VerfGH 49/19.VB-2 Authenticated copy

Decision

in the proceeding concerning
the constitutional complaint

1. of the Palestinian Community of Germany Bonn e.V., represented by its chairman George Rashmawi

2. of the German-Palestinian Women's Association e.V., represented by its chairmen

complainants,

represented by: Ahmed Abed, lawyer, Schönstedtstraße 7,
12043 Berlin,

against

the motion of the Landtag of North Rhine-Westphalia of 20 September 2018,
LT-Drs. 17/3577

the

CONSTITUTIONAL COURT FOR THE STATE OF NORTH RHINE-WESTPHALIA
on 22 September 2020

with the participation of the judges

Präsidentin Dr. B r a n d t s ,
Vizepräsident Prof. Dr. H e u s c h ,
Prof. Dr. D a u n e r - L i e b ,
Dr. G i l b e r g ,
Dr. N e d d e n - B o e g e r ,
Dr. R ö h l und
Prof. Dr. W i e l a n d

has decided that: The constitutional complaint is rejected after being declared inadmissible.

reasons:

I.

1 On 20 September 2018, the state parliament (Landtag) of North Rhine-Westphalia passed a motion upon proposal of the CDU, SPD, FDP and Bündnis 90/Die Grünen (LT-Drs. 17/3577) parliamentary groups on the 11 September 2018 declaring that "There is no place in North Rhine-Westphalia for the anti-Semitic BDS movement" (hereinafter, *motion*). The *motion* declares:

"Decision-making:

- We condemn the anti-Semitic and anti-Israeli BDS campaign and the call for boycott of Israeli products or companies and Israeli scientists or artists.

- Institutions of the state of North Rhine-Westphalia shall not make available any premises for the BDS campaign or support any event of the BDS campaign or of any group that pursues the goals of the BDS campaign.

- We call on cities, municipalities, districts and all public actors to join this stance.

- The state parliament supports the state government both in the prevention as in the firm opposition against anti-Semitism and all forms of extremism".

Under the heading "starting situation", the report explains, among other things, that:

> "For more than 13 years, the BDS movement (Boycott, Divestment and Sanctions) has been calling for the isolation and an economic, cultural and

> political boycott of the State of Israel. The BDS movement is not only anti-Israeli in its methods and aims, but unequivocally anti-Semitic. For example, the affixing of "DON'T BUY" signs reminds us of the darkest hours of German history. In Berlin, BDS supporters stormed a podium discussion with a Holocaust survivor and shouted it down. This is disgraceful.
>
> Criticism of the Israeli government policy must be, obviously, allowed in Germany as well as in Israel and the legitimate concerns of the Palestinian people for peaceful coexistence in their own state must also be supported. But Israel's right to exist applies to us unconditionally. It is not negotiable for us as itis part of the German raison d'être. We will not allow it to be called into question by the BDS movement."

The complainants' arguments.

2 In their constitutional complaint, filed on 20 September 2019, the complainants, two associations, appealed against the *motion*. They declare to have endorsed the BDS campaign and are listed on the campaign's website under the heading "Supporting groups and organisations in Germany" (cf. http://bds-kampagne.de/aufruf/aufruf-der palstinenische-zivilgesellschaft/unterstuetzer, accessed on 9 September 2020). They claim that the *motion*, by describing the BDS campaign as "clearly anti-Semitic", equating it with National-Socialism and stating that the BDS movement calls into question Israel's right to exist, is thus violating their fundamental right to freedom of association under Article 4 (1) of the state constitution in conjunction with Article 9 of the Basic Law. These statements defame and stigmatise the complainants and are likely to scare off future members. The "prohibition" to provide premises of the State of North Rhine-Westphalia and the call for other public actors to join this stance violates their right to equal treatment under Article 4 (1) of the state constitution in conjunction with Article 3 (1) and (3) of the Basic Law (in conjunction with Paragraph 8 (2) and (4) of the NRW municipal code). Moreover, they are penalised by this specific section in the organisation of

assemblies because of their opinions, which violates Article 4 (1) of the state constitution in conjunction with Article 5 (1) and Article 8 (1) of the Basic Law, since the call for a boycott of Israeli goods is covered by the freedom of opinion. As a result of the *motion*, the complainants were excluded by the city of Bonn from participating at the "Vielfalt" festival and should have taken legal action against it. The interference with their fundamental rights could not be justified as the Landtag had no competence to warn about the BDS campaign. Nor there could be in material terms any justification, as the accusation of anti-Semitism and the comparison with National-Socialism were unfounded. The Landtag also disregarded the constitutional principle of the independence of the judiciary by calling on "public actors", since it was also addressed to the courts. Furthermore, the Landtag resolution infringes Article 10 (1) and Article 11 (1) of the ECHR.

