Green: I .

The applicant - a teacher at the Gesamtschule Flötenteich comprehensive school in Oldenburg - who is a local

che „Boycott, Divestement and Sanction (BDS) campaign “ auftritt, begehrt im Wesentlis cultural centre PFL for the purpose of holding various events.

On 31 January 2019, the applicant applied for the lecture hall to be let to him on 22, 27 and 29 March 2019 and seminar rooms five and six on 24 March 2019. By letter of 11 Feb ruar 2019 nahm der Antragsteller diesen „eher informell besprochenen“ Antrag auf Raumüberlassung zurück und stellte einen neuen Antrag für the above-mentioned days, the content of the application being apparent from the application for interim measures set out below. The events are to take place within the framework of the international IAW 2019 - the Israeli Apartheid Week. The events would be information events for the interested Oldenburg public as well as political meetings which would be scheduled and held in the spirit of basic democratic rights. In order to ensure a serious planning, the applicant asked for approval of the application or confirmation of the transfer contracts at least four weeks before the start of the event.

On 28 February 2019, the defendant's Lord Mayor decided to wait and not to take an immediate rejection decision on the merits after the defendant's council had reached a decision on the merits of the application.

rem Amt für Kultur und Sport erstellte, online abrufbare Vorlage (Nr. 19/0145) „Gegen any anti-Semitism! - No cooperation with the anti-Semitic BDS movement (‚boykott, divestment and sanctions‘)“ vom 19. Feb ruar 2019 on 25 February 2019. The bill states, inter alia, that the city of Munich has complied with a directive - also available online - adopted by the Council. „Arbeitsdefinition Antisemitismus“ created a basis for future administrative action. The intended decision would serve to bring about a substantive concretisation by the Council of the purpose of the BDS campaign for the provision of urban space. In Annex 1 to the above-mentioned document (preparation of the S tadt München zur „Arbeitsdefinition Antisemitismus“ vom 06.12.2017) heißt es unter „B.2.1.2 Definition“:

> „Der Antisemitismus ist eine bestimmte Wahrnehmung von Juden, die sich als can express hatred towards Jews. Anti-Semitism is directed in word or deed against Jewish or non-Jewish individuals and/or their egos, as well as against Jewish community institutions or religious organisations.

> In addition, the State of Israel, which will be understood as a Jewish collective, can also be the target of such attacks. Anti-Semitic statements often contain the accusation that the Jews were engaged in an anti-humanity offensive.
> schwörung und seien dafür verantwortlich, dass „die Dinge nicht richtig laufen“. Anti-Semitism manifests itself in words, writing and pictures as well as in other forms of action, it uses negative stereotypes and assumes negative charac
> terzüge. …“

The following are current examples of anti-Semitism in public life, the media, schools, the workplace and the religious sphere, as well as examples of anti-Semitism related to the State of Israel. In conclusion

es, „Allerdings kann Kritik an Israel, die mit der an anderen Ländern vergleichbar ist, not considered as anti-Semitic werden.“

The applicant applied for interim relief on 8 March 2019.

Insofar as the applicant originally also applied in the application under 2. to oblige the respondent by way of a temporary injunction to make technical equipment specifically described in the application provisionally available to him in the rooms requested by him at the usual conditions, the proceedings were separated by order of 18 March 2019, continued under file no. 3 B 798/19 and referred to the Local Court of Oldenburg by order of the same day due to the inadmissibility of the legal action.

The applicant claims that the Court should

> 1. order the defendant, by way of an interim measure, to grant him use under the usual conditions
>
> a) on Friday, 22.03.2019, from 18:00 to 22:00, for the implementation of
> Veranstaltung „Filmvorführung „Roadmap to Apartheid“ mit anschließender Darle-
> of the BDS Initiative Oldenburg with activists and discussion with the public
> kum“ den Vortragssaal (90 Sitzplätze, Reihenbestuhlung),
>
> b) on Sunday, 24.03.2019, from 9:00 to 17:00, to hold a Veranstaltung „BDS workshop with local and international activists on how to better implement human rights and international law in Israel/Palestine. Explicit reference to implementation possibilities in Oldenburg.
> Geschlossenes Seminar mit Voranmeldung“ die Seminarräume 5+6 (je Raum 20 chairs and tables),
>
> c) on Wednesday 27.03.2019, from 17:00 to 21:00, for the implementation
> der Veranstaltung „Vortrag, Titel: „Apartheid, Siedlerkolonialismus und Meinungs-
> freiheit.“ Referent und Diskussion mit Prof. Norman Paech, mit Vorstellung der BDS Initiative Oldenburg with other active members of the BDS movement and discussion
> mit dem Publikum“ den Vortragssaal (60 Sitze in Reihenbestuhlung),

d) as well as on Friday, 29.3.2019, 18:00-22:00, for the organisation of the staltung „Vortrag: Titel: Menschenrechtsarbeit in Oldenburgin Gefahr? corporate players in Oldenburg and elsewhere, they try to obstruct the Palestinian human rights campaign BDS through defamation and spatial deprivation. A look back with a view: What can be learned from this for local work? und ziviles Engagement lernen?“ Mit Vorstellung of the BDS Initiative Oldenburg with other active members of the BDS movement and discussion with the Christoph Glanz“ den Vortragssaal (60 Sitze in Reihenbestuhlung. 2 Tische auf der audience, speaker: stage),

in the municipal cultural centre PFL, alternatively to make other municipal rooms available on a provisional basis in accordance with the Statutes for the use of rooms in buildings of the City of Oldenburg dated 19 June 2017 and Annexes 1 and 2 to the Statutes for the use of rooms in buildings of the City of Oldenburg dated 19 June 2017,

2. in the alternative, to decide on its application for the use of space of 11 February 2019 for the use of the urban spaces named in the application under 1. a) to d) by 12 March 2019.

The defendant requests that

the application be

dismissed.

II.

1. The applicant's application is unsuccessful.

1.1. If interpreted correctly, his request is to be interpreted in accordance with §§ 122 (1), 88 of the German Administrative Court Rules (VwGO) to the effect that with his application under 1. he is seeking an interim injunction requiring the defendant to grant him provisional (public law) access (admission) to the event rooms in the municipal cultural centre PFL named in this application under a) to d), or alternatively to the other rooms named in the application under 1. for the purpose of staging the events listed.

The first application thus understood is admissible with regard to the main application (1.2.1.), but unfounded (1.2.2.). The same applies to the auxiliary request under 1. (1.3.). The request under
2. is inadmissible (1.4.).

1.2.1. Admissibility

1.2.1.1. With regard to the application under 1. in the sense understood by the court,

administrative recourse is available under § 40 (1) sentence 1 VwGO. It is true that the Council of the defendant, by decision of 19 June 2017, adopted the aforementioned statutes, which were adopted on

15 August 2017 came into force. The explanatory memorandum to the proposed decision of 8 June 2017 (document 17/0491) states that the statutes, together with Annex 1 and Annex 2, constitute the highest level of regulation and that „Zweck" provide general rules on the following

of a usable public facility, and pursuant to Article 3 (1) sentence 1 of the Articles of Association, the rooms are made available within the framework of a transfer agreement to be concluded in writing (cf. judgment of the VG Oldenburg of 27 September 2018 - 3 A 3012/16, juris, marginal no. 47, known to the parties). Nevertheless, the decision on admission to a public institution and thus also to the municipal cultural centre PFL is always made by (possibly implied) administrative act (cf. Nds. OVG, decision of 18 June 2018 - 10 ME 207/18 -, juris, marginal no. 35; Wefelmeier in KVR- NKomVG, as of March 2012, § 30 marginal no. 7, with further references). This view is apparently now also shared by the respondent, who, in her reply to the application at any rate, did not challenge the admissibility of legal action.

1.2.1.2. Furthermore, the application is admissible (cf. § 123 (5) VwGO) because interim legal protection in the event that the respondent were to make a negative decision before the first day of the event would not be obtained pursuant to § 80 (5) VwGO, since an action for annulment would not be filed, but rather an action for an obligation.

1.2.1.3. The applicant is also entitled to file an application in accordance with § 42 (2) VwGO. In proceedings for interim relief under § 123 VwGO, the applicant must at least possibly be entitled to a subjective right that could be infringed as a result of the defendant's actions or omissions (cf. OVG Nordrhein-Westfalen, order of 27 October 2017 - 5 B 1251/17 -, juris, marginal nos. 8 f.; BeckOK VwGO/Kuhla, 48 Ed. 1.7.2018, VwGO § 123 marginal no. 35). This possibility must be ruled out if the applicant's subjective rights can obviously not be violated from any point of view (cf. BVerwG, judgement of 10 October 2012 - 6 C 36.11 -, juris, marginal no. 17). Measured against this, it is not excluded from the outset that the above-mentioned condition is fulfilled. The applicant, who now lives in the urban area of the respondent, is entitled under § 30 (1) of the Nds. Kommunalverfassungsgesetz (NKomVG) as a resident of the respondent to use its public facilities and thus also the PFL as part of the existing regulations.

1.2.1.4. Lastly, the applicant does not lack an interest in bringing proceedings. In view of the defendant's inactivity and the content of its application, it cannot assume that it will decide on its application of 11 February 2019 in a timely manner in its favour. It is true that in the field of university admission law, the view is taken that there is regularly sufficient reason for

the granting of interim legal protection with the aim of provisional admission to the higher education institution of choice outside the fixed capacity is lacking if the applicant has been able or has been able to take up the desired course of study at another higher education institution in Germany without a specific orientation of the course of study at the higher education institution of choice (cf. OVG Nordrhein-Westfalen, Order of 23 September 2011 - 13 C 58/11 -, juris, marginal no. 2). In the opinion of the court, however, this case law is not transferable to the right of access to public facilities, at any rate not if the rooms sought by the resident are actually available, as in this case. On this basis, the court considers it to be legally irrelevant whether the applicant would have been able to rent sufficient non-urban event rooms in the area of the defendant.

1.2.2. However, the application under 1. is unfounded.

1.2.2.1. A temporary injunction can only be issued if there is both a reason for the injunction, i.e. the urgency of the requested regulation, and a claim for an injunction, i.e. the entitlement to the requested benefit, must be substantiated (§ 123 (3) VwGO in conjunction with §§ 920 (2), 294 Code of Civil Procedure - ZPO -).

1.2.2.2. In that context, it must be taken into account that, despite der Verwendung des Begriffs „vorläufig“ in seinem Antrag mit der erstrebten Zulassung concerning the municipal cultural centre PFL, does not seek interim measures but a definitive anticipation of the decision to be sought in the main proceedings. In proceedings under Paragraph 123(1) of the VwGO (German Rules of the Administrative Courts), however, applications anticipating the main proceedings are to be granted only in exceptional cases if waiting in the main proceedings would result in serious and unreasonable disadvantages for the applicant which cannot be subsequently eliminated. In this case, the respective affected fundamental or subjective right and the requirements of effective legal protection must be taken into account (cf. BVerwG, decision of 26 November 2013 - 6 VR 3.13 -, juris, marginal no. 5).

It can be left open whether the above conditions for an anticipation of the main proceedings are fulfilled.

1.2.2.3. Irrespective of the foregoing considerations, there is in fact no prima facie evidence of a claim for an injunction.

1.2.2.3.1. It should be noted that a request for a decision anticipating a decision on the substance of the case will only be granted

The Commission considers that a decision on the merits of the case may be successful if it is based on a summary examination of the facts of the case during the preliminary proceedings. If an applicant would already achieve the objective to be pursued in main proceedings by means of a temporary injunction, a strict standard must be applied to the prospects of success in main proceedings (cf. BVerwG, decision of 26 November 2013 - 6 VR 3.13 -, loc.cit., juris, para. 7).

1.2.2.3.2. In the light of that legal framework, it is not apparent at this stage with the requisite degree of probability that the defendant in the main proceedings would be obliged to admit the applicant to the premises of the municipal cultural centre PFL for the events to which he refers.

1.2.2.3.3. According to § 30 (1) NKomVG, residents are - as already explained above (No. 1.2.1.3.) - entitled to use the public facilities of the municipality within the framework of the existing regulations. The concept of a public facility is characterised by the fact that the municipality fulfils a task towards its inhabitants that falls within its sphere of activity by making available for general use a physical, personnel or organisational unit maintained by it for this purpose. With the dedication of the facility, which can be done by formal act or by implied action, the purpose of the facility (dedication purpose) is defined and its publicity is created. The purpose of the dedication may limit the right to be admitted under municipal law. Especially in the case of voluntary facilities, the local authority has a wide scope of action with regard to the requirements, conditions and type of use. For example, local authorities are in principle entitled to define access to their public facilities by means of conditions of use and to restrict the right to use them, for example by imposing time limits, capacity limits or content requirements. It is sufficient if access is granted according to objective criteria. If the purpose of the public facility has not been defined by the municipality in a usage statute, usage regulations or a decision on the dedication of the facility, the scope and limits of the dedication can only be determined by the previous usage and transfer practice of the municipality (Nds. OVG, decision of 18 June 2018, loc.cit, marginal no. 35, with further references; cf. also VG Oldenburg, decision of 22 May 2017 - 3 A 3012/16 -, juris, marginal no. 11; Wefelmeier, loc.cit., marginal nos. 2 to 7 and 14 ff.)

1.2.2.3.4. It remains open in the present proceedings whether the information provided by the defendant on

In this context, the statute adopted by the City Council on 19 June 2017 regarding public access (admission) to the municipal cultural centre PFL as a public institution can be applied at all, although the predominant argument against it and thus exclusively in favour of its applicability under private law is that it is not.

The following aspects in particular speak against the applicability of the statutes in these proceedings:

The defendant's legal office explained - as already partly described above (1.2.1.1.) in the explanatory memorandum to the proposed resolution of 8 June 2017 (submission 17/0491) - that the statutes, together with Annex 1 and Annex 2, represent the highest level of regulation and that they regulate public institutions in general trakt den „Zugang“ zu einer nutzbaren. The provision of premises is governed by private law and takes place in detail through the conclusion of an agreement. In order to implement the statutes, it is therefore essential to „Allgemeine Geschäfts- and use zungsbedingungen zur Nutzung von Räumen in Gebäuden der Stadt Oldenburg“ (im Further: AGB), which have to be accepted by all users before conclusion of the contract. These GTCs would further specify the type of use and would be issued by the Lord Mayor. Finally, the remaining questions would be developed at the lowest level by means of a model contract (individual agreement). In addition, the susceptibility of the statutes would be greatly reduced, as possible civil law problems in a contractual relationship would be shifted to an application level. Nor does it appear from the extracts submitted by the defendant from the minutes of the meetings of the General Affairs Committee, the Management Committee and the Council on 19 June 2017 that the respective members of the Committees and the Council were informed that the admission to public bodies is governed by public law and the use by private law.

Ferner lautet § 1 Abs. 1 Satz 1 der Satzung, „Diese Satzung in Verbindung mit der ‚Anposition 1 Auflistung der Räumlichkeiten‘ (…) sowie der ‚Anlage 2 - Entgeltordnung‘ (…) regulates die Überlassung von städtischen Räumen in Gebäuden der Stadt Oldenburg (…).“, and in accordance with § 3 (1) sentence 1 of the Articles of Association, the rooms are provided within the framework of

a transfer agreement to be concluded in writing. In addition, according to § 2 (3) of the statutes, the premises - and not access under public law - are not made available to residents who do not support the free democratic basic order on account of their objectives. It is legally irrelevant, d „Nach Maßgabe dieser Satzung § Further the ass es in 1 Abs. 1 Satz 2 heißt, der in im

City as well as every legal entity with its registered office in Oldenburg has a right to access the respective öffentlichen Räumlichkeiten." Denn einen

However, the statutes do not explicitly specify the conditions to be met in order to be entitled to authorise public access to urban areas. There is also some evidence to suggest that the statutes should at least clarify the definition of
§ The first sentence of Article 3(1) of the statutes would have contained a provision stating that a decision on a - possibly implied - application for authorisation of public access would be taken by administrative act,
wenn beabsichtigt gewesen wäre, das „ob" der Nutzung der städtischen Räume öffent-
to be regulated by law. For example, Article 1(8) of the Guidelines for the Transfer of Function Rooms in the Municipal Cultural Centre PFL (Guidelines), which have been in force since 1 June 2007 and which - the Court of First Instance assumes - should be completely superseded by the statutes, states that in all cases of transfer of use, the provisions
dieser Richtlinie zum Inhalt der „Nutzungsgenehmigung" zu machen.

It must also be borne in mind that, in Case 3 A 3012/16 pending before the Court of First Instance, in which the applicant successfully sought a declaration that the annulment, on 13 May 2016, of the decision of the Court of First Instance of the decision to grant the applicant the use of the auditorium at the municipal cultural centre PFL for the purposes of holding a lecture series, referred to in the judgment of
In any event, until the order of the Nds. OVG of 11 September 2017 (10 OB 51/17) rejecting the applicant's appeal against the order of the Court of First Instance of 22 May 2017, the Commission took the view that there was no administrative remedy for the applicant's action.

Furthermore, a letter from the defendant dated 8 June 2017, which was drawn up one day before the abovementioned proposal for a decision by the Legal Office, states
On 7 June 2017, which the applicant in Case 3 A 3012/16 attached to its statement of 1 June 2018, the defendant withdrew from the contracts concluded with a third party for the use of the auditorium at the PFL cultural centre, even though the defendant had already received the order of 22 May 2017.

Ferner ist in diesem Zusammenhang anzumerken, dass das „Regelungswerk" d the opponent is partly unclear and unclear. For example, in the Articles of Association and in the General Terms and Conditions of Business and Use for the use of

rooms in buildings of the City of Oldenburg (AGB) of 15 August 2017 contain partly identical or similar regulations. It should be emphasised in particular that § 1 Abs. 1 Satz 1 der AGB lautet, „Die vorliegenden Bestimmungen regeln die Überlassung von städtischen Räumen in Gebäuden der Stadt.“, und damit im Wesentlichen mit der is identical to the provision of Article 1 (1) sentence 1 of the Articles of Association already quoted above.

It is also not sufficiently apparent that, despite the foregoing, the defendant's council intended not to regulate the use of the urban areas mentioned in the statutes exclusively privately, but to make admission to them subject to a permit granted under public law.

1.2.2.3.5. Irrespective of the foregoing, the question of the applicability of the Articles of Association is, however, not relevant to the decision.

1.2.2.3.5.1. If it were applicable, the provision of § 2 (3) already cited above would have to be taken into account. It would be assumed that it would be permissible to take this provision, which according to the statutes applies solely to the private-law transfer agreement, into account when examining whether there is a right to authorisation of public-law access to the municipal cultural centre PFL.

If they were to be inapplicable, the Court of First Instance considered that the directives referred to above, which have not in any event been expressly repealed under the Statute, would still have to be taken into account as the content of previous administrative practice, the third subparagraph of Article 1(1) of which states

> „Eine Überlassung von Räumlichkeitto users who, by virtue of their statutes or objectives, do not support the free democratic basic order nicht.“

Im Gegensatz zum Inhalt der Satzung lässt sich den Richtlinien trotz des Begriffs „Überlassung“ in § 1 Abs. 1 Unterab § 1 AB that it also contains regulations for the (public law) admission to the municipal cultural centre PFL (cf. VG Oldenburg, decision of 22 May 2017 - 3 A 3012/16 -, juris, para. 11).

If the Directives are not taken into account either because they have been repealed, it can be seen from the following that no other decision would be taken either.

1.2.2.3.5.2. The limitation of (public law) access to the municipal cultural centre PFL resulting from § 1 (1) subparagraph 3 of the guidelines and § 2 (3) of the statutes would be permissible in both cases. In this respect, the regulations are not applicable-hend auszulegen, dass die „Überlassung“ nur dann nicht gewährt wird, wenn die in den

In the context of the events they organise, the persons referred to in the regulations do not, by virtue of their statutes or their objectives, stand up for the free democratic basic order. However, this does not apply to their conduct outside the PFL (and other urban areas mentioned in Annex 1 to the Statute). This is supported by the fact that the defendant stated in its statement of 13 March 2019 that the condition of similarity was already lacking. The events listed by the applicant are not events which were presented or supported by the BDS campaign.

1.2.2.3.5.3. The right of residents to use the public facilities and services of tungen der Kommune zu benutzen, ist nur „im Rahmen der bestehenden Vorschriften“ given. A boundary therefore constitutes a higher-ranking right (cf. Wefelmeier, loc.cit., § 30 marginal no. 14). A limitation of the right to admission may therefore arise in particular from fundamental rights. Under Article 1 (1) of the Basic Law, human dignity is inviolable. All state authorities are obliged to respect and protect it. The use of a public institution must therefore not violate the fundamental right under Article 1(1) of the Basic Law, i.e. the guarantee of human dignity enshrined therein (on the fundamental right character of the guarantee of human dignity, see BVerfG, Judgment of 5 February 2004 - 2 BvR 2029/01 -, juris, marginal no. 73; Maunz/Dürig/Herdegen, 85 EL November 2018, Basic Law Article 1(1) marginal no. 29, with further references). Respect for and protection of human dignity are among the constitutional principles of the Basic Law. Human dignity protects the social value and respect of the human being, which prohibits making the human being a mere object of the state or exposing him or her to treatment that fundamentally questions the quality of the subject (BVerfG, judgement of 5 February 2004, loc. cit., marginal no. 66). Human dignity is based exclusively on membership of the human species, irrespective of characteristics such as origin, race, age or gender. Recognition as an equal member of the legally constituted community is inherent in the individual's claim to respect as a person. A legally devalued status or humiliating unequal treatment is therefore not compatible with human dignity. This applies in particular if such unequal treatment violates the prohibitions of discrimination in Article 3 (3) of the Basic Law - according to which no one may be discriminated against or favoured on account of his or her sex, ancestry, race, language, home and origin, faith, religious or political beliefs - which - irrespective of the fundamental question of the human dignity content of the fundamental rights - is in any case a concrete manifestation of human dignity. Anti-Semitic concepts or concepts aiming at racial discrimination are not compatible with this and violate the free democratic basic order (BVerfG, judgment of 17 January 2017 - 2 BvB 1/13 - <NPD prohibition proceedings>, marginal no. 541).

1.2.2.3.6. Taking the above explanations into account, the applicant, as a resident of the defendant, would have a public-law right of access to the rooms requested by him under Section 30(1) NKomVG, because it can be seen from the defendant's administrative procedure that they would be available on the dates requested by the applicant if other provisions did not apply. However, it is not sufficiently likely that the latter condition is fulfilled.

1.2.2.3.6.1. Taking into account the standard of review set out above, which is mandatory in these proceedings, the applicant has not sufficiently substantiated that a decision on the merits of the case would be recognisably successful on the basis of the merely summary examination of the facts of the case, which includes the question of whether the concept of the BDS campaign is to be assessed as anti-Semitic, resulting in a violation of Article 1 (1) of the Basic Law. If the statutes or the guidelines were to be applicable, this would include, in particular, the determination of whether the applicant is responsible for the free democratic basic order. In this connection, the Court is of the opinion that the existence of an anti-Semitic concept also means that anti-Semitic objectives are being pursued. If both the statutes and the directives were not applicable, the only relevant question would be whether there was a violation of Article 1(1) of the Basic Law. In support of his application, the applicant submitted, inter alia, an affidavit stating that he had always stood up against racism and anti-Semitism and that he found it intolerable that he should be accused of doing so despite his commitment to human rights. It should be noted, however, that he himself stated this in his application,

tion(BDS)-Kampagne auf. insbesondere auch Konzepte und Ziele der „Boycott, Divestment and Sanctions BDS campaign. Furthermore, the assumption is justified that, if an anti-Semitic concept and the pursuit of anti-Semitic goals are present, an event is basically also the subject of such an event if its stated content indicates this. The latter condition is fulfilled in all likelihood, because all topics mentioned in the application under 1. a) to d) are directly related to the activities of the BDS campaign.

1.2.2.3.6.2. In view of the extensive, but only partially presented submissions of both parties (see 1.2.2.3.6.3. and 1.2.2.3.6.4.), including the contents of Annexes 1 and 2 to the respondent's submission No. 19/0145 of 19 February 2019, the remaining comments under 1.2.2.3.6.5. and other generally accessible sources of information, the len sowie der Vielschichtigkeit der Problematik im Zusammenhang mit dem Begriff „Antisemitismus“ kann in diesem auf vorläufigen Rechtsschutz gerichteten Verfahren nach
Commission has decided to reject the application.

necessary, but also sufficient summary examination of the situation is not included

it can be sufficiently established that the concept of the BDS campaign and its objectives are not anti-Semitic and thus do not violate Article 1 (1) of the Basic Law and that the applicant, as the organiser, is committed to the free democratic basic order.

In addition, it must be pointed out that the applicant himself stated in his application that the defendant's assertion that the BDS campaign was incompatible with the liberal demokra „in tischen bestünde, sei Anbetracht des vorgenannten Vortrags“ infam und werde den „komplexen“ Anforderun- of the Federal Constitutional Court to establish such incompatibility.

1.2.2.3.6.3. The applicant submits, inter alia, that the abovementioned international campaign continues to call for boycott, disinvestment and sanctions against the State bis die „Besetzung und Kolonisation allen arabischen Landes beendet und die Mauer of Israel as long as

The schüt BDS campaign, which has been torn down, recognises the fundamental right of Arab-Palestinian citizens of Israel to full equality and respects the rights of Palestinian“ refugees to return to their homes and property as agreed in UN Resolution 194, rejects schüt racism and anti-Semitism and abstains from the one- or two-state solution. The campaign is based on the anti-apartheid campaign against the state of South Africa in the 1980s and refers to the international definition of apartheid and the internationally enshrined rights of Palestinians. It is a form of action protected by fundamental rights within the meaning of Article 5(1) of the Basic Law. The international week of action is of particular significance for the e „Israeli Apartheid Week“, in der die ersten beiden Veranstaltungen stattfinden sollten. Die internationale „Israeli Apartheid Week“ In 2019, it will have a special public impact by taking place simultaneously in hundreds of different locations worldwide to raise awareness of the Israeli military occupation of over five million Palestinians and the explosive developments for the Arab minority in Israel. Public interest in his information was extremely high. Both the local press and readers of the local press had commented on the way the Lord Mayor of the defendant intends to deal with the BDS campaign. The accusations in the draft resolution were untenable. The BDS campaign is not directed against Jews because they are Jewish, but against the occupation policy of the Israeli state and for the human and international rights of the Palestinians. There was no official working definition of anti-Semitism by the EUMC (European Monitoring Centre on Racism and Xenophobia) and its successor organisation the European Union Agency for Fundamental Rights (EUMC/FRA). The EUMC/FRA had established the so-called

„Arbeitsdefinition“ nie verabschiedet und sie sei auch nicht professionally recognised. The adoption of the definition was rejected because the criticism of Israel and its occupation policy was described too sweepingly as anti-Semitic. A revival
bung der „Nicht-Definition“ der EUMC/FRA finde sich alle rently since the cabinet decision of the Federal Government (government press conference on 20 September 2017). They refer to the proposal of the intergovernmental organisation „International Holocaust Remembrance Alliance“ (IHRA), die die „Nicht-Definition“ der EUMC/FRA als adopted its own working definition in May 2016. The Federal Government had extended the definition by adding the first sentence of the declaration to the working definition. This had explicitly included the attack on the Israeli state as a possible expression of anti-Semitism and excluded others. For anti-Semitism research, but also for the judiciary and educational institutions, the adopted definition of the executive, which is not legally binding with its many indefinite
Begriffen, einen herben Rückschlag, da sie die Kritik an der „Definition“ des EUMC und ignoring all scientifically recognised discussions on anti-Semitism. In view of the fact that the Federal Cabinet omits all other case studies and only includes criticism of Israel in its own working definition, this attempt to stand up against anti-Semitism can only be regarded as failed or ideologically motivated. The report of the independent circle of experts on anti-Semitism (BT-Drs. 18/11970) did not stand up to critical examination. Among other things, it uses a definition which is not scientifically based. The report even states that it excludes the BDS campaign from its assessment. Furthermore, the applicant refers to various statements or declarations made, inter alia, by governments, politicians and individuals, according to which freedom of expression for the BDS campaign is supported, the BDS campaign is covered by freedom of expression, the call for or participation in a boycott is a form of expression which is peaceful and does not involve a threat to the protection of the environment.
lich, legitim und international akzeptiert sei, und „(…) Kritik an der Politik des Staates Israel is covered by freedom of expression, insofar as this is not motivated by hatred of the
‚Kollektiv der Juden‘, der Religionszugehörigkeit zum Judentum oder andere rassistische Zuschreibungen motiviert ist“.

In addition to the defendant's argument, the applicant essentially submitted that it could not substantiate its counterclaim with regard to the claim, refuted in the application, that the IHRA definition had not been adopted by the EUMC/FRA. The content of the statement of the BDS National Committee (BNC) of 21 November 2017 to the Munich City Council was capable of refuting numerous false assertions of the defendant. The drafting of the draft resolution was riddled with factual and factual errors. On the antisubject

The courts have used very different definitions of the concept of mitism. In none of those cases was the support for the BDS campaign or the BDS campaign considered sufficient for the acceptance of anti-Semitic attitudes or allegations, although it had been put forward several times as evidence.

und die „Nicht-Definition“ des EUMC Anwendung gefunden habe. Gänzlich unbeachtet It also remains the case that official Israeli statements have been made that a two-state solution can no longer be achieved due to the illegal Israeli settlement of the sovereign state of Palestine, as defined in the Oslo agreements.

1.2.2.3.6.4. The defendant, on the other hand, essentially claims that the BDS campaign pursues anti-Semitic objectives and thus does not stand up for the free democratic fundamental order. That also applies to events at which the BDS campaign advocates its objectives. In this respect, it refers first of all to the relevant elaborations of the City of Munich of 6 December 2017, to which it referred in its Council Bill 19/0145. The statements of the applicant that the matter in question was

bei der „Arbeitsdefinition Antisemitismus“ nicht um eine offizielle Definition, überzeugten not. Rather, the European Parliament had called on the Member States, in a decision

vom 1. Juni 2017 dazu aufgefordert, die „Arbeitsdefinition Antisemitismus“ anzunehmen and to implement it (European Parliament resolution of 1 June 2017 on combating anti-Semitism (2017/2692 (RSP), referred to under B. 2.) This approach was supported by the Bundestag and the Federal Government, which had recommended that the international definition be adopted. Since then, the working definition has also served as a basis for courts to assess statements as anti-Semitic. One of the anti-Semitic demands of the BDS campaign was to end the occupation and colonisation of all Arab countries and to grant Palestinian refugees the right to return to their homeland. This demand was aimed at Israel's right to exist as a Jewish state. A return of the approximately 5 million Palestinian refugees would result in the degradation of Jewish populations to a minority and would lead to the end of Israel as a (Jewish) state. Further anti-Muslim statements can be found in a strategic position paper of the BNC (Pa- lestinian BDS National Committee) of 2009. The antisemitic character of the BDS-

Maskottchens „Handala“ ebenfalls in des

by the international BDS- Kampagne. Das Zeichentrickmännchen „Handala“ sei eine comic figure popular in the Arabic world. She appears in drawings that call for violence against Israel, depict a denial of Israel's right to exist and the rejection of peace negotiations. This graphic is also used on the pages of the BDS Initiative Oldenburg.

1.2.2.3.6.5. In addition to the arguments put forward by interested parties, the following is given as an example:

In an answer from the Lower Saxony Ministry of Culture on behalf of the state government to an oral question concerning the applicant (article information 24.11.2016 - available at http://www.mk.niedersachsen.de/startseite/aktuelles/presseinformationen/lt-november-plenum-top-25-written answer to the oral question number-12-148847.html) it says among other things For the research of the question, to what extent the BDS campaign can be characterised as anti-Semitic, various scientific studies and journalistic articles, as well as publicly accessible statements and announcements of the German and international web presence of the BDS campaign were used. In addition, contact had been made with the Federal Foreign Office, the Federal Agency for Civic Education and the Lower Saxony Office for the Protection of the Constitution in order to find out their opinions, compare them with their own findings and thus form their own differentiated picture. After this research a complex picture of the BDS campaign emerges. Its heterogeneous followers cannot be described as anti-Semitic in general, but it does have some extremely problematic or controversial characteristics. The state government shares this assessment with the Federal Foreign Office, the Federal Agency for Civic Education and the Lower Saxony Office for the Protection of the Constitution. The Federal Government had also made it clear, in the context of answering a minor question from several members of the parliamentary group BÜNDNIS 90/DIE GRÜNEN (Bundestag Drs. 18/4173), that it had no information that would allow the Federal Office for the Protection of the Constitution to observe the BDS campaign. The point of reference for assessments of the BDS campaign as anti-Semitic is the concept of

eines „antizionistischen“ oder „israelbezogenen Antisemitismus“, der auf die Ablehnung

the State of Israel's right to exist. Such an assessment of the BDS campaign is not uncontroversial, however, but is discussed very controversially. It should be noted that there is no generally shared definition of the term anti-miticism and its various manifestations.

At the aforementioned government press conference on 20 September 2017, the cabinet reported that it had today taken note of the working definition of anti-Semitism adopted by the International Alliance for Holocaust Thought in an expanded form. The adoption of this working definition in the plenary session of the International Alliance for Holocaust Remembrance in May 2016 was due to a German-Romanian initiative. The definition in its extended form is as follows:

> „Anti-Semitism is a certain perception of Jews that can express itself as hatred towards Jews. Anti-Semitism is directed in word or deed against Jewish or non-Jewish individuals and/or their property, as well as against Jewish community or religious institutions. In addition, the State of Israel, as a Jewish collective, can also be a target of anti-Semitism.
> den wird, Ziel solcher Angriffe sein.“

It adds that the Federal Government is pursuing the aim of reaffirming Germany's responsibility in the fight against anti-Semitism through the cabinet. Furthermore, it should give even more weight to Germany's foreign policy credibility vis-à-vis our partners and international organisations. The working definition in its expanded form should be taken into account in school and adult education as well as in the fields of justice and the executive, insofar as this is not already the case in this or a similar form. The Federal Cabinet's referral to the working definition of anti-Semitism of the International Alliance for Ho Locaust Remembrance has no direct legal effect, but it does have a recommending and symbolic effect.

In the Federal Government's answer of 14 September 2018 (BT-Drs. 19/4248) to a minor question, it is stated that the Federal Government firmly rejects any calls for a boycott against the State of Israel and firmly opposes any manifestation of anti-Semitism. When asked whether the Federal Government was planning to ban the BDS, she replied that she did not generally express any thoughts of banning it, regardless of whether there was any reason to do so in individual cases. She pointed out, however, that the concept of association in the law on associations is an open concept in every respect. From all extremist areas of observation there were indications of references to the BDS campaign. In individual cases, these were of varying importance. This circumstance and the fact that the BDS campaign as a whole comprises a very heterogeneous spectrum of organisations and members does not currently allow for a blanket assessment of the extremist influence on this campaign.

1.2.2.3.6.6. On the basis of the foregoing, the applicant could in all probability successfully invoke the fundamental rights of freedom of assembly (Article 8 (1) of the Basic Law) and freedom of opinion (Article 5 (1) of the Basic Law) in proceedings on the merits only if a violation of Article 1 (1) of the Basic Law were not established, which is not sufficiently likely. For human dignity as the root of all fundamental rights cannot be weighed "against any individual fundamental right (BVerfG, Order of 10 October 1995 - 1 BvR 1476/91 -, juris, marginal no. 121). Freedom of opinion and freedom of assembly must always withdraw if the statement offends the human dignity of another (cf. BVerfG, loc. cit., expressly on freedom of opinion).

In so far as the applicant relies on the judgment of the Court of First Instance of 27 September 2018 (3 A 3012/16), it must be pointed out that the essential difference between those proceedings and the pending proceedings is that, in 2016, the applicant was initially granted public access to the PFL by an implied administrative act, but that that access was subsequently impliedly annulled. On the basis of his application of 11 February 2019, the applicant was not entitled to be granted the requested premises.

has been promised. The respondent only confirmed the receipt of this application in an e-mail dated 18 February 2019 and pointed out that the political bodies were currently discussing the fundamental question of a position on the BDS Initiative Oldenburg. This could not be anticipated in this respect. In view of the fact that the applicant, in his letter of 11 Feb- ruar 2019, had informed the defendant of the content of the telephone calls he had made with employees of the defendant prior to 11 February 2019, it is not ruar 2019 gleichzeitig seinen „eher informell besprochenen“ Antrag auf Raumüberlas- possible to prejudge the content of these calls.

sion of 31 January 2019 was legally irrelevant after summary examination. Apart from this, an undertaking given by the competent authority to adopt a certain administrative act at a later date (assurance) requires the written form in order to be effective (see § 38 (1) sentence 1 VwVfG). Moreover, the applicant does not base his request in his application on a promise by the respondent. In connection with the statement of the reason for the order, it is often stated that he cannot acquire the film screening rights for 22 March 2019 as long as no commitment is given.

1.2.2.3.7. Finally, the applicant cannot successfully invoke a claim under Article 3 (1) of the Basic Law on the basis of the above-mentioned principles, which apply accordingly here. Even if the defendant had in the past, in disregard of the provisions in the third subparagraph of Article 1(1) of the guidelines and in Article 2(3) of the statutes, authorised persons to have public access to the municipal cultural centre PFL, this would be legally irrelevant because, in the event of a breach of Article 1(1) of the Basic Law on account of an anti-Semitic concept and the pursuit of anti-Semitic objectives, it would still not be possible to establish that the applicant is responsible for the free democratic basic order.

Apart from this, it is also not apparent that the defendant has in the past not been able to identify persons who - in the event of the applicability of the statutes or guidelines - at the respective time, based on their objectives, for the reasons named under 1.2.2.3.6.1. and taking into account the interpretation of § 1 (1) (1) (b), (c), (d), (e), (f), (g), (h) and (g). In the event of the applicability of the statutes or guidelines, the association did not stand up for the free democratic basic order, approved the public access to the PFL or did not (impliedly) revoke the approvals granted.

On this basis, it is legally irrelevant that the applicant claims, for example, that events on the same subject matter are regularly held in the premises of PFL which are the subject of the dispute. For example, a BDS- „Die

Because of his support for the BDS campaign, which is characterised as anti-Semitism

and an attempt was made to prevent the event from taking place, which the defendant refused to do. It has not been shown, nor is it apparent in any other way, that the person concerned did not stand up for the free democratic fundamental order during the event. The defendant submitted that the event had dealt exclusively with the subject of the presentation of the book. The same applies to the applicant's argument that the former member of the Central Council of Jews in Germany, Rolf Verleger, was also allowed to present his new book at the PFL and is a member of the Jewish Voice for a Just Peace in the Middle East e.V., which supports the BDS campaign. The defendant has declared, without objection, that the event in question was held in accordance with the announcement of the BDS campaign.

... ng und Verlauf um eine Buchvorstellung mit dem Titel „100 Jahre Heimatland? Israel zwischen Nächstenliebe und Nationalismus“ und nicht um eine Unterstützerveranstaltion for the BDS campaign.

1.3. The first alternative claim is admissible but unfounded.

The statements under 1.2.1 and 1.2.2 apply accordingly, insofar as they are relevant. In the alternative, the applicant requests that the defendant be ordered by way of an interim injunction to provisionally make available to him urban spaces for use under the usual conditions in accordance with the statutes and Annexes 1 and 2 to the statutes. It should be noted that the Court of First Instance is no longer required to consider the question of which other public bodies referred to in the statutes were already covered by directives before the adoption of the statutes. Even if directives existed which also contained rules for admission to the respective institution, it can be inferred from the above that, in the final analysis, it is also irrelevant in law here whether the statutes were applicable or whether the rules contained in the third subparagraph of Article 1(1) of the directives applicable to the PFL were also included in the directives applicable to other public institutions of the defendant.

1.4. The alternative claim in the second place is inadmissible.

In the alternative, the applicant requests that the defendant be ordered by way of a temporary injunction to give a decision on its application for the use of space from 11 February 2019 for the use of the urban spaces named in the application under 1. a) to d) until 12 March 2019.

It is true that, in order to ensure effective legal protection (Article 19 (4) sentence 1 of the Basic Law), an applicant cannot, in principle, be prevented from making a mere application for a ruling by way of a temporary injunction (see VG Oldenburg, Order of 29 July

2014 - 12 B 1652/14 -, juris, para. 33; W.-R. Schenke in Kopp/Schenke, VwGO, 23rd ed. 2017, Rn. 8: „Neubescheidung eines Antrags mit vorläufiger Wirkung“). Dem Antragstel- However, the applicant has no legal interest in bringing proceedings in these proceedings, if only because the period of time mentioned by him in the alternative claim has elapsed. Apart from that, it is not apparent what legal interest he might have in doing so in the light of the first head of claim. Even without the auxiliary request, he could file an action after the respective completion of his request if the respondent did not issue a decision by the respective planned date of the event, whereby it can remain open at this point what type of action would be involved. If the defendant were obliged to issue a new decision and the decision were issued before the events planned by him, he could also bring an action against it if the decision was negative for him. In view of the defendant's conduct, it is not to be expected that she will voluntarily grant the applicant's application.

The decision on costs is based on § 154 (1) VwGO.

2 The determination of the amount in dispute is based on § 53 (2) No. 1 of the Court Costs Act (GKG) in conjunction with § 52 (2) GKG taking into account the recommendation no. 22.3 of the catalogue of amounts in dispute 2013 (NVwZ Supplement 2013, 57 et seq.), according to which the amount in dispute is the economic interest when using a municipal facility and otherwise the collection value. Since it is not evident that the applicant was pursuing an economic interest in applying for a temporary injunction and the facts and circumstances of the case do not provide sufficient indications for determining the amount in dispute, a value in dispute of 5,000 € is to be assumed,00because the applicant's request would have precluded the decision in the main proceedings (see no. 1.5. of the catalogue of values in dispute 2013) (cf. VG Oldenburg, decision of 18 May 2016 - 3 B 2172/16 -, known to the parties).

Information on legal remedies

An appeal against No. 1 of this decision may be lodged with the Higher Administrative Court of Lower Saxony in Lüneburg. The appeal must be lodged within two weeks of notification of this decision with the

Oldenburg Administrative Court, Schloßplatz 10, 26122 Oldenburg

to be inserted. The time limit for appeal is also deemed to have been observed if the appeal is received by the Lower Saxony Higher Administrative Court in Lüneburg within the time limit.

The grounds of appeal must be stated within one month of notification of the decision. The statement of grounds, if it has not already been submitted with the appeal, must be filed with the

Higher Administrative Court of Lower Saxony, Uelzener Straße 40, 21335 Lüne- burg

to be submitted. It must contain a specific request, state the reasons for which the decision is to be amended or annulled and deal with the contested decision.

The complainant must be represented by a lawyer or a teacher of law at a state or state-recognised higher education institution of a member state of the European Union, another state party to the Agreement on the European Economic Area or Switzerland which has the qualification for the office of judge, or by a person or organisation named in § 67.2 sentence 2 nos. 3 to 7 VwGO as authorised representative. Authorities and legal persons under public law, including associations formed by them to fulfil their public duties, may be represented by employees within the meaning of § 67 (4) sentence 4 VwGO.

An appeal against the determination of the amount in dispute (No. 2 of the decision) is admissible if the value of the object of the appeal exceeds 200.00 EUR. If the value is not reached, the complaint is only admissible if it is admitted by the court due to the fundamental importance of the issues to be decided. The non-admission is unappealable. The appeal is admissible only if it is brought before the Court of First Instance within six months of the date on which the decision on the substance of the case becomes final or the proceedings are otherwise terminated.

Oldenburg Administrative Court, Schloßplatz 10, 26122 Oldenburg

is inserted. If the amount in dispute has been determined later than one month before the expiry of this period, the appeal may still be lodged within one month after service or informal notification of the determination decision.

Osterloh Ristow Tute

Authenticated
Oldenburg, 21.03.2019

- electronically signed
- Weigel judicial clerk
as clerk of the office