact the nature of implementation of the tasks by the Government. Traditionally, the public relations work of government offices emphasised the portrayal of measures and projects of the Government, presenting and explaining its ideas on tasks to be carried out in the future and on seeking support (see BVerfGE 20, 56 <100>; 44, 125 <147>; 63, 230 <242-243>). Information activity under the circumstances prevalent today goes beyond such public relations work in many cases … For instance, in a democracy, it is part of the task of the government to inform the public of important events also outside or well in advance of their own constituting political activities. In a political order largely orientated towards self-responsibility of citizens in solving problems within 74

society, the task of government also covers the dissemination of information is which enables citizens to participate on their own responsibility in solving problems. Accordingly, citizens expect information from the Government for their personal opinion-forming and orientation if it would otherwise not be available. This may in particular concern areas in which the provision of information to the populace is based on interest-led information linked with the risk of biased information, and the social powers are not sufficient to create an adequate informational balance.

Governance in this sense covers not only the task to facilitate, by providing information to the public in good time, to solve conflicts in the state and in society, but also by these means to counter new challenges frequently arising rapidly, and to react quickly and correctly to crises and to the citizen's concerns, as well as to help them gain an orientation … (see further Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts* – BVerfGE) 105, 252). Many citizens would equate the silence on the part of the Government in such a situation with failure. This can lead to a loss of legitimacy. 75

(b) Informing the public of events and developments which are important for citizens in the functioning interplay between the state and society is also covered by the task of governance assigned to the Government by the Basic Law if the information activity entails indirect factual impairments of fundamental rights, as was the case with the statements in question on the Osho Movement and the communities belonging to it. The assignment of a task in principle entails an empowerment to carry out information activity in the framework of the implementation of this task, even if this may bring about indirect factual impairments. The proviso of legality does not demand the legislature to provide any particular empowerment going beyond this, unless in accordance with its goals and impact the measure constitutes a replacement for a state measure which is to be qualified as an encroachment on fundamental rights in the traditional sense. By selecting such a functional equivalent of an encroachment, the requirement of a special statutory basis cannot be circumvented. 76

(aa) In application of the Basic Law, the protection of fundamental rights is not restricted to encroachments in the traditional sense, but has been expanded to factual and indirect impairments. Hence, the legal system reacted to changed risks. At the same time, the proviso of legality has been expanded not only in the interest of the protection of subjective rights, but also to strengthen parliamentary responsibility, and hence the democratic legitimisation of state activity. 77

Because of the differing reasons in some cases for the expansion of the protection of fundamental rights on the one hand and of the proviso of legality on the other, it is not automatically the case that the proviso of legality of necessity has grown along with the expansion of protection to factual-indirect impairments of fundamental rights in every sense. The requirements of a statutory empowerment are also determined by whether these can help meet the interests of the proviso of legality inherent in the principles of the rule of law and of democracy. This also depends on the legislature's 78

potential for information and action related to it. The factual area must be accessible to state legislative activity (see BVerfGE 49, 89 <126>). Whether and to what degree this is the case can only be assessed in considering the respective area and the characteristic of the object of regulation in question (see BVerfGE 98, 218 <251>).

The legislature may certainly determine the task of state activity normatively. Equally, it may legislate on the preconditions to be met for deliberate, direct encroachments. This does not apply as a rule to the factual-indirect impact of state activity. Here, the impairment stems not from state requirements as to the conduct of the addressee of the legislation, but from the impact of state activity on a third party which depends in particular on the conduct of other persons. The impairment arises from a complex course of events in which consequences become relevant to basic rights indirectly linked to the means employed or the purpose achieved. It is typically impossible to legislate on such factual-indirect effects. 79

(bb) This certainly applies to an information activity of the Government which leads to indirect-factual impairments of fundamental rights on the basis of citizens' reactions. The preconditions of this activity cannot be sensibly regulated by law. 80

