FEDERAL CONSTITUTIONAL COURT

– 1 BvQ 28/01 –

– 1 BvQ 30/01 –

In the proceedings
on
the applications for preliminary injunctions

1. to suspend the order of the Berlin Higher Administrative Court (*Oberverwaltungsgericht*) of 6 July 2001 – OVG 1 S 11.01, thereby restoring the suspensory effect of the applicant's objection against the decree of the Berlin Chief of Police (*Polizeipräsident*) of 14 May 2001 – LKA 521-07702/140701 –

   or, alternatively,

   to suspend the order of the Berlin Higher Administrative Court of 6 July 2001 – OVG 1 S 11.01 and the decision of the Berlin Chief of Police of 14 May 2001 – LKA 521-07702/140701 –, while providing that the "fuck parade", registered by letter of 19 March 2001, falls within the scope of the Act concerning Assemblies and Processions (*Versammlungsgesetz* – VersG)

Applicant: Mr K(…)

- authorised representative: Rechtsanwältin Inka Bock,
Gelbehirschstraße 12, 60313 Frankfurt –

– 1 BvQ 28/01 –,

2. to suspend the order of the Berlin Higher Administrative Court of 6 July 2001 – 1 SN 54.01, thereby restoring the suspensory effect of the applicant's objection against the decree of the Berlin Chief of Police (*Polizeipräsident*) of 14 May 2001 – LKA –

Applicant: P(…) GmbH, represented by its managing director

- authorised representatives: 1. Rechtsanwälte Niko Härting und Koll.,
Gipsstraße 2, 10119 Berlin,

2. Rechtsanwälte Prof. Dr. Konrad Redeker und
Koll., Kurfürstendamm 218, 10719 Berlin –

the First Chamber of the First Senate of the Federal Constitutional Court, with the Participation of Justices

Vice-President Papier

Steiner,

Hoffmann-Riem

unanimously held on 12 July 2001:

The applications for preliminary injunctions are rejected.

[**Facts:** The applications for the issuance of temporary injunctions concern decisions of Berlin Chief of Police that were declared directly enforceable not to regard the “Fuckparade” and the “Love Parade” as assemblies within the meaning of the Act concerning Assemblies and Processions because they did not demonstrate the purpose of formation and expression of opinion which is a prerequisite to fall within the definition of an assembly. The applications were unsuccessful.]

REASONS :

A.

[…] 1-10

B.

[…] 11

1. […] 12-13

2. In applying these principles, the consideration in both instant cases leads to those reasons prevailing which disfavour the issuance of a temporary injunction. 14

It has neither been explained, nor is it recognisable, that the factual findings of the non-constitutional courts as to the individual elements of the intended events and their characterisation are manifestly incorrect. The arguments of the Higher Administrative Court (*Oberverwaltungsgericht*) are also legally sound in both cases. This applies in particular to the statements on the definition of the term “assembly” and the denial of the nature of an assembly for both events concerned here. 15

a) It is constitutionally unobjectionable to interpret the term “assembly” within the meaning of the Act concerning Assemblies and Processions in concord with the constitutional definition of an assembly and to limit it to events which are characterised by the joint development of several persons oriented towards communication (see Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts* – BVerfGE) 69, 315 (343); BVerfG, First Chamber of the First Senate, *Deutsches Verwaltungsblatt – DVBl* 2001, pp. 901-902; Decisions of the Federal Administrative Court (*Entscheidungen des Bundesverwaltungsgerichts* – BVerwGE) 82, 34 (38-3939)). The fundamental right of the freedom of assembly takes on its special constitutional significance in the free democratic order of the Basic Law (*Grundgesetz*) because of the reference to the process of public opinion-forming. Particularly in democracies with representative parliamentary systems and few rights of participa- 16

tion through plebiscites, the freedom of collective declaration of opinions has the significance of a fundamental functional element. The fundamental right guarantees in particular the protection of minorities, and also creates possibilities for those to reach a larger public who have no direct access to the media (see BVerfGE 69, 315 (346-347)). Accordingly, assemblies within the meaning of Article 8 of the Basic Law are meetings *in situ* of several persons for the purpose of jointly discussing and making declarations with the aim of participating in public opinion-formation. The concomitant freedom of assembly enjoys increased protection as compared to the general freedom of action under Article 2.1 of the Basic Law. In particular, because of the constitutive significance of this fundamental right for democracy, the freedom of assembly is only subject to the restrictions prescribed in Article 8.2 of the Basic Law. To open up the area protected by Article 8 of the Basic Law, it is not sufficient for the participants to be linked to one another in their joint conduct by any random purpose.

