H e a d n o t e s

to the Judgment of the Second Senate of 3 May 2016

– 2 BvE 4/14 –

1. The Basic Law contains a general constitutional principle of effective opposition (*verfassungsrechtlicher Grundsatz effektiver Opposition*), which has been further defined by the case-law of the Federal Constitutional Court.

2. The Basic Law, however, does not expressly create specific rights for parliamentary opposition (groups), nor can one derive from it an obligation to create such rights.

3. The creation of specific rights for parliamentary opposition groups is also not compatible with the second sentence of Article 38(1) of the Basic Law.

4. The lowering of the specifically envisaged quorums of one third (Article 39(3) third sentence of the Basic Law) or of one fourth (Article 23(1a) second sentence, Article 44(1) first sentence, Article 45a(2) second sentence and Article 93(1) no. 2 of the Basic Law) of the members of the *Bundestag* for the exercise of parliamentary minority rights is impossible due to the constitutional legislature's deliberate decision for the existing quorums.

FEDERAL CONSTITUTIONAL COURT

– 2 BvE 4/14 –

Pronounced
on 3 May 2016
Fischböck
Amtsinspektorin
as Registrar
of the Court Registry

IN THE NAME OF THE PEOPLE

In the proceedings on the application to declare,

1. that the respondent, in violation of the principle of democracy (Article 20(1) and (2) of the Basic Law (*Grundgesetz* – GG) and the principles of the German parliamentary system (Articles 45b, 63, 67, 68 and 69 of the Basic Law), in particular of the requirement of effective exercise of opposition and of effective parliamentary oversight of the government and the parliamentary majority, infringed upon rights and obligations of the German *Bundestag*, which are being asserted by the applicant in its own name on the *Bundestag's* behalf (representative action), by rejecting the applicant's draft law of 18 March 2014 to amend Articles 23, 33, 45a and 93 of the Basic Law (*Bundestag* document, *Bundestagsdrucksache*– BTDrucks 18/838) on 3 April 2014 in the 26th plenary session of the 18th electoral term (*Bundestag* Minutes of Plenary Proceedings 18/26, p. 2087 D) and thereby omitted to grant the respective entitlements provided in Article 1 nos. 1 to 5,

a) to the entirety of those parliamentary groups who do not support the Federal Government (parliamentary opposition),

b) alternatively, to the applicant to exercise on behalf of the entirety of the parliamentary groups who do not support the Federal Government (parliamentary opposition)

in an act to amend the Constitution,

2. that the respondent, in violation of the principle of democracy (Article 20(1) and (2) of the Basic Law) and the principles of the German parliamentary system (Articles 45b, 63, 67, 68 and 69 of the Basic Law), in particular of the requirement of effective exercise of opposition and of effective parliamentary oversight of the government and the parliamentary majority, infringed upon rights and obligations of the German *Bundestag*, asserted by the applicant through a representative action, by rejecting the 29 January 2014 draft law to secure the rights of the parliamentary opposition during the 18th electoral period of the German *Bundestag* (*Bundestag* document 18/380) on 3 April 2014 in the 26th plenary session of the 18th electoral period (*Bundestag* Minutes of Plenary Proceedings 18/26, “p. 2083 A” [correctly: p. 2082 D]) and thus omitted to grant the respective entitlements provided in

   - Article 1 (Amendment of the Committees of Inquiry Act, *Änderung des Untersuchungsausschussgesetzes* of 19 June 2001 [Federal Law Gazette, *Bundesgesetzblatt* – BGBl. I p. 1142], as amended by Article 4(1) of the Act of 5 May 2004 [BGBl. I p. 718])

   - Article 2 (Amendment of the Federal Constitutional Court Act, *Änderung des Bundesverfassungsgerichtsgesetz* in the version published on 11 August 1993 [BGBl. I p. 1473], as last amended by Article 1 of the Act of 29 August 2013 [BGBl. I p. 3463])

   - Article 3 (Amendment of the Act on the Cooperation between the Federal Government and the German *Bundestag* in Matters Concerning the European Union, *Änderung des Gesetzes über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union*) of 4 July 2013 [BGBl. I p. 2170])

   - Article 4 (Amendment of the ESM Financing Act, *Änderung des Gesetzes zur finanziellen Beteiligung am Europäischen Stabilitätsmechanismus, ESM-Finanzierungsgesetz* of 13 September 2013 [BGBl. I p. 1918])

   - Article 5 (Amendment of the Euro Stabilisation Mechanism Act, *Änderung des Gesetzes zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus*, *Stabilisierungsmechanismusgesetz* of 22 May 2010 [BGBl. I p. 627]), as last amended by Article 1 of the Act of 23 May 2012 [BGBl. I p. 1166])

   - Article 6 (Amendment of the Responsibility for Integration Act, *Änderung des Gesetzes über die Wahrnehmung der Integrationsverantwortung des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union*, *Integrationsverantwortungsgesetz* of 22 September 2009 [BGBl. I p. 3022], as amended by Article 1 of the Act of 1 December 2009 [BGBl. I p. 3822]),

a) to at least two parliamentary groups who do not support the Federal Government,

b) alternatively, to the applicant for joint exercise by at least two parliamentary groups who do not support the Federal Government,

by amending the Acts accordingly,

3. that the respondent, in violation of the principle of democracy (Article 20(1) and (2) of the Basic Law) and the principles of the German parliamentary system (Articles 45b, 63, 67, 68 and 69 of the Basic Law), in particular of the requirement of effective exercise of opposition and of effective parliamentary oversight of the government and the parliamentary majority, infringed upon the applicant's rights under Article 38(1) of the Basic Law by deciding, on 3 April 2014 in the 26th plenary session of the 18th electoral period, to amend the procedural rules of the German *Bundestag* in the version published on 2 July 1980 (BGBl. I p. 1237), as last amended per publication of 2 July 2013 (BGBl. I p. 2167), by inserting § 126a (*Bundestag* Minutes of Plenary Proceedings 18/26, "p. 2067 C" [correctly: p. 2085 C]), and omitted to grant the applicant the entitlements for 120 Members of the *Bundestag* in § 126a(1) numbers 1 through 6 and 11, as well as the entitlements for all committee members from the parliamentary groups who do not support the Federal Government in numbers 7 through 10,

a) as rights of its own as a parliamentary group or as rights of the "parliamentary group on the committee",

b) alternatively, as rights of all the members of the parliamentary group or of the "parliamentary group on the committee"

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Applicant: Parliamentary Group DIE LINKE in the German *Bundestag*,
acting through its Chairpersons
Dr. Sahra Wagenknecht, member of the *Bundestag*,
and Dr. Dietmar Bartsch, member of the *Bundestag*,
Platz der Republik 1, 11011 Berlin

- authorised representative: Prof. Dr. Dr. h.c. Hans-Peter Schneider,
Drosselweg 4, 30559 Hannover -

Respondent: German *Bundestag*,
acting through its President
Prof. Dr. Norbert Lammert, member of the *Bundestag*,
Platz der Republik 1, 11011 Berlin,

Prof. Dr. Kyrill-A. Schwarz,
Dönersberg 13, 91550 Dinkelsbühl -

the Federal Constitutional Court – Second Senate –

with the participation of the Justices

President Voßkuhle,

Landau,

Huber,

Hermanns,

Müller,

Kessal-Wulf,

König,

Maidowski

held on the basis of the oral hearing of 13 January 2016:

Judgment:

To the extent that the applications are admissible, they are rejected as unfounded.