If the Government has the task of information activity, hence with regard to the variety and the changeable nature of the circumstances in question it is not determined as a rule from the outset what will give rise to a particular information activity on the part of the Government. The topics of conceivable state information activity relate to practically all areas of life. The purposes of state information activity are accordingly varied. The nature and manner of state conduct is determined by the concrete occasion of the statement, which frequently arises at short notice, may change quickly, and hence in many cases also cannot be forecast. The effects and further consequences of state information activity for the citizen are also and above all uncertain. Whether and which disadvantageous consequences this activity has in individual cases for the subject of fundamental rights depends as a rule on a large number of different factors and their interactions. The conduct of third parties is frequently decisive for this, which because it is based on their free decision, as a rule cannot be assessed and the consequences of which are difficult to calculate. 81

Neither the rule-of-law function of the proviso of legality, its function of protecting fundamental rights and guaranteeing legal protection, nor its democratic mandate, requires under these circumstances an empowerment over and above the allocation of tasks. The subject-matter and modalities of state information activity are so varied that in light of the restricted possibilities of information and action of the legislature they can at best be covered in generally worded formulae and in general clauses. As a rule, such means cannot afford citizens increased measurability and calculability as to state action, or only in a manner which does not meet the needs of state information activity. The same applies to the goal for reasons of democratic legitimisation of reserving to the parliamentary legislature at least in essentials the decision on fundamental questions, in particular those questions that are vital to the implementation of 82

fundamental rights (see BVerfGE 47, 46 <79>; 98, 218 <251>). In view of the necessarily broad, uncertain definition of an empowerment under ordinary law for the Government to carry out information activities, it would not be linked with such an empowerment to decide on the matter in reality.

(c) That over and above the proviso of legality on allocation of tasks, no special statutory empowerment of the Federal Government is necessary for information activity however does not mean that this activity is not the subject of constitutional boundaries. The allocation of competences is to be adhered to even in information activity. At the level of the Federation, the competence arises in the relationship between the Federal Chancellor, Federal Ministers and the Federal Government as a collegiate under Article 65 of the Basic Law. Over and above this, the federal allocation of competences between the Federation and the *Länder* is to be adhered to (see BVerfGE 44, 125 <149>). Here, the decision on the associated competence depends on whether the information task to be carried out is respectively that of the Federation or the *Länder*, or whether there are parallel competences. 83

The task of governance and the information work of the Federal Government which it includes as an integral element is an expression of its overall state responsibility. In contradistinction to the legislative and administrative competences, the Basic Law provides no explicit provisions for the governmental competence to govern. The Basic Law however tacitly presumes such competences, such as in the norms on the formation and tasks of the Federal Government (Articles 62 et seq. of the Basic Law) or on the duty of the Federal Government to inform the *Bundestag* and its committees; the same applies to the obligation incumbent on the Government and its members to answer the *Bundestag's* questions and to acquire the information to enable its members to exercise their mandates (see on the latter BVerfGE 13, 123 <125-126>; 57, 1 <5>; 67, 100 <129>). The Federal Government is empowered to carry out information work in all instances where an overall state responsibility attaches to governance which can be carried out with the aid of information. The starting point of such a responsibility can be gained either from other competence-defining provisions, such as those on legislation, and also independently of concrete legislative initiatives. The Federation is entitled to govern in particular when, because of their foreign connection or their significance spanning more than one *Land*, events have a supra-regional character and nation-wide information work by the Government makes it possible to deal with the problem more effectively. In such cases, the Federal Government can take up the event in question, portray and evaluate it to Parliament and the public, and can also issue recommendations or warnings where it considers this to be necessary to solve the problem. 84

At the same time, the Basic Law creates another arrangement in the relationship with the *Länder* in the shape of this empowerment of the Federal Government to carry out information activity within the meaning of Article 30 of the Basic Law. Articles 83 et seq. of the Basic Law are not relevant to the competence of the Federal Government in the area of information activity. Government activity is not administration as 85

understood by these provisions. The Federal Government is not empowered in the course of its governance to implement statutes by administrative measures.

