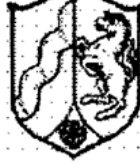


Beglaubigte Abschrift



Verwaltungsgericht Köln

decision

14 L 1766/19

In the administrative procedure

of the German-Palestinian Women's Associations, represented by the Chairmen of the
German-Palestinian Women's Association
Schützenstraße 4 A, 53773 Hennef,

Applicant,

Court of attorney:

Lawyer Ahmed Abed, Schönstedtstraße 7, 12043 Berlin,
Gz.: A7522/19,

against

The Federal City of Bonn, represented by the Lord Mayor, Legal Office, Thomas-
Mann-Straße 2-4, 53111 Bonn,

Defendant,

for participation in the cultural and encounter festival "Vielfalt!" here: Application for
interim measures

the 14th Chamber of the Administrative Court of Cologne
on 12.09.2019

by

the presiding judge of the Administrative Court
the Judge at the Administrative Court
the Judge at the Finance Court

bricklayers
Wagner and
Dr. Engler

decided:

1. By way of an interim injunction, the respondent is obliged to provide the applicant with a stand at the "Vielfalt!" event under the usual conditions applicable to all exhibitors. Bonn Culture and Encounter Festival on 29.9.2019.
Orders the defendant to pay the costs.
2. The value of the object in dispute is fixed at 5000,00 €.

reasons

The admissible analogous request,

to oblige the respondent, by way of an interim injunction, to present the applicant with a stand at the event - Vielfalt! Bonn Culture and Encounter Festival on 29.9.2019,

is justified by the restriction apparent from the tenor. The request for auxiliary assistance is therefore not relevant.

Pursuant to § 123 (1) sentence 2 of the Administrative Court Rules (VwGO), the court may, upon request, issue an interim injunction to settle a provisional situation with regard to a disputed legal relationship if this settlement, especially in the case of permanent legal relationships, appears necessary to avert material disadvantages or to prevent imminent violence or for other reasons. Pursuant to Section 123 (3) VwGO in conjunction with Section 123 (3) VwGO in conjunction with Section 123 (3) VwGO. § 920 (2) of the Code of Civil Procedure (ZPO) to substantiate the factual prerequisites of a right (right to an injunction) and the particular urgency (ground for an injunction). The decision on the merits of the case cannot, in principle, be overruled either in law or in fact.

Only by way of exception can the general prohibition of anticipating the main action be waived. Such an exceptional case exists if, without a decision pursuant to § 123 (1) VwGO, the effective legal protection required pursuant to Article 19 (4) of the Basic Law (GG) could not be guaranteed. In concrete terms, this means that the desired regulation must be absolutely necessary for granting effective legal protection because the disadvantages otherwise to be expected would be unreasonable for the applicant. In addition, it must be predominantly probable that the applicant will win the main proceedings.

According to these provisions, the prerequisites for the granting of the requested interim injunction anticipating the main action are fulfilled.

The claim to an order follows from Section 8 (2), (4) of the North Rhine-Westphalian Local Government Code (GO NRW) in conjunction with Section 8 (2), (4) of the North Rhine-Westphalian Local Government Code (GO NRW). Article 3 paragraph 1 GG. According to § 8 para. 2 GO NRW, all residents of a municipality are entitled to use the public facilities of the municipality within the framework of the applicable law. The same applies to legal entities and associations of persons pursuant to § 8 para. 4 GO NRW.

The planned cultural and encounter festival on the market and Münsterplatz in Bonn, which was organised by the respondent, is a public institution which any entitled person may "use" within the scope of the dedication. A public institution comprises enterprises, enterprises, institutions and other service equipment which, in the final analysis, have in common only the function of creating the prerequisites for the provision of basic needs and welfare for the population,

cf. VGH Hessen, resolution of 28 May 2019- 8 B 1087/19-, juris, para. 27.

These can also be public events of a municipality on otherwise (only or also) areas dedicated to public transport,

see VGH Bayern, judgment of 17.2.1999 -4 B 96.1710 -, juris, paragraphs 30 and 31; VG Hannover, decision of 12.1.2017 - 1 B 7215/16 -, juris, paragraphs 17 et seq.; VG Köln, decision of 3.7.2014 - 14 L 1046/14-, juris, recital 17; VG Darmstadt, decision of 19.2.2013 - 3 L 89/13.DA -, juris, recital 9 et seq.; VG Chemnitz, decision of 30.7.2008-1 L 206/08-, juris, recital 21.