For the rest, the applications are dismissed.

R e a s o n s:

A.

The object of these *Organstreit* proceedings (dispute between constitutional organs) are minority and opposition rights in the German *Bundestag* which can be found at various levels of legislation and which are sought by the applicant mainly with respect to the 18th electoral term. 1

I.

[…] 2-29

[*Excerpt from Press Release 83/2015 of 12 November 2015*]

Under the Basic Law, to exercise certain parliamentary minority rights, certain quo-

rums have to be reached. These include

?the right of one quarter of the members of the Bundestag to request the Bundestag to file a subsidiarity action (Art. 23(1a) second sentence GG),

?the right of one third of the members of the Bundestag to request the President of the Bundestag to convene the Bundestag (Art. 39(3) third sentence GG),

?the right of one quarter of the members of the Bundestag to request that a committee of inquiry be established by the Bundestag (Art. 44(1) first sentence GG),

?the right of one quarter of the members of the Defence Committee to request that the Defence Committee act as a committee of inquiry (Art. 45a(2) second sentence GG), and

?the right of one quarter of the members of the Bundestag to file an application to initiate abstract judicial review proceedings (Art. 93(1) no. 2 GG).

For the main part, those rights are also provided at statutory level. In addition, at statutory level there are further parliamentary minority rights whose exercise requires certain quorums to be reached.

Due to the majority situation in the 18th German Bundestag, the parliamentary groups that do not support the Federal Government, that is DIE LINKE and BÜNDNIS 90/DIE GRÜNEN, have 127 out of (now) 630 seats. Consequently, the members of Parliament of the parliamentary opposition groups do not reach the quorums, enshrined in the Basic Law and provided for at statutory level that are necessary to exercise certain parliamentary minority rights.

Based on this situation, the parliamentary group *BÜNDNIS 90/DIE GRÜNEN* and the applicant introduced a draft law “Securing the Rights of the Parliamentary Opposition during the 18th Electoral Term of the German *Bundestag*” (*Bundestag* document, *Bundestagsdrucksache* – BTDrucks 18/380), which proposed changes to six statutes to the effect that during the 18th electoral term, minority rights provided in these statutes could be exercised jointly by at least two parliamentary groups who do not support the Federal Government. On 11 February 2014, the parliamentary groups supporting the Federal Government introduced an amendment to the Rules of Procedure of the German *Bundestag* (*Geschäftsordnung des Deutschen Bundestages* – GO-BT) concerning the “Special Application of Parliamentary Minority Rights during the 18th Electoral Term” (BTDrucks 18/481). Finally, on 18 March 2014, the applicant separately introduced a “Draft of a … Law to Amend the Basic Law (Articles 23, 39, 44, 45a, 93)” (BTDrucks 18/838) which sought a grant of constitutional rights to the “entirety of the parliamentary groups who do not support the Federal Government.”

On 3 April 2014, the respondent rejected both of the draft laws. The Bundestag instead decided to amend the Rules of Procedure of the Bundestag (GO-BT) by introducing § 126a (“Special application of parliamentary minority rights in the 18th electoral term”). As a consequence, in the plenary of the Bundestag, certain

parliamentary minority rights can be exercised by 120 members of Parliament, whereas, in committees of the Bundestag, such rights are provided to “all committee members who are members of parliamentary groups that do not support the Federal Government”. However, § 126a GO–BT does not change the quorum for filing an application to initiate an abstract judicial review.

[*End of excerpt*]

II.

The applicant is of the opinion that the respondent should not have been allowed to reject its draft laws that were aimed at amending provisions of the Basic Law and statutory laws, or to enact the amendment to the GO-BT. 30

[…] 31-41

III.

1. The respondent argues that the applications are inadmissible, but that they are unfounded in any event. 42

[…] 43-44

2. […] 45-46

3. […] 47-54

IV.

[…] 55

B.

The applications are admissible for the most part. 56

I.

Pursuant to Article 93(1) no. 1 of the Basic Law (*Grundgesetz* – GG) in conjunction with § 13 no. 5, §§ 63 et seq. of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz* – BVerfGG), the Federal Constitutional Court decides on the interpretation of the Basic Law in the event of disputes concerning the extent of the rights and obligations of one of the highest federal organs or of other parties vested with own rights under the Basic Law or under the rules of procedure of one of the highest federal organs. In the case at hand, there is a constitutional dispute within the meaning of these provisions. […] 57

II.

[…] 58

III.

The applicant opposes specific, legally relevant actions or omissions by the respondent, which is an admissible subject matter for an application within the meaning of § 64(1) BVerfGG. 59

1. The applicant, in its applications no. 1 and no. 2, challenges, on the one hand, the respondent's rejection of the draft laws concerned, and, on the other hand, it challenges the fact of not having been granted the rights contained in the rejected draft laws. The Federal Constitutional Court has not dealt with the matter yet; however, in this case, the question may remain open under what conditions sheer inactivity by the legislature could be challenged in *Organstreit* proceedings (cf. Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE 20, 82 <97> with further references), and whether, in general, the rejection of draft laws introduced by the applicant constitutes a challengeable measure. The respondent rejected each draft law in parliamentary procedure after having addressed the substance of the rights sought by the applicant in the two draft laws which expressly aimed for specific amendments to the Basic Law (application no. 1) or to individual statutes (application no. 2) respectively. Addressing the draft law in its substance and then rejecting it constitutes a qualified omission, which is a measure on par with passing a law. Therefore, the omission is an admissible subject matter for challenge in *Organstreit* proceedings (cf. BVerfGE 120, 82 <98 and 99>). 60

2. In its application no. 3, the applicant challenges the decision to introduce § 126a GO-BT, which constitutes a legally relevant action within the meaning of § 64(1) BVerfGG. Moreover, parallel to its applications no. 1 and no. 2, the applicant requests the granting of further rights, and thus, again claims a qualified omission. 61

IV.