The information competence of the Federal Government does not end where action by state bodies with other associated competences can be additionally considered to deal with a topic, such as that of the *Land* Governments in the course of the implementation of their own governmental task, or that of the administration in the framework of police risk aversion. The goal of educating the population might not be achieved if the information activity of the Federal Government related to everything else important to achieve this goal, but was not permitted to contain an indication of the dangerousness of certain circumstances. The completeness of information is an important element of plausibility. The information provided by the Federal Government, adapted to the problem and where appropriate overarching the competences of other state bodies, is unobjectionable from the point of view of the federal assignment of competences since this information activity neither rules out that of the Land Governments for their area of responsibility, nor prevents the administrative authorities from carrying out their administrative tasks. 86

(2) In accordance with these standards, the statements of the Federal Government are unobjectionable from a point of view of competences. 87

(a) The statements were a part of the governing information work of the Federal Government. In accordance with the factual findings, in particular of the Higher Administrative Court, the value judgments linked with the statements on the Osho Movement, its goals and activities must be regarded in the context of the statements which Osho-Rajneesh had submitted in his writings and other statements on the topics “marriage and family”, “human life” and “human dignity”. The occasion for the derogatory evaluation of his movement had allegedly been the assessment that above all juveniles and young adults became more under the influence of the Osho Movement and its individual organisations, and that the legal interests could be placed at risk by these means. 88

The information activity of the Federal Government was hence a reaction to events within society which at that time caused a considerable stir among the public, juveniles and young adults, as well as their relatives – above all as persons concerned – with regard to the dangers that have been mentioned. The Federal Government was concerned here not with risk aversion in the administrative-law sense by means of administrative activity, but with using its information work to contribute towards the debate on the more recent religious and ideological groups which the *Bundestag* and the population indeed expected of it as a governing body. Independent information activity by other state bodies, in particular the Land Governments, was to be just as little ruled out by this as where necessary intervention by the administrative authorities in the sense of risk aversion. 89

(b) The Federal Government was able to call for its statements also on the associated competence of the Federation for information activity of the Government. The 90

evaluations on the Osho Movement and the groups belonging to it were national in nature. They were caused by events and manifestations which were not restricted to the area of a Federal *Land* or of a small number of *Länder*, and furthermore also were connected to religious and ideological groups abroad (see *Bundestag* document 13/10950, pp. 38, 105 et seq., 118 et seq.). The Federal Government was able to presume that evaluating statements alone in the area of responsibility of the *Länder* and their governments would not have met the public need for action.

bb) The designation of the Osho Movement and of its individual groups as “destructive” and “pseudoreligious”, and the allegation addressed against it that its members were allegedly being manipulated largely to the exclusion of the public, nevertheless do not stand up to the constitutional court examination of statements violating the principle of neutrality. They are not justified in accordance with the standards of the principle of proportionality. 91

If it is as here a matter of evaluating events which concern religious or ideological groups, their goals and their conduct, statements which impair the area protected by Article 4.1 and 4.2 of the Basic Law, hence in particular the occasion leading to them, must be suitable; it is vital in this context which burdening consequences the indirectly and factually affected subject of fundamental rights can understandably make the subject-matter of assessment. The designation of the Osho Movement and of its groups as “destructive” and “pseudoreligious”, and the allegation that they were manipulating their members – largely to the exclusion of the public – were inappropriate. 92

In accordance with the factual determinations, above all those of the Higher Administrative Court, the Federal Government was able to presume that in particular juveniles and young adults would continue to fall under the influence of the Osho Movement and of its individual organisations, and that hence they, as well as their families and as society as a whole, could incur consequences from this which at that time considerably disquieted large groups of the population. In this situation it was legitimate to contribute to the orientation of the citizen by means of education-based information activity. 93