Since 2010, the annual celebration of the respondent (also) as organizer goes far beyond the common use of these public spaces. Much more, the respondent, using her personnel and public resources (available budget: € 15,000.00), operates a kind of public service for the population beyond her urban area as part of her self-administration tasks.

The content of the dedication is decisive for the entitlement to use this public facility, both with regard to the manner of use and the group of beneficiaries.

The scope of the dedication, which could also be implied, is expressly set out in the present decision of the Council of the Defendant of 28 March 2019. To the extent that it is of interest, the "new concept" adopted here was compared with previous years and deviated from the original proposal of the administration (as of 18 March 2019).1.2019, Bl. 50 et seq. of the Administrative Act -W-) now states in No. 2 sentence 2 on "Exhibitors" that "Associations, organisations and institutions with an intercultural and international orientation based in Bonn or in the Rhein-Sieg district" should be invited to participate (Bl. 48 in conjunction with Bl. 58 et seq. W).

The applicant is included as a potential user of this dedication purpose. As the invitation and at least occasional participation in previous years show, the respondent does not

doubt that the applicant is an association of the kind described. According to the Register of Associations of the Bonn Local Court (VR 5488), the applicant is domiciled in Bonn.

Insofar as the respondent justifies the admission of the applicant because of his undisputed proximity to the so-called BDS movement, which, in the opinion of the NRW Landtag and the council of the respondent in its decision of 12 June 2019, pursues anti-Semitic measures and objectives, this is not compatible with Article 3 (1) of the Basic Law and is therefore legally inadmissible.

It may remain to be seen whether the decision of the Council of the respondent of 12.6.2019 concerns a constellation like this one at all. If the decision is taken literally, it does not prevent the applicant from participating in the event on 29.9.2019. The second indent of the decision, which is relevant in this respect, concerns the provision of 'premises' and the support of 'events' of the BDS campaign or supporting groupings by 'institutions of the City of Bonn', 'as far as legally permissible'. I don't think there's any room for either. In particular, the Culture and Encounter Festival is not an event organised by the applicant.

If one wanted to see in the Council Decision of 12.6.2019 also a (subsequent) limitation of the "new conception" of the festival for 2019, i.e. the dedication of 28.3.2019 - for which there are no serious indications - this would be legally irrelevant. It is true that a municipality is not obliged to maintain public facilities or to retain existing possibilities of use. However, if the municipality creates a public institution and makes it available to the users, this must be done in accordance with the principle of equality under Article 3 (1) of the Basic Law. In particular, a municipality such as the respondent may not, under the primacy of the law (in this case, among others, § 8 GO NRW), violate priority standards either generally or within the framework of the (sub-legal) regulation of the use of its public facilities. Moreover, the general statutory power and the power of a local authority to regulate the use of its public facilities do not constitute a sufficient basis of empowerment to justify an encroachment on fundamental rights.

Cf. with regard to freedom of occupation: BVerwG, judgment of 16.10.2013 - 8 CN

1.12 -, juris, marginals 23 et seq.; OVG Niedersachsen, resolution of 02.03.2017 - 10 ME 4/17 -, juris, marginals 15.

A - here once assumed - subsequent restriction of the dedication to all basically entitled groups and associations with the exception of the sympathizers of the SOS movement constitutes an unequal treatment of the applicant which is not even rudimentarily justified. Admittedly, the clear rejection of anti-Semitism of any kind might be a reasonable reason in the sense of a differentiation objective. In any case, there is a lack of a suitable criterion for unequal treatment. The SOS campaign lacks a solid organizational structure and sufficient homogeneity to inevitably attribute an anti-Semitic attitude to supporters of the BDS campaign.

See OVG Lüneburg, resolution of 27.3.2019 - 10 ME 48/19 -, juris, marginal 8.

Irrespective of this, such a restriction would also be difficult to reconcile with Article 5 (1) of the Basic Law. In view of the fact that the applicant has participated without complaint, at least occasionally, in the past years, there is no evidence that the applicant or his members and supporters will engage in anti-Semitic activities to a legally relevant extent when participating in the festival, e.g. by statements and actions that go beyond freedom of expression or even the commission of criminal offences. Irrespective of the legal relevance in question in the present constellation, it is also not discernible or only asserted by the respondent, who is burdened with the burden of presentation and proof, that the applicant does not stand up for the free democratic constitutional order or even endangers it. In particular, there are no findings that would allow observation by the Office for the Protection of the Constitution.

See again OVG Lüneburg, resolution of 27.3.2019- 10 ME 48/19-, juris, recitals 7 to 9.

Both the Council Decision of 12.6.2019 and the resolutions of the Landtag NRW of 20.9.2018 or the German Bundestag of 17.5.2019 (BT-Drs. 19/10191) are not legislative acts, but political resolutions or statements of intent. They alone cannot restrict an existing legal claim from any legal point of view.

To the extent that the Council decision of the respondent could in principle be granted a discretionary function within the framework of the constellations mentioned therein, this is also irrelevant in the present case, since the respondent has no discretionary power to decide on the admission of the applicant to the public institution "Vielfalt!

It is neither apparent nor rudimentarily demonstrated by the respondent that the applicant's fundamental legal claim is precluded by reasons which could justify non-admission or open up a margin of discretion.

According to the documents, including the defendant's flyer, the capacity of the areas is clearly not exhausted. While approx. 85 exhibitors participated in 2018, this year (so far) only approx. 70 exhibitors will be represented. The admission of the applicant does not fail either due to an alleged failure to meet a deadline. Irrespective of whether the time limit for filing might be the subject of the dedication or otherwise be legally relevant, no time limit has been set either publicly or vis-à-vis the applicant. As the respondent confirmed by telephone, there was no public call for participation. Since the applicant had also received no (written) invitation, the "deadline for registration" in the letters attached to the invitations had in any event not been set vis-à-vis him. Nor does the defendant allege that the applicant was otherwise aware of the time limit. Finally, admission cannot be denied for reasons relating to the person of the applicant or his members or their past conduct in participating in the "pre-requirements" of the festival. The respondent confirmed that there were no negative incidents.

According to all this, the applicant is entitled to the public-law claim asserted, but only under the general conditions covered by the dedication.

The reason for the order, which exceptionally justifies the anticipation of the main action, results from the fact that the public body can only be used to the extent of the dedication on 29.9.2019, that the exclusion of the applicant would violate his fundamental rights and that the applicant would most probably prevail in a main action if it could be decided in time.

The dispute value decision is based on § 53 (2) no. 1, § 52 (2) of the Court Costs Act. In accordance with section 1.5 of the Dispute Value Catalogue for Administrative Jurisdiction (as of July 2013), the Chamber has refrained from halving the amount in dispute to half the (catch-all) amount in dispute of a possible main action, because the petitioner requests an anticipation of the main action.

Right of appeal

An appeal may be lodged in writing with the Administrative Court of Cologne, Appellhofplatz, 50667 Köln, within two weeks of notification against No. 1 of this order, on which the Higher Administrative Court for the State of North Rhine-Westphalia shall decide if the court making the decision does not remedy the situation.

Instead of filing the complaint in writing, the complaint may also be filed as an electronic document in accordance with § 55a of the Administrative Court Ordinance - VwGO - and the Ordinance on the Technical Framework Conditions of the Electronic Media (Verordnung über die technischen Rahmenbedingungen des elektronischen

legal transactions and via the special electronic mailbox of the authorities (Electronic Legal Transactions Ordinance - ERW).

The time limit for lodging an appeal shall also be observed if the appeal is received by the Higher Administrative Court for the State of North Rhine-Westphalia, Aegidiikirchplatz 5, 48143 Münster within the time limit in writing or as an electronic document in accordance with § 55a VwGO and ERW.

In disputes concerning costs, fees and expenses, the appeal shall be admissible only if the value of the subject-matter of the appeal exceeds EUR 200.

The parties must be represented by an authorised representative when filing and substantiating the appeal. Attorneys at law or legal teachers at a state or state-recognised university of a member state of the European Union, another signatory state of the Agreement on the European Economic Area or Switzerland who are qualified to hold the office of judge are admitted as attorneys-at-law to public law authorities and legal entities as well as to their own employees or employees of other public law authorities or legal entities who are qualified to hold the office of judge. In

addition, the persons designated in § 67 (4) of the Administrative Court Ordinance as equivalent to them by law shall be admitted.

An appeal against paragraph 2 of this Decision may be lodged within six months of the date on which the decision on the merits of the case becomes final or the proceedings are otherwise disposed of. If the amount in dispute has been fixed more than one month before the expiry of this period, it may still be filed within one month of service or informal notification of the fixing decision.

The complaint must be filed in writing with the Administrative Court Cologne, Appellhofplatz, 50667 Cologne, as a protocol of the clerk of the office or as an electronic document in accordance with § 55a VwGO and ERW.

The appeal shall be admissible only if the value of the subject-matter of the appeal exceeds EUR 200.

The notice of appeal should be filed in duplicate. Copies are not required in the case of submission of an electronic document.

bricklayer:



Wagner

Dr. Engler