The Landtag’s arguments.

3) The Landtag has commented on the constitutional complaint and considers it to be inadmissible, certainly unfounded. On the one hand, the complainants' right to appeal is lacking. Given that the complaint is directed against the negative assessment of the BDS movement, the *motion* is the wrong subject of the application; **rather, the *motion* proposal and its publication are to be taken into account, since thereby the statements were publicly disclosed**. Moreover, the Landtag stresses out that the complainants are not personally affected by the judgement of the BDS campaign since they were not mentioned either directly or indirectly in the *motion* or the motion proposal. This also applied to the call for not making premises available to the BDS movement. Moreover, the complainants are not directly affected, since they are only concerned with the **prevention of future enforcement actions**, such as the non-admittance to an event. The complainants should have also first exhausted the administrative court's legal remedies. The constitutional complaint is also unfounded because the *motion* was lawful since it fell within the global parliamentary competences of the Landtag and did not infringe any fundamental rights. Even if the statements in the *motion* could affect the rights

of persons or groups which are linked to the BDS movement, the parliamentary right of the Landtag to address this issue would prevail.

II.

The constitutional complaint was rejected for being inadmissible. Nevertheless, the Court decided that: 1) the complaint is directed against a subject which is suitable of judicial review (see section 1.); 2) the complainants are entitled to file a complaint in respect of some parts of the *motion* (see section 2.); 3) However, the necessary exhaustion of the others internal legal remedies is lacking (see section 3.).
Validity of the subject-matter of the appeal.

1 The *motion* is a valid subject of complaint. Pursuant to Article 75 No. 5a of the state constitution and Paragraph 53 (1) of the Constitutional Tribunal Act, any act of public authority of the Land of North Rhine-Westphalia may be the subject of a state constitutional complaint. The term “public authority” in this sense comprises the legislative, executive and judicial powers. **In this regard, acts of the legislative power also include acts of the parliament which - like the challenged *motion* - cannot be included into the field of legislation** (cf. Heilmann, in: Barczak, BVerfGG, 2018, § 90 marginal no. 100).

2 The complainants are entitled to file complaints only with regard to some parts of the Landtag resolution.

Pursuant to Article 75 No. 5a of the state constitution in conjunction with Paragraph 53 (1) of the Constitutional Tribunal Act, **a complainant must claim that one of his or her rights enshrined in the state constitution has been violated** and in order to make this assertion, he or she must demonstrate in a sufficiently substantiated manner that the alleged violation of a fundamental right or a right

equivalent to a fundamental right is possible (cf. Constitutional Court of North Rhine-Westphalia, Order of 14 January 2020 - 44/19.VB-3, juris, marginal no. 3). A violation of the law is in fact possible if it is not excluded from the outset (cf. Heusch, in: Heusch/Schönenbroicher, Landesverfassung NRW, 2nd ed. 2020, Art. 75 marginal no. 67). Moreover, the right to appeal can only be affirmed if the complainant is himself or herself currently and directly affected by the challenged provision (see, for example, Constitutional Court of North Rhine-Westphalia, decisions of 27 August 2019 - Constitutional Court 30/19.VB-1, NVwZ-RR 2020, 89 = juris, marginal 11, and of 14 January 2020 - Constitutional Court 59/19.VB-3, juris, marginal 7 et seq.)

The complainants are for certain largely affected by the challenged *motion*; b) However, direct concern must be in this specific case partially excluded. c) With regards to the sufficient concern of the complainants, an infringement of their rights enshrined in the state constitution can currently not be excluded a priori without further examination. d) The rights enshrined in the European Convention on Human Rights cannot, however, be invoked directly in a the state constitutional complaint.

The degree of impact of the *motion.*

a) The requirement of the *Selbstbetroffenheit* requires in particular that the complainant’s fundamental rights or rights equivalent to fundamental rights are affected and this is primarily the case if the complainant is the target of the public authority's action. However, ***Selbstbetroffenheit* also exists if the act is directed to third parties - such as in this case the local authorities - and there is a sufficiently close relationship between the complainant's fundamental rights position and the measure**. In the case of a law, there must be an actual legal impact; a merely de facto prejudice in the sense of a reflex effect is not sufficient (cf. BVerfG, Order of 7 October 2003 - 1 BvR 1712/01, BVerfGE 108, 370 = juris, marginal no. 63 m. w. N.).