It was however not justified to refer to the Osho Movement and the groups belonging to it with the attributes “destructive” and “pseudoreligious”, or to accuse them of manipulating their members. These attributes and this allegation are defamatory for the complainants. It is also understandable for the latter to claim that as a result of these statements they had to fear grievous disadvantages, such as the loss of existing members and difficulties in recruiting new ones, or a lack of financial support. Sufficiently weighty reasons supported by concrete facts which could nevertheless justify the statements of the Federal Government in light of the principle of restraint have not been submitted by the latter, nor are they otherwise manifest. In particular, they cannot be derived from the situation in which the evaluations by the Federal Government have been carried out. The expressions and designations in question should therefore have been avoided, both in the speech by the Federal Minister for Youth, Family 94

Affairs and Health, and in the answers which the Federal Government gave in response to the questions asked of it in the *Bundestag*. In view of the significance of the fundamental right of the freedom to profess a non-religious faith and of the state's duty of neutrality, it was exaggerated and inappropriate to make the statements concerned on the Osho Movement and organisations which – as the complainants – adhere to this movement.

4. Of the impugned court rulings, hence, the appeal on points of fact and law judgment of the Higher Administrative Court is incompatible with Article 4.1 and 4.2 of the Basic Law where it rejected with the action also the complainants' request to prohibit the defendant Federal Republic of Germany in official proclamations of any kind to refer to the Osho Movement and the groups belonging to it with the attributes "destructive" and "pseudoreligious", and further publicly to claim that the members of such groups were largely being manipulated to the exclusion of the public. 95

Constitutionally unobjectionable, by contrast, is the administrative-court judgment. Since the complainants had not submitted an appeal on points of fact and law against the rejection of the action, insofar as the latter related to the further use of the designations "destructive cult" and "psychocult" by the Federal Government, this judgment is subject to examination by the Federal Constitutional Court only insofar as it also considered to be unfounded the request by the complainants to prohibit the Federal Government from using the term "sect". However, as has been stated, the use of this term already does not affect the area protected by Article 4.1 and 4.2 of the Basic Law. Hence, also in this sense no constitutional objections are to be raised against the rejection of the action as to this fundamental right. 96

Finally, the impugned order of the Federal Administrative Court does not relate to considerations which could be criticised constitutionally. The Federal Administrative Court has refrained from giving its own evaluation of the designations and terms which were still a bone of contention in the initial proceedings on the appeal on points of fact and law. Where the standards found by it deviate for the judgment of statements by the Federal Government in the area of the information activity from the principles set out above, it is not manifest that adherence to these principles would have led to a different decision by the Federal Administrative Court. There is hence no reason to constitutionally object, in addition to the appeal on points of fact and law judgment of the Higher Administrative Court, to the order of the Federal Administrative Court on denial of leave to appeal on points of law. 97

II.

No further constitutional rights of the complainants have been violated. […] 98

[…] 99-101

III.

The appeal on points of fact and law judgment of the Higher Administrative Court is 102

to be rescinded in accordance with § 95.2 of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz – BVerfGG*) because of this violation, and the case referred back to the court of appeal on points of fact and law insofar as it has not complied with the complainants' request to prohibit the Federal Republic of Germany in official proclamations of any kind to refer to the Osho Movement and the communities belonging to it with the attributes "destructive" and "pseudoreligious" and to continue to claim publicly that the members of such organisations were being manipulated largely in exclusion of the public. The order of the Federal Administrative Court on the denial of leave to appeal on points of law only becomes invalid in this extent.

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Bundesverfassungsgericht, Beschluss des Ersten Senats vom 26. Juni 2002 - 1 BvR 670/91

Zitiervorschlag BVerfG, Beschluss des Ersten Senats vom 26. Juni 2002 - 1 BvR 670/91 - Rn. (1 - 102), http://www.bverfg.de/e/rs20020626_1bvr067091en.html

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