[…] 62

V.

Pursuant to § 64(1) BVerfGG, the applicant must claim that the subject matter of its application violates or directly threatens rights and obligations vested in the applicant or the applicant's organ by the Basic Law. 63

1. Inasmuch as the applicant, in regard to its application no. 3, invokes rights of its own as a parliamentary group based on Art. 38(1) GG, it cannot be ruled out in advance that the respondent's insertion of § 126a GO-BT violated the applicant's constitutionally guaranteed rights. Although the Federal Constitutional Court has, in its past decisions, refrained from institutionalising the parliamentary opposition, and has never recognised the opposition as a separate legal entity under the Constitution or as an independent parliamentary institution, it cannot be ruled out in advance that the applicant's rights have been violated by not being afforded the full scope of rights required under the Constitution when § 126a GO-BT was inserted. This is illustrated by a num- 64

ber of *Land* constitutions which acknowledge parliamentary groups who do not support the government as the opposition, and attach certain guarantees to this status […].

2. In regard to the applications no. 1 and no. 2 the applicant, in principle, also has the legal ability to file the application. 65

a) Parliamentary groups are entitled to assert their own rights as well as to assert rights on behalf of the German *Bundestag* by bringing a representative action, i.e. asserting rights in one's own name on behalf of others (cf. BVerfGE 2, 143 <165>; 45, 1 <28>; 67, 100 <125>; 131, 152 <190>; 139, 194 <220>; 140, 115 <138 and 139> […]). The standing to bring such a representative action on behalf of the *Bundestag* was conferred both as an expression of the Parliament's oversight function and as a means of protecting the parliamentary minority (cf. BVerfGE 45, 1 <29 and 30>; 60, 319 <325 and 326>; 68, 1 <77 and 78>; 121, 135 <151>; 123, 267 <338 and 339>; 131, 152 <190>; 139, 194 <220> […]). In light of the extensive congruity between the government and its supporting majority in Parliament in the parliamentary system of government, the Parliamentary Council (*Parlamentarischer Rat* [the 1949 constitutional legislature]) regarded the availability of *Organstreit* proceedings to parties other than the highest federal organs primarily as a means of ensuring that parliamentary opposition groups – and thus the organised parliamentary minority, as the governing majority's opponent – should have legal recourse to the Federal Constitutional Court in order to effectively assert the rights granted to the Parliament within the constitutional structure (cf. BVerfGE 90, 286 <344> referencing the Parliamentary Council's debate; 117, 359 <367 and 377>). 66

It is of no consequence that the present Organstreit proceedings are brought on the *Bundestag's* behalf and that, at the same time, the *Bundestag* is the respondent in these proceedings. It is possible to assert rights on behalf of the *Bundestag* in a representative action not only in cases where the *Bundestag* has approved the challenged act or omission (cf. BVerfGE 1, 351 <359>; 45, 1 <29 and 30>), but also in cases where it is the respondent (cf. BVerfGE 123, 267 <338 and 339>; 132, 195 <247>; 134, 366 <397>). The right of representative action provided under § 64(1) BVerfGG makes *Organstreit* proceedings part of the reality of measuring political power, realising one aspect of separation of powers beyond the classical opposition of self-contained authorities, mainly by establishing minority rights. Thus, the purpose and rationale of the right of representative action is to authorise the parliamentary minority to assert rights of the *Bundestag* not only when the *Bundestag* declines to make use of its rights, particularly in relation to the Federal Government that is supported by it (cf. BVerfGE 1, 351 <359>; 45, 1 <29 and 30>; 121, 135 <151>), but also when the parliamentary minority asserts rights of the *Bundestag* against the parliamentary majority supporting the Federal Government (cf. BVerfGE 123, 267 <338 and 339>). 67

b) The applicant claims a violation of the principle of democracy (Art. 20(1) and (2) 68

GG) and of fundamental principles of the parliamentary system (Arts. 45b, 63, 67, 68 and 69 GG), in particular those of effective exercise of opposition and of effective parliamentary oversight of the government and the parliamentary majority.

In the present case, the right of the *Bundestag* asserted on the *Bundestag's* behalf concerns parliamentary rights to oversee the Federal Government, which are, in a structural sense, crucially dependent upon the ability of the parliamentary opposition to exercise them. The effectiveness and intensity of oversight by the *Bundestag* depend, in the parliamentary system, on the extent of the parliamentary minority's rights and on how those rights shape up in regard to the instruments by which oversight of the government, and of its supporting parliamentary majority, may be exercised. The more robust the minority rights available to the parliamentary opposition, the more effective the parliamentary oversight. Hence it cannot be ruled out from the outset that the respondent has violated its rights to oversight by not accepting the draft laws which are subject of the applications no. 1 and no. 2. 69

c) […] 70

3. […] 71-74

VI.

[…] 75

VII.

Even in *Organstreit* proceedings, an organ's recognised legal interest in bringing an action generally is a prerequisite for a decision on the substance of a claim (cf. BVerfGE 62, 1 <33>; 67, 100 <127>; 68, 1 <77>; 119, 302 <307 and 308>; 140, 115 <146> […]). Given that the parties disagree on the inventory and scope of the minority and opposition rights derived from the Basic Law or uncodified constitutional law and these require clarification, the applicant's recognised legal interest in bringing an action is affirmed (1.). An equivalent course of action does not exist, neither as a matter of constitutional law nor of parliamentary politics (2.). Finally, the requirement under Art. 79(2) GG that the *Bundesrat* must participate in any constitutional amendment does not preclude the applicant's recognised legal interest in bringing an action (3.). 76

1. To the extent that the parliamentary group *BÜNDNIS 90/DIE GRÜNEN* calls into question the applicant's recognised legal interest with regard to the provision in § 126a GO-BT as far as the majority does not violate the rules thereby put in place, it fails to recognise the applicant's significant interest in obtaining a binding determination of the legal situation, especially the legal situation as it stands under the Basic Law. 77

Firstly, the provisions in the Rules of Procedure – irrespective of their compliance with constitutional requirements, which is not at issue in the present decision – can be subject to amendment at any time. Therefore, even considering the provision in 78

§ 126a(2) GO-BT, the Rules of Procedure do not constitute a firm legal position for the parliamentary opposition […].