Based on these elements, **the complainants are largely affected by the challenged *motion*.**

The complainants themselves are sufficiently affected in so far as the BDS campaign is the target of the *motion* and them being considered as anti-Semites is at issue. Although, as the Landtag pointed out, **the complainants are not mentioned by name in the *motion*, as it refers only to the "BDS campaign", it should be however noted that this campaign has no legal organisational structure or even legal personality of its own**. It is a political movement whose supporters want to achieve common goals through certain measures. **In fact, the judgement of anti-Semitism thus does not only concern the campaign itself, but it affects negatively also the people and organisations behind it, who form the campaign and agree with the campaign's principles**. This is certainly the case when a person or an association consider themself to belong to this movement and they are perceived as such externally. This is the case for the complainants as they not only claim to have joined the BDS campaign but are also listed on the campaign's website under the heading "Supporting Groups and Organisations in Germany" (cf. http://bds-kampagne.de/aufruf/aufruf-der-palstinensischenzivilgesellschaft/unterstuetzer, accessed on 9 September 2020). **The fact that they are perceived externally as belonging to the BDS campaign is also evident by their exclusion from the city festival in Bonn, where the city of Bonn referred to the *motion* challenged here**.

The complainants themselves are also affected, given that the addressees of the *motion* are all the public institutions of the Land of North Rhine-Westphalia, cities, municipalities, districts and other public actors. It must be underlined that this section of the contested *motion* is addressed to the authorities of the Land and the local authorities and that the complainants themselves are not directly addressed. However, **there is a sufficiently close relationship between the content of this *motion* and the legal position of the complainants**. The aim of this section of the *motion* is to make it more difficult for the BDS campaign and groups supporting its

objectives to be assigned for the use of public premises and, considering this desired impact, the complainants themselves are affected. Nor is this concern merely a reflex, since this impact on the complainants is specifically intended by the Landtag.

On the other hand, it is not clear to what extent the complainants should be affected in their own rights by the statement that the Landtag supports the Land government both in the prevention and also in the decisive fight against anti-Semitism and any kind of extremism.

Direct concern.

b) Moreover, **the complainants are only to a certain extent directly affected in their fundamental rights by the *motion***. aa) With regard to the statement that institutions of the Land of North Rhine-Westphalia are not allowed to provide any premises to the BDS campaign or to support any of its events, and with regard to the appeal to cities, municipalities, districts and public actors to join this position, there is a lack of direct concern. bb) However, in so far as the complainants object to the defamatory effect of the *motion*, in particular by describing the BDS movement as anti-Semitic, their direct concern must be affirmed.

aa) Direct concern exists if the challenged provisions change the complainant's legal position without requiring a further enforcement act (cf. BVerfG, Judgment of 15 February 2006 - 1 BvR 357/05 -, BVerfGE 115, 118 = juris, marginal no. 75; Order of 21 June 2016- 2 BvR 637/09 -, BVerfGE 142, 234 = juris, marginal no. 23). The complainants claim that the *motion* infringes their fundamental rights by "prohibiting" the provision of public facilities and calling on all public actors to adopt this stance. In this respect, however, they are not directly affected by the *motion*. Essentially, the *motion* is not likely to have a direct effect on the achievement of the aimed objectives, but may require further actions (see, for example, VerfGH TH, judgment of 2 February 2011 - 20/09, juris para. 34 et seq. N.; Badura, in:

Isensee/Kirchhof, Handbuch des Staatsrechts, 3rd ed. 2004, § 25 marginal 12; Klein, in: Isensee/Kirchhof, Handbuch des Staatsrechts, 3rd ed. 2005, § 50 marginal 14). **The exclusion from public, generally communal, premises is not the immediate result of this non-binding decision, but only the consequence of independent decisions of other legal entities, such as municipalities**. The complainants can take recourse to the administrative courts against any possible decisions denying access to public premises, as they have already done successfully in the past.

bb) In contrast, the complainants are directly affected by the *motion* in so far as they denounce the defamatory effects of portraying the BDS campaign and the calls for boycott as anti-Semitic. **A possible loss of reputation, which the complainants fear, can occur in this respect without any further enforcement act. The fact that the *motion* is not legally binding is irrelevant**.

The violation of constitutional rights.

c) **As far as the complainants are directly concerned, there is also the possibility of a violation of their rights under the state constitution.** Without further examination, it cannot be excluded, from every conceivable point of view, that the Landtag has in any event infringed the complainants' right to freedom of association under Article 4 (1) of the state constitution in conjunction with Article 9 (1) of the Basic Law by equating the BDS movement as a form of "anti-Semitism", by referring to conceivable historical parallels with the boycott of Jewish businesses under the National-Socialist regime and by condemning the call for a boycott. At least for defamatory, discriminatory or distorting statements by the government, the Federal Constitutional Court has recognised that they can prejudice the fundamental right of association (cf. BVerfG, judgment of 26 June 2002 - 1 BvR 670/91, BVerfGE 105, 279, 294 f. = juris, marginal no. 53). **At this stage, it also does not appear completely impossible that - as the complainants point out - the possibility of gaining new members might be affected by the statements**

of the Landtag. This is not contradicted by the fact that the *motion* itself - as explained above - does not have any direct legal consequences (it is not legally binding), **as fundamental rights safeguard also from factual and indirect interferences** (cf. BVerfG, Order of 26 June 2002 - 1 BvR 670/91, BVerfGE 105, 279 = juris, marginal no. 77). **State activity that has effects - which depend on the conduct of other persons - for a third party can thus also violate fundamental rights** (cf. BVerfG, Order of 26 June 2002 - 1 BvR 670/91, BVerfGE 105, 279 = juris, marginal no. 79). **This must also apply to a simple parliamentary motion insofar as it concerns the sphere protected by fundamental rights of private individuals**, for example because it expresses a judgment about their conduct and thereby it is intended to change the behaviour of third parties (cf. also Sester, Parliamentary resolution, p. 96).

It can't be excluded that the *motion* could potentially violate fundamental rights because the challenged value judgments have already been made public by the publication of the *motion's* proposal on 11 September 2018. The *motion* contains also a separate grievance. By means of the *motion*, the Landtag, as a constitutional body, has adopted the view previously expressed in the motions of the parliamentary groups. In view of the authority conferred to the Landtag ex-officio, the *motion* has an effect that goes beyond its publication. In order to promote certain objectives, it is precisely this authority that the Parliament might use when adopting decisions such as the one at issue here. Moreover, the *motion* has been able to have an even greater influence on the institutions of the Land and other public actors than the motion's proposals of the political groups alone.

The European Convention on Human Rights.

d) Insofar as the complainants claim a violation of provisions of the European Convention on Human Rights, the constitutional complaint is already inadmissible because the only rights that can be taken into account in the procedure of the individual constitutional complaint before the Constitutional Court are rights

enshrined in the state constitution, cf. Paragraph 53 (1) of the Constitutional Tribunal Act. The provisions of the European Convention on Human Rights are merely used as aid to interpret fundamental rights (cf. BVerfG, Judgment of 12 June 2018 - 2 BvR 1738/12, juris, LS 3a).

Exhaustion of all legal remedies.

3) The constitutional complaint is inadmissible because the complainants have, contrary to Paragraph 54 of the Constitutional Law Act, not exhausted all the legal remedies.

a) Before lodging a constitutional complaint, all the other internal legal remedies must be exhausted, pursuant to Paragraph 54 sentence 1 of the Constitutional Law Act. This requirement is the expression of the constitutional procedural principle of subsidiarity, according to which a complainant must take all procedural possibilities available in the circumstances of the case in order to prevent or remove the alleged violation of a fundamental right with a proceeding which is the most closely connected with it (cf. Constitutional Court of North Rhine-Westphalia, orders of 6 June 2019 - Constitutional Court 3/19.VB-3, Constitutional Court 4/19.VB-3, juris, para. 28, of 12 November 2019 - Constitutional Court 47/19.VB-3, juris, para. 18, of 20 December 2019 - Constitutional Court 45/19.VB-1, juris, para. 8, of 17 March 2020 - 67/19.VB-2, juris, para. 3, and of 28 April 2020 - 31/20.VB-3, juris, para. 4). Having regard of the comprehensive legal protection provided by the specialised courts, the individual constitutional complaint should not grant an optional remedy, but should only be admissible if it becomes necessary to prevent a violation of fundamental rights despite the exhaustion of the regular procedural possibilities (cf. Constitutional Court of North Rhine-Westphalia, orders of 20 December 2019- VerfGH 45/19.VB-1, juris, marginal 8, and of 17 March 2020- 67/19.VB-2, juris, marginal 3).