17 The legislature has defined narrowly the permissible restrictions on the freedom of assembly in the Act concerning Assemblies and Processions, above all in its §§ 14 and 15. This is understood in the case-law and in the legal literature such that the requirement of registration (§ 14 of the Act concerning Assemblies and Processions) in interaction with the possibility of imposing conditions (§ 15 of the Act concerning Assemblies and Processions) replaces other acts of authorisation and permission of the general legal system which serve to ward off dangers (see BVerwGE 82, 34 (38-39); Dietel/Gintzel/Kniesel, *Demonstrations- und Versammlungsfreiheit*, 12th ed., 2000, *§ 14*, marginal no. 34; Ridder/Breitbach/Rühl/Steinmeier, *Versammlungsrecht*, 1992, *§ 15*, marginal no. 57). This is an expression of the preference of assemblies over other meetings. Over and above this, the content of the administrative-law provisions is to be interpreted taking account of Article 8 of the Basic Law, and the administrative authority with responsibility for assemblies is obliged to cooperate with the organiser of an assembly in a manner that is positive towards the assembly (see BVerfGE 69, 315 (357)).

18 b) In view of such legal provisions favouring assemblies, it is constitutionally unobjectionable for the Higher Administrative Court not to expand the term further than required to provide protection in accordance with Article 8 of the Basic Law. Here, the Court takes into account that rights of others (such as residents, road-users and businesses) frequently take second place because of the high status attached to the freedom of assembly. This is certainly to be accepted if the term “assembly” is given a narrow definition. It does not cover popular celebrations and entertainment events any more than events serving to merely show off a life perception or are intended as a mass public party solely aimed at having fun and towards entertainment, irrespectively of whether the type of music presented there expresses a life perception of what is known as subcultures or whether it corresponds to the taste of the majority.

19 c) It is hence constitutionally sound not to categorise the “Fuckparade” and the “Love Parade” as assemblies. This is certainly unobjectionable insofar as both are music and dance events. The categorisation is however also constitutionally unobjec-

tionable in view of these events also serving purposes of declaration.

aa) Assemblies also fall in the area protected by the freedom of assembly if they achieve their communicative purposes using music and dance. This is to be confirmed if these means are used for communicative development with the goal of influencing the formation of public opinion. 20

Such events are also covered by the freedom of assembly if for instance they work towards making certain music and dance events possible in future. Exerting an influence on public opinion via communication in order to call for such events being carried out in future is protected by Article 8 of the Basic Law in such cases, but not the holding of the music and dance event itself. 21

bb) A music and dance event however does not as a whole become an assembly within the meaning of Article 8 of the Basic Law simply because also declarations of opinion take place during the event. Accordingly, that the existing elements of public declaration of opinion were considered insufficient by the Higher Administrative Court both with the “Fuckparade” and with the “Love Parade” in order to categorise the respective event in its entirety as an assembly does not encounter any decisive constitutional reservations. 22

The indications for public declarations of opinion have however caused the Administrative Court in the proceedings related to the “Fuckparade” to categorise the event as an assembly. In this respect, the court referred to the content of the large numbers of distributed leaflets, on which the communicative interest of the organisers was alleged to be reproduced in relatively detailed form. According to the Administrative Court, the event is objects to the removal of supporters of certain Techno music styles from traditional quarters of the city, against the closing of clubs and the dissolution of parties, against the “cleansing” of the capital city of “everything that is different” and against the commercialised “Love Parade” as a “pseudo demo”. These are alleged not to be empty slogans, but concerns of the applicant re 1 for which detailed grounds are provided. The concern is said to be expressed with the necessary clarity, so that with the “Fuckparade” the element of expression of opinion at least was not entirely overshadowed. 23

The Higher Administrative Court does not dispute these factual circumstances, but evaluates them such that they do not remove from the event the overall character of a mass spectacle or popular celebration. The event – and the “Love Parade” – was said to focus on entertainment. The declarations of opinion were only a coincidental ancillary event. 24

It is constitutionally unobjectionable to orientate the legal evaluation according to whether the event is an assembly by its overall character, or whether the focus is on the fun, dance or entertainment purpose. If doubts remain, the effect of the high rank of the freedom of assembly is that the event is treated as an assembly. 25

As to the question of what the overall character of an event is, it must be taken into 26

account that the participants are entitled to determine for themselves what they wish to make the subject of the formation of public opinion, and what forms of communicative influence they wish to use. It is however the preserve of the competent courts to legally categorise such conduct as an assembly. It is in principle not a matter for the Federal Constitutional Court in the proceedings for the issuance of a temporary injunction to substitute its evaluation for that of non-constitutional courts which are closer to the location and to the case. In the instant cases, the legal evaluations are at any rate not manifestly erroneous. The legal characterisation can only be finally clarified in the main proceedings.

d) The applications for the issuance of temporary injunctions are unsuccessful in accordance with the above. The injunction is not necessary in either case to avert serious detriment. Also, the applicant re 1 can still apply for special utilisation permission for the intended event. Its issuance should not be refused merely for time reasons in view of the long-term decision-making process related to the legal characterisation of the event. 27

[…] 28

Papier Steiner Hoffmann-Riem

Bundesverfassungsgericht, Beschluss der 1. Kammer des Ersten Kammers vom 12. Juli 2001 - 1 BvQ 28/01, 1 BvQ 30/01

Zitiervorschlag BVerfG, Beschluss der 1. Kammer des Ersten Kammers vom 12. Juli 2001 - 1 BvQ 28/01, 1 BvQ 30/01 - Rn. (1 - 28), http://www.bverfg.de/e/qk20010712_1bvq002801en.html

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