Moreover, in the course of *Organstreit* proceedings, the Basic Law is the only standard by which the Federal Constitutional Court assesses the case , whereas not every provision of the GO-BT which the *Bundestag* enacts in exercise of its autonomy with respect to its procedural rules, pursuant to Art. 40(1) second sentence GG, must be constitutionally prescribed. Indeed, only rights based on a corresponding constitutional mandate (cf. § 64(1) and (2) BVerfGG) are actionable before the Federal Constitutional Court. Rights only guaranteed under the GO-BT are not actionable under constitutional law […]. 79

2. The respondent has advanced a subsidiarity argument according to which the applicant should be required to first make a specific motion – to establish, for example, a committee of inquiry – and only in case this motion were rejected, could the applicant appeal to the Federal Constitutional Court. This argument, however, also does not change anything with regard to the existence of the recognised legal interest in bringing an action. It is unreasonable to require that the applicant first attempt to exercise a minority right in the parliamentary process. It has a prior, substantial interest in clarifying the legal situation under the Constitution because even the abstract possibility of the exercising minority rights can affect, in advance, the impact potential of opposition activities. Thus, for instance, the (mere possibility of the) threat that the opposition might exercise one of the minority rights available to it – for example, by establishing a committee of inquiry – could lead to a reaction thereto by the government and the government majority in Parliament – such as an increased readiness to disclose information – and thereby render the actual exercise of the minority right superfluous (cf. Kelsen, Publications of the Association of German Public Law Professors, *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer* – VVDStRL 5 (1929), p. 30 <81>). 80

3. Finally, it is no obstacle to the applicant's recognised legal interest in bringing an action with regard to its application no. 1 that – as the respondent argues – a constitutional amendment under Art. 79(2) GG necessarily requires involvement of the *Bundesrat*. It is formally admissible for the applicant to seek a declaration in *Organstreit* proceedings to the effect that the respondent should have had to adopt its draft law to amend the Constitution. In this respect, the adoption of the draft law constitutes a distinct step in the process of amending the Constitution. If the *Bundesrat* failed to approve the amendment as required under Art. 79(2) GG, then, supposing the applicant had a valid corresponding constitutional claim, the latter would be entitled to initiate separate *Organstreit* proceedings against the *Bundesrat*. 81

C.

To the extent that the applications are admissible, they are unfounded. 82

I.

Application no. 1 is unfounded as there is no obligation on the part of the respondent to carry out its oversight function by granting opposition rights at the constitutional level as sought by the applicant. 83

While the Basic Law does contain a general constitutional principle of effective opposition, which has been further defined by the case-law of the Federal Constitutional Court (1), this principle does not guarantee specific rights for parliamentary opposition groups (2). Irrespective thereof, it is incompatible with the principle of equality of the members of the *Bundestag* and of their groupings pursuant to Art. 38(1) second sentence GG to introduce specific rights for parliamentary opposition groups (3). A lowering of the quorums set down in the Basic Law, in order to make the exercise of parliamentary minority rights easier in practice – which approximates the legal protection sought by the applicant and which is neutral in regard to the equality of all the members of the *Bundestag* – is contrary to the unambiguous wording of the constitutional provisions and the intent of the constitution-amending legislature are opposed to it (4). 84

1. The Basic Law contains a general constitutional principle of effective opposition which has been further defined by the case-law of the Federal Constitutional Court. 85

a) The constitutional protection of the opposition is rooted in the principle of democracy provided for in Art. 20(1) and (2) GG and Art. 28(1) first sentence GG (cf. BVerfGE 2, 1 <13>; 44, 308 <321>; 70, 324 <363>). Respect with regard to the substantive decisions of the parliamentary majority and the guarantee that the parliamentary minority have a realistic chance of becoming the majority follow from the principle of majority rule in Art. 42(2) GG and from the rights of the parliamentary minority in Art. 23(1a) second sentence, Art. 39(3) third sentence, Art. 44(1) first sentence, Art. 45a(2) second sentence and Art. 93(1) no. 2 GG, which constitute selective carve-outs against the principle of majority rule (cf. BVerfGE 5, 85 <198 and 199>; 44, 308 <321>; 70, 324 <363>; 123, 267 <367>). The underlying idea is an open competition within and outside of parliament between different political forces, which especially requires that the opposition not be obstructed (cf. BVerfGE 123, 267 <341 and 342>). Accordingly, the formation and exercise of an organised political opposition is constitutive of the free and democratic basic order (cf. BVerfGE 2, 1 <13>; 5, 85 <199>; 123, 267 <367>). 86

b) The right “to organised political opposition” (BVerfGE 123, 267 <367>) is also constitutionally secured by the rule of law (Art. 20(3) and Art. 28(1) first sentence GG). The principle of the separation of powers anchored therein, which governs the structuring and mutual oversight of the legislative, executive and judiciary authorities and which, in particular, includes parliamentary oversight of the government and the administration (cf. Art. 45b GG), must take account of the working conditions of the parliamentary system as they are shaped by the Basic Law and by political practice. Accordingly, the formation of a stable majority is indispensable to the election of a 87

government capable of functioning properly, and to the continuous support thereof (cf. Arts. 63, 67 to 69 GG). For that reason, not only the parliament as a whole is responsible for carrying out parliamentary oversight, but especially and in particular members of Parliament and parliamentary groups who do not support the government. As parliamentary opposition, they act as the natural opponents of the government and the parliamentary majority supporting it (so-called new or intra-parliamentary dualism; cf. also BVerfGE 49, 70 <85 and 86>; 129, 300 <331>; 135, 259 <293 and 294>).

c) The central role of the parliamentary opposition in carrying out the parliament's oversight function is also reflected in the system of legal protection provided under constitutional law. Firstly, the parliamentary minority's right to initiate abstract judicial review proceedings "from the floor of the *Bundestag*" (*aus der Mitte des Bundestages*) exists alongside the parallel capacity of (also) "oppositional" *Land* governments to initiate such proceedings (cf. Art. 93(1) no. 2 GG […]). Furthermore, subjective legal positions in the intra-parliamentary arena can be enforced, applying constitutional procedure, by initiating *Organstreit* proceedings, as there exists the legal ability "of other parties vested with rights of their own by this Basic Law or by the rules of procedure of a supreme federal body" to initiate such proceedings (cf. Art. 93(1) no. 1 GG). In addition, the ability to assert rights of the *Bundestag* by means of a representative action enables parliamentary opposition groups, and thus an organised parliamentary minority as the opponent of the governing majority, to effectively carry out the function of parliamentary oversight (cf. *supra*, para. 66). 88

d) The individual right to, in general as well as in individual situations, oppose policies pursued by the government and the majority supporting it, is based on the freedom and equality of the members of Parliament under Art. 38(1) no. 2 GG. As representatives of the whole people, they are not bound by orders or instructions and are responsible only to their conscience. This freedom is guaranteed by the indemnity and immunity of each member of Parliament under Art. 46 GG and by their right to refuse to give evidence under Art. 47 GG, and is of special significance particularly for the parliamentary opposition. 89

e) In order for the opposition to be able to perform its oversight function, the minority rights provided for in the Basic Law must be interpreted with a view to their effectiveness (cf. BVerfGE 67, 100 <130>). This is acknowledged specifically with regard to the right to establish a committee of inquiry in the form of an official investigation by the parliamentary minority (cf. BVerfGE 49, 70 <86 and 87>; on the minority's control of the inquiry which is conducted by the committee established on its motion cf. now § 2(2) and § 3 Committees of Inquiry Act (*Gesetz zur Regelung des Rechts der Untersuchungsausschüsse, Untersuchungsauschussgesetz* – PUAG); on the protection even of the minority that is potentially authorised to establish a committee of inquiry cf. BVerfGE 105, 197 <224 and 225>). The controlling principle is that of effective opposition. The opposition must not be dependent on the parliamentary majority's benevolence when exercising its oversight powers. The opposition is entrusted with 90

those powers not merely in its own interest, but primarily in the interest of the democratic state in which power is distributed, and particularly for public oversight of the majority-supported government and its executive organs (cf. BVerfGE 49, 70 <87>). The principle of the separation of powers in the parliamentary system thus guarantees the practical ability to exercise parliamentary oversight, especially by the parliamentary opposition.

2. However, the Basic Law does not explicitly establish specific rights for parliamentary opposition groups, nor can an obligation to create such rights be derived from it. 91

a) The Basic Law does not even mention the term ‘opposition’, let alone recognise parliamentary opposition groups as holders of specific rights. After [German] reunification, the Joint Constitutional Commission (*Gemeinsame Verfassungskommission*) did consider incorporating the term ‘opposition’ into the Basic Law, but the motion failed to obtain the required majority (cf. BTDrucks 12/6000, p. 89). Rather, within the system of the Basic Law, the rights of the parliamentary opposition are designed as rights of parliamentary minorities. Of central significance with respect to the tools available to the parliamentary opposition are the rights assigned to parliamentary minorities, for instance under Art. 23(1a) second sentence, Art. 39(3) third sentence, Art. 44(1) first sentence, Art. 45a(2) second sentence or Art. 93(1) no. 2 GG. However, except for the fundamental decision on selective carve-outs against the majority principle in cases where the parliamentary minority is supposed to be capable of implementing certain measures against the will of the majority, the listed provisions indicate that minority rights are always at the disposal of only a qualified minority that fulfils specific criteria. Qualifying as a minority provided with such special rights is a matter of reaching a certain quorum with members of the *Bundestag*. In Art. 39(3) third sentence GG, that quorum is set at one third; in Art. 23(1a) second sentence, Art. 44(1) first sentence, Art. 45a(2) second sentence and Art. 93(1) no. 2 GG respectively, it is set at one quarter. There is no provision of the Basic Law providing particular rights to a certain number of parliamentary groups (cf. Art. 53a(1) second sentence GG). 92

This legislative approach is guided by the political power relations in the parliamentary system since, as the parliamentary opposition generally represents the parliamentary minority (cf. BVerfGE 49, 70 <85 and 86>), it does not, however, necessarily constitute a homogenous unit but, like the parliamentary majority, may be split up into several or even a multitude of groupings, such as formal parliamentary groups (*Fraktionen*), groupings in Parliament not meeting the formal requirements for constituting a parliamentary group (*Gruppen*) and individual members of Parliament (cf. BVerfGE 70, 324 <363 and 364>). The Basic Law does not limit the exercise of parliamentary minority rights to actors of the opposition – for instance, parliamentary opposition groups, but to provide such rights to members of Parliament who together reach a certain quorum, regardless of the group’s composition (cf. BVerfGE 124, 78 <107>) . 93

b) […] 94

3. Furthermore, Art. 38(1) second sentence GG precludes the introduction of specific rights for parliamentary opposition groups. Rights available exclusively to opposition groups – such as, for instance, the creation of specific opposition rights for committees in § 126a(1) nos. 2 and 7 to 10 GO-BT – would constitute an unjustifiable breach of the principle of equality of the members of the *Bundestag* and of their groupings under Art. 38(1) second sentence GG. 95

a) All members of the *Bundestag* are, essentially, subject to the same rights and obligations. This results in particular from the fact that, generally, the *Bundestag* fulfils its representative function in its entirety, with the participation of all its members, rather than through individual members of Parliament, a group of members or the parliamentary majority (cf. BVerfGE 40, 296 <318>; 44, 308 <316>; 56, 396 <405>; 80, 188 <218>; 93, 195 <204>; 96, 264 <278>; 123, 267 <342>; 130, 318 <342>; 140, 115 <149 and 150, para. 91> […]). Each member of Parliament is called to participate in the work of the *Bundestag*, its debates and decision-making. This applies in particular with regard to the parliamentary oversight function vis-à-vis the government (cf. BVerfGE 80, 188 <217 and 218>; 92, 130 <134>; established case-law). Consequently, even those members of Parliament structurally supporting the government are provided with the option of opposing government policies in individual cases. 96

These standards also apply to parliamentary groups whose legal position as necessary institutions of constitutional life, as the principle political structure in the work of the *Bundestag* and as essential agents in the political decision-making process is likewise founded on Art. 38(1) second sentence GG, given that parliamentary groups are groupings of members of Parliament (cf. Art. 53a(1) second sentence GG; BVerfGE 70, 324 <362 and 363>; 80, 188 <219 and 220>; 84, 304 <322>; 93, 195 <204>; on the principle of equality of parliamentary groups cf. BVerfGE 93, 195 <204>; 112, 118 <133>; 130, 318 <354>; 135, 317 <396 para. 153>; 140, 115 <150 and 151>, para. 92 […]). 97

Derogations from the principle of equality of members of Parliament and their groupings can only be justified under constitutional law if special reasons are stated (cf. BVerfGE 93, 195 <204>; 96, 264 <278>; established case-law). Such reasons must be legitimated by the constitution and be of such a weight as to at least equal that of the equality of the members of Parliament. Such a reason is subject to the same requirements that apply to differentiation in cases concerning equality in electoral law, because its effects carry through to the second level of democratic decision-making, that is to say to the status and activity of members of Parliament (cf. BVerfGE 102, 224 <237 and 238>; 112, 118 <134>; 130, 318 <352>; established case-law). The right of each member of the *Bundestag* to participate in the parliamentary decision-making processes cannot be called into question (cf. BVerfGE 80, 188 <218 and 219>; 84, 304 <321 and 322>). 98

b) Providing specific opposition rights constitutes derogation from equal treatment as it means favouring members of the parliamentary opposition and their groupings 99

over members of Parliament supporting the government and their groupings. In the case at hand, no convincing justifying reason for such unequal treatment according to the identified standards has been put forward, nor is one apparent.

aa) In political practice, members of Parliament structurally supporting the government make relatively infrequent use of the possibility of opposing government policies in specific situations during parliamentary work because of ties within the parliamentary groups of the governing coalition (cf. BVerfGE 49, 70 <86>, cf. *supra*, para. 87). Nevertheless, the very existence of this possibility forces the government time and again to advocate for its own policies "within its own ranks," which can only be beneficial for the openness of political process. The fact that members of Parliament structurally supporting the government abstain from oversight in practice is therefore not sufficient to justify their exclusion from the exercise of certain minority rights. 100

bb) Even the particular situation of a "disenfranchised" opposition in face of a truly "overpowering" governing majority does not lead to any different result. The argument in favour of compensation put forward by the applicant in this respect is inadequate. Introducing specific minority rights reserved for the opposition would only achieve a relative advantage for the opposition as against the members of Parliament supporting the government. If, however, the applicant's aim is to improve Parliament's oversight function, then it would even be counterproductive to deny the remaining members of Parliament the – at least theoretical – possibility of occasionally exercising such rights. The same even applies in case that specific opposition rights were to be introduced in addition to, rather than in place of, the already existing minority rights. 101

As the Federal Constitutional Court has already emphasised on several occasions that the parliamentary minority rights, which are tied to quorums can be exercised by any minority that is formed in a given situation – without regard to its composition or its formation and irrespective of the party or parliamentary group membership of the participating members of Parliament (cf. BVerfGE 21, 52 <53>; 124, 78 <107>). Rather, under Art. 38(1) second sentence GG, each member of the *Bundestag* is guaranteed the opportunity to oppose government policies, procedurally and through individual action. (cf. Ingold, Das Recht der Oppositionen, 2015, p. 434; see also Haberland, Die verfassungsrechtliche Bedeutung der Opposition nach dem Grundgesetz, 1995, p. 181). Each member of Parliament is solely responsible for his or her voting record and actions in Parliament, regardless of political preferences and party membership. 102

cc) The reference to special functions of the parliamentary opposition is equally inadequate to justify the unequal treatment sought by the applicant. As stated above, potentially all members of Parliament perform the function of criticising and overseeing the government. Admittedly, it is worth considering that, as the applicant points out, political oversight by parliamentary opposition is qualitatively different from governmental oversight by the parliamentary majority as the latter neither constitutes public oversight, nor is it invested in a change of government and thus constitutes 103

forms of internal oversight of the government in parliamentary and working groups' sessions. However, disadvantaging the members of Parliament who support the government by introducing exclusive opposition rights would further weaken this form of internal oversight from the floor of Parliament. It would signal to members of Parliament supporting the government that their role in fulfilling the parliamentary oversight function is of lesser significance.

Furthermore, the possibilities of the members of the parliamentary opposition in particular to perform the functions of criticising and formulating alternatives during floor deliberations especially have been expanded by the increase in the opposition groups' speaking time, albeit through the Council of Elders of the *Bundestag* (*Ältestenrat*) and not the Rules of Procedure (cf. *supra*, para. 28). The allocation of speaking time differs from the question of granting minority rights because the former involves deciding on the distribution of a scare resource, so that favouring one side necessarily leads to disadvantaging the other. 104

The structural weakness of the opposition in comparison to the governing majority especially in regard to obtaining information, due in part to the proximity of the parliamentary groups supporting the government to the ministerial bureaucracy, is also compensated by a relative advantage at the level of financial resources: the opposition supplement under the Members of the *Bundestag* Act (*Abgeordnetengesetz*) was increased from 10% to 15% (cf. *supra*, para. 28). 105

dd) Finally, the applicant's assertion, to the effect that the minority rights established in § 126a GO-BT for a group of 120 members of the *Bundestag* do not fulfil the function intended in the original petition by the parliamentary groups CDU/CSU and SPD (BTDrucks 18/481), is also unsuccessful. Firstly, an intention expressed in the context of the parliamentary deliberation process is not a standard for constitutional review. Additionally, the functionality sought by the applicant is perfectly available on account of the parliamentary opposition's ability to exercise the provided minority rights. In any case, an exclusive entitlement for the parliamentary opposition was never mentioned in BTDrucks 18/481; the entitlement in § 126a GO-BT pertaining to "all members of the parliamentary groups who do not support the Federal Government" was only meant to supplement the current minority rights and the quorums laid down in constitutional and statutory law. 106

4. The solution which comes close to achieving the legal protection sought by the applicant, which involves a – neutral, with respect to the equality of all members of the *Bundestag*, – lowering of the constitutional quorums by way of interpretation regarding the practicable possibility of exercising parliamentary minority rights in times when the parliamentary opposition cannot reach the one-third and one-quarter quorums –, is also barred. Lowering the quorums of one third (Art. 39(3) third sentence GG) or one quarter (Art. 23(1a) second sentence, Art. 44(1) first sentence, Art. 45a(2) second sentence and Art. 93(1) no. 2 GG) of the members of the *Bundestag*, which are constitutionally required for exercising parliamentary minority rights, runs contrary to 107

the deliberate decision of the constitutional legislature in favour of the current quorums. The Federal Constitutional Court, too, must respect this decision.

The constitutional quorums required to exercise minority rights may indeed be in tension with the general constitutional principle of effective opposition. However, the question need not be resolved whether these rights – which according to the Basic Law are not at the disposal of the parliamentary opposition of the 18th German Bundestag –, taken individually, even constitute rights that are essential to the parliamentary opposition when measured against the general constitutional principle of effective opposition. This question is particularly controversial in relation to the legal ability to file an application for the abstract judicial review of statutes (Art. 93(1) no. 2 GG), – unlike the right to request that a committee of inquiry be established by the *Bundestag* (Art. 44(1) first sentence GG). 108

a) Due to the express wording of the provisions of the Basic law, an interpretation of the quorums by way of a teleological reduction is not possible (on the requirement to interpret a norm in support of the effectiveness of parliamentary oversight cf. BVerfGE 67, 100 <130>; cf. *supra*, para. 90); conclusions by analogy can be ruled out because there is no norm that could be used as the basis for the analogy. As regards the abstract judicial review of statutes in particular, the Federal Constitutional Court has determined that the list of parties having the legal ability to file such an application is exhaustive and no expansion by way of interpretation or analogy is permissible (cf. BVerfGE 21, 52 <53, 54>; 68, 346 <349>). As a result, the Court would exceed the limits set for constitutional jurisdiction under the Basic Law by allowing additional constitutional disputes and thus deviate from one of the constitutional legislature's fundamental decisions. The Court is not authorised to do that (cf. BVerfGE 21, 52 <53 and 54>). This assessment is applicable with regard to all constitutional quorums. 109

b) There has been no "constitutional shift" (*Verfassungswandel*) on this issue, either. If one regards such a shift primarily as a question of interpretation […], given the clear wording of the quorum requirements, there is no room for interpretation. Even if one were not to accept the wording as a limit, a constitutional shift could only be found to exist if the quorums originally corresponded to the general constitutional principle of effective opposition, but over time, the factual circumstances shifted to such an extent that the current quorums have ceased to fulfil that purpose. But this is out of the question. Since the first electoral term, grand coalitions in the *Bundestag* have been a possibility in consequence of which parliamentary groups who do not support the government may not reach certain quorums. This possibility has become reality several times (cf. *supra*, para. 18). The factual circumstances are thus unchanged. 110

c) The controversial legal concept of unconstitutional constitutional law (*verfassungswidriges Verfassungsrecht*) does not contribute to resolving the tension between the quorums required to exercise parliamentary minority rights and the general constitutional principle of effective opposition either. The problem with this legal concept is already the fact that among legal provisions at the same level no hierarchy can 111

be discerned which could provide a criterion for determining which constitutional provision takes precedence. The Basic Law can only be comprehended as a structural unity (cf. BVerfGE 1, 14 <32>, established case-law […]). As a result, it is fundamentally inconceivable that there might be higher or lower ranking provisions at the constitutional level, in the sense that one provision might be measured against another, (cf. BVerfGE 3, 225 <231 and 232>).

In the case at hand, the particular case of the eternity clause (*Ewigkeitsklausel*) in Art. 79(3) GG is not applicable. Irrespective of the question whether the general constitutional principle of effective opposition counts among those fundamental principles laid down in Articles 1 and 20 for purposes of Art. 79(3) GG, there have not been any changes to the Basic Law that could in any way negatively impact the parliamentary opposition: the quorum provisions in Arts. 39 and 44 GG have been in place since the Basic Law entered into force. The amendments to Arts. 23, 45a and 93 GG enacted between 1956 and 2008 served solely to strengthen minority rights by introducing minority rights requiring a quorum of one quarter in Arts. 23 and 45a GG in the first place, and by lowering the quorum in Art. 93 GG from one third to one quarter. 112

As the most recent constitutional minority right, the quorum required to oblige the *Bundestag* to initiate a subsidiarity action, introduced by Art. 1 no. 1 of the Act to Amend the Basic Law (Articles 23, 45 and 93) (*Gesetz zur Änderung des Grundgesetzes (Artikel 23, 45 and 93)*) of 8 October 2008 (BGBl I p. 1926), effective 1 December 2009, was inspired by both the quorum required for applications for abstract judicial review from the floor of the *Bundestag* under Art. 93(1) no. 2 GG, which itself was lowered to one quarter by the same Act, as well as the relevant quorum of one quarter of the members of the *Bundestag* required for establishing a committee of inquiry under Art. 44(1) first sentence GG. The aim behind the determination of the size of the quorums was to prevent abusive exercise of the minority right (cf. BTDrucks 16/8488, p. 4 right col.). The initiative by some members of the *Bundestag* and by the parliamentary group DIE LINKE to expand the circle of those having the legal ability to bring a subsidiarity action or to file an application for abstract judicial review by including “a parliamentary group” was rejected because it was considered as overemphasising minority protection and incurring a risk of abuse (cf. BTDrucks 16/8912, p. 5). 113

d) Finally, it also does not follow from the general constitutional principle of effective opposition that there be a constitutional necessity to lower the constitutional quorums required for exercising the rights of parliamentary minority. Rather, the quorums laid down in the text of the Constitution express how the original constitutional legislature (*Verfassungsgeber*) and the constitution-amending legislature intended to further define this principle. 114

aa) In particular, there is no unintentional regulatory gap because, for instance, the constitutional legislature failed to consider the particular stringency of the quorums in certain situations, or because it overlooked the fact that an especially small parliamentary opposition, which by design should be able to exercise the minority rights ac- 115

cording to the general constitutional principle of effective opposition, would be prevented from doing so by the choice of these specific quorums.

116 The legislative history of the provisions of the Basic Law relating to parliamentary minority rights requiring quorums offers no indications of a regulatory gap with regard to times when a parliamentary opposition numerically falls short of the determined quorums. The original constitutional legislature recognised both the issue of protecting the parliamentary minority, on the one hand, as well as the danger of the abuse of minority rights, on the other, which it could well recall from the days of the Weimar Republic (cf. BVerfGE 105, 197 <224> with further references to the debates of the Parliamentary Council), and balanced these against one another. It was also aware of the consequences that the provisions on quorums entailed and knowingly accepted them.

117 For example, under Art. 57(1) of the *Herrenchiemsee* draft (Constitutional Committee of the Conference of Minister-Presidents of the Western Occupation Zones, Report on the Constitutional Convention at *Herrenchiemsee* from 10 to 23 August 1948, *Jahrbuch des öffentlichen Rechts der Gegenwart, neue Folgen* – JöR N.F., vol. I, p. 366) a quorum of one fifth of the legal members of the *Bundestag* was required to oblige the *Bundestag* to establish a committee of inquiry, just as formerly Art. 34(1) first sentence of the Weimar Constitution (*Weimarer Reichsverfassung* – WRV) had done with respect to the *Reichstag*. During negotiations in the Parliamentary Council's Organizational Committee (*Organisationsausschuss*), raising the quorum to – the eventually prevailing – one quarter as well as to one third (motion of Member de Chapeaurouge, CDU) was discussed. While raising the quorum to one third was rejected (cf. JöR N.F., vol. I, p. 367, especially footnote 4), the change to one quarter – thus increasing the one fifth quorum of the Weimar period – was defended by the members of the Parliamentary Council Dr. Katz (SPD) and Dr. Fecht (CDU) citing the frequent abusive use of committees of inquiry during the Weimar period (cf. JöR N.F., vol. I, p. 367, especially footnote 5). The member of the Parliamentary Council Dr. Dehler (FDP) voiced the objection that this change was prejudicial to parliamentary minorities. To that objection Dr. Katz (SPD) replied that it was "merely the question of whether or not one should call for a larger minority" (JöR N.F., vol. I, p. 367, especially footnote 6; cf. BVerfGE 105, 197 <224>).

118 bb) Finally, no different assessment is called for based on the circumstance that the original constitutional legislature may not have envisaged the *Bundestag* becoming a parliament of many political parties. Rather the opposite suggests itself. While the number of political parties represented in the German *Bundestag* rose from its numerical low point of just four in the 1960s – upon the joining of the *GRÜNEN* in 1983 (10th electoral term) and of the PDS in 1990 (12th electoral term) – and did not decrease again until the FDP missed entry into the 18th German *Bundestag*, from the 1949 constitutional legislature's perspective, based on both experience and expectations, the *Reichstag* and *Bundestag* were characterised, in particular, by great numbers of political parties in Parliament, numbers the like of which have never been

reached since. In the days of the Weimar Republic, the *Reichstag* never held fewer than 10 political parties, with the attendant risk of excessive fragmentation (cf. BVerfGE 1, 208 <248>; 14, 121 <135>; 34, 81 <99 and 100>). Following the election of the first *Bundestag* on 14 August 1949 – the result of which the Basic Law legislature naturally could not anticipate – eleven parties entered the *Bundestag*. Nor did a subsequent constitution-amending legislature make a different fundamental choice even as the number of political parties in Parliament gradually increased: not after the 1983 increase to five, nor after the 1990 increase to six parties. The lowering of the quorum from one third to one quarter in the isolated case concerning the legal ability to file an application for abstract judicial review, which was enacted in the context of introducing the parliamentary minority right relating to subsidiarity action in 2008, does not reflect a different fundamental choice (cf. *supra*, para. 113).

II.

The Application no. 2 is unfounded as the respondent is not under any obligation to accomplish a more effective oversight function by creating the opposition rights sought by the applicant at the level of statutory law. 119

1. To the extent that application no. 2 also concerns minority rights provided for in the Basic Law, the quorums specifically provided for in the Basic Law also rule out any constitutional obligation to provide for more extensive opposition rights at the statutory level. […] 120

2. Inasmuch as application no. 2 concerns minority rights that are not particularly provided for in the Basic Law and to the extent that this application is admissible (Art. 4 nos. 1 and 2 and Art. 6 of the draft law BTDrucks 18/380), the result is not prescribed by explicit constitutional norms. […] 121

a) The inclusion, sought by the applicant, of specific opposition rights, by means of a temporary amendment to § 5(4) of the ESM Financing Act (*Gesetz zur finanziellen Beteiligung am Europäischen Stabilitätsmechanismus, ESM-Finanzierungsgesetz* – ESMFinG) for the duration of the 18th legislative period to empower “two parliamentary groups on the committee who do not support the Federal Government” (Art. 4 nos. 1 and 2 [in conjunction with Art. 7(1)] of the draft law BTDrucks 18/380), constitutes an impairment of the equality of the members of Parliament and their groupings under Art. 38(1) second sentence GG that is not justifiable under the Constitution. 122

aa) According to the standards identified above (cf. para. 95 et seq.), the expansion of the minority right sought for “two parliamentary groups on the committee who do not support the Federal Government” constitutes unequal treatment of the parliamentary groups supporting the Federal Government and their members on the committee because it only applies to parliamentary opposition groups. 123

It is to be noted that the specific opposition right sought in the case at hand would not be exclusive: providing “two parliamentary groups on the committee who do not support the Federal Government” with the right to make a binding request for informa- 124

tion was intended to supplement the right of “one quarter of its [the budget committee’s] members” to make such a request under § 5(4) ESMFinG. Members of parliamentary groups of the governing coalition would thereby retain their ability to convene as the required one quarter quorum and exercise the minority right. Unequal treatment would however lie in the fact that for (members of) the parliamentary groups of the coalition supporting the government it would be more difficult in individual cases to exercise opposition because the wording “two parliamentary groups on the committee who do not support the Federal Government” by definition excludes them from one of the two possible minority groupings.

The practical relevance of such unequal treatment would not be cancelled out by the unaltered quorum of one quarter either. Indeed, (members of) parliamentary opposition groups would be able to reach the unaltered one quarter quorum with the help of individual supporters from the ranks of parliamentary groups of the governing coalition as well as have at their exclusive disposal – supposing concerted action – the newly introduced right of parliamentary opposition groups to make such a request [for information]. Conversely, however, (members of) parliamentary groups of the governing coalition would be barred from making use of the new right to request with the help of members from the parliamentary opposition groups. Their only recourse would be the general qualified minority right of one quarter of members of the budget committee under § 5(4) ESMFinG, which might be of any political orientation. 125

bb) In light of the standards cited above (cf. para. 98), the unequal treatment of members of parliamentary groups supporting the Federal Government, which arises from the fact that the additional rights sought are specific to an opposition, is not justifiable under the Constitution. In the case at hand, a compelling reason for disadvantaging the (members of Parliament and) parliamentary groups supporting the government has neither been put forward nor is it evident (cf. supra, para. 99 et seq.). 126

The fact that under § 5(4) ESMFinG (members of Parliament and) parliamentary groups supporting the government would not be excluded from participating in the minority right but merely partially limited therein, is also not necessary as a matter of legislative technique. If the provision were such that it – in addition to or instead of the entitlement of one quarter of the members of the budget committee – stipulated a number attainable by members of parliamentary opposition groups (on the committee), then the entitlement would not exhibit any specificity. Take, for instance, the inserted provisions in § 126a(1) GO-BT, which, in most cases (nos. 1, 3 to 6 and 11), grant an entitlement to a specific, absolute number of members of the *Bundestag* (“120 Members”; cf. supra, para. 28). 127

b) The insertion, sought by the applicant, of specific opposition rights by the proposed § 12(1) third sentence of the Responsibility for Integration Act (*Gesetz über die Wahrnehmung der Integrationsverantwortung des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union* – IntVG), an addition set to expire after the 18th electoral term, with the attendant expansion of entitlement to in- 128

clude two qualified parliamentary opposition groups (Art. 6 [in conjunction with Art. 7(2)] of the draft law BTDrucks 18/380), likewise represents unjustifiable impairment of the equality of the members of Parliament and their groupings under Art. 38(1) second sentence GG (cf. paras. 99 et seq., 123 et seq.).

III.

Application no. 3 is unfounded as the respondent is not under any obligation to grant the opposition rights sought by the applicant at the level of the Rules of Procedure of the German *Bundestag*. 129

[…] 130-138

D.

[…] 139

Voßkuhle Landau Huber

Hermanns Müller Kessal-Wulf

König Maidowski

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