However, the legal remedies to be exhausted in the constitutional complaint procedure do not include: a) the possibility to appeal to a court in all those cases where it is not regulated by law, b) a priori inadmissible judicial remedies. Therefore, the complainant should not lodge these types of constitutional complaints (Constitutional Court of North Rhine-Westphalia, orders of 2 July 2019 - 16/19.VB-2, juris, marginal no. 23, of 13 August 2019-VerfGH 12/19.VB-2, juris, marginal no. 6, and of 17 March 2020 - Constitutional Court 5/20.VB-2, juris, marginal no. 3).

A legal remedy is a priori inadmissible in all those cases where it is manifestly inadmissible or illegitimate, i.e. if there is, according to the current state of case law and doctrine, certainty as to whether it is inadmissible or illegitimate(cf. Ver fGH NRW, order of 2 July 2019 - 16/19.VB-2, juris, marginal no. 23; BVerfG, order of 21 April 2013 - 1 BvR 423/11, juris, marginal no. 8, with further details. N.).

It follows from this standard that a complainant must in principle make use of all the legal remedies before lodging a constitutional complaint, even if it is doubtful whether it is admissible. If it does not appear to be obviously impossible to obtain protection of fundamental rights through the specialised courts, the complainant is required to make use of the legal remedies provided by the ordinary law. This also applies if, according to the current state of case law and doctrine, the validity of an appeal is disputed and it is therefore doubtful whether the legal protection sought in the matter is granted by the court seised. In these cases, the task of the specialised courts is basically to decide on the controversial question of admissibility under the ordinary law by taking into account the claimed arguments. It would undermine the purpose of the constitutional complaint to admit it or to grant the possibility to opt between a potentially admissible appeal and the constitutional complaint itself (cf. BVerfG, Order of 18 December 2018 - 1 BvR 1240/18, juris, marginal no. 5 f.). Accordingly, an appeal must be lodged even if there is no case law that yet confirms the admissibility of the appeal (BVerfG, Order of 19 March 2019 - 2 BvR 2638/18, juris, marginal no. 32).

b) On this basis, the constitutional complaint does not satisfy the requirement of exhaustion of all the judicial (i.e. administrative) remedies. In any event, **it is not excluded a priori that the complainants could obtain legal protection before the administrative courts against the challenged resolution. In fact, a general action, aimed at ordering the Land parliament to revoke the negative value judgements or to refrain from future statements, does not appear to be pointless from the outset**. In particular, it cannot be established with the necessary certainty that this dispute is a constitutional dispute, which would, according to Paragraph 40 (1) Rules of the Administrative Courts, preclude an administrative proceeding. Neither the provision of Paragraph 40 (1) Rules of the Administrative Courts, which is decisive for distinguishing between constitutional and administrative court disputes, nor the large number of opinions expressed in this regard, nor the case law on comparable cases, indicate an obvious inadmissibility to appeal to the administrative court.

How a constitutional dispute within the meaning of Paragraph 40 (1) Rules of the Administrative Courts is to be defined is disputed in case law and doctrine. In the case law it is predominantly assumed that a legal relationship under constitutional law can only exist between persons who are involved in constitutional processes. The claims asserted must therefore result from a substantive constitutional relationship comprising both parts, i.e. from legal relationships that exist between constitutional organs or organs involved in constitutional processes. Accordingly, preventing the violation of fundamental rights is a duty that should not be assigned to the constitutional jurisdiction solely because a constitutional body, and not an administrative authority, acted, or because the measure itself can be assessed according to constitutional law (cf. BVerfG, Order of 20 May 2019 - 2 BvR 649/19, juris, marginal no. 4 et seq. N.). Different opinions consider that even citizens can participate to a constitutional dispute. This is the case whenever a constitutional body, part of a constitutional body or a body directly involved in constitutional dynamics encroaches on the fundamental rights of citizens by using their to them specifically assigned constitutional powers (cf. VerfGH SL, judgment of 21 January

2020 - Lv 15/19, juris, marginal no. 43), or if the constitutional body is being used precisely as such (cf. Rennert, in: Eyermann, VwGO, 15th ed. 2019, § 40 marginal no. 27).

Based on this, it can not be a priori excluded that the present legal dispute is a constitutional dispute, i.e. that the administrative court action under Paragraph 40 (1) Rules of the Administrative Courts is possible. The complainants, registered associations, are bodies not involved in constitutional dynamics (see also BVerfG, Order of 20 May 2019 - 2 BvR 649/19, juris, marginal no. 5.) Nor is the judgement of social and political movements and of their evolution - and, optionally, the warning against them - which the Landtag has undertaken in the challenged decision, a task assigned to the Landtag as a specific constitutional authority. In the light of the above, it is irrelevant that the question whether the Landtag was allowed to adopt the *motion* with the here contested content is assessed in accordance with the protection of fundamental rights enshrined in the constitution. This assessment is also consistent with the fact that in the case of a citizen’s proceeding against statements of members of the government, i.e. parts of the constitutional body government, which are made on the basis of the constitutionally directly assigned tasks, the administrative legal route is considered permissible (cf. only OVG HB, decision of 1 December 2015 - 1 B 95/15, juris; OVG NRW, judgement of 17 September 2013 -13 A 2541/12, juris).

Nor does the fact that the negative assessment of the BDS movement criticised by the complainants was made in a parliamentary motion automatically requires to assume that this is a constitutional dispute. On the contrary, as the Federal Constitutional Court already found in 1992, it is unclear whether and in what cases disputes about parliamentary motion are constitutional disputes (see also BVerfG, Kammerbeschluss vom 28 August 1992 - 1 BvR 632/92 -, juris, marginal no. 2 m. w. N.). Administrative court case-law is inconsistent in this respect. Some cases, in which citizens are directly involved in the legal dispute, are entitled to administrative court legal protection against parliamentary motions. (cf. for example OVG BB,

judgment of 26 September 2011 - OVG 3a B 5.11 , juris, concerning a citizen's request for the Bundestag’s decision on a judicial application for waiver of the immunity of one of its members; OVG HH, decision of 27 September 2011 - 1 BvR 632/92 -, juris, para. 2 with further details). VG Düsseldorf, decision of 21 March 2018 - 20 L 6077/17, juris, concerning the final report of a committee of enquiry; see also VerfG BB, decision of 18 September 2015 - 14/15, juris), partially negative (see OVG SL, decision of 17 July 2002 - 1 W 15/02, juris). In this respect, no uniform picture can be drawn from the doctrine either. It is true that the majority refers to the fact that disputes with regard to parliamentary motions are usually of constitutional nature (cf. Sodan, in: So dan/Ziekow, VwGO, 5th ed. 2018, § 40 marginal no. 238; Wolf/Posser, BeckOK VwGO, 54th ed. as of 1 April 2020, § 40 marginal no. 121). However, the examples cited in this context - such as the motion on the capital city, budget motions, vote of no confidence or determination of the case of defence - make it clear that this refers to constellations in which, on the one hand, the parliament exercises a specific constitutional competence to which it alone is entitled and, on the other hand, citizens are not directly affected by the motion. By contrast, according to the same authors, disputes in which allegedly defamatory mentions of third parties in parliamentary pronouncements are concerned are not to be of a constitutional nature, even if the parliament’s member defends himself with special constitutional powers (cf. Rennert, in: Eyermann, VwGO, 15th edition 2019, § 40 marginal no. 27; Sodan, in Sodan/Ziekow, VwGO, 5th edition 2018, § 40 marginal no. 238).

If neither case law nor the doctrine indicate that there is no chance of recourse to administrative judicial legal protection from the outset, **the complainants were obliged to appeal to the administrative courts first**. This does not place unreasonable demands on the complainants either. On the one hand, they were already aware of the issue of the opening of an administrative legal recourse because the monograph by Sester, *Der Parlamentbeschluss*, which they cited in this appeal, presents the different views in the section to which the complainants refer. The fact that they considered that the view expressed in the monograph about

the existence of a constitutional dispute was convincing did not, taking into account the uncertainties which existed and of which they were fully aware, relieve them of the need to bring an appeal, even if they doubted about its admissibility. A complainant can counter the dilemma that the specialised courts might consider the appeal then considered inadmissible by filing in parallel the constitutional complaint with the appeal before the specialised courts and disclosing this to the Constitutional Court (cf. Heusch, in: Heusch/Schönenbroicher, Landesverfassung NRW, 2nd ed. 2020, Article 75 marginal no. 70).

c) **Nor is there any case in which the Constitutional Court could decide before the exhaustion of all available legal remedies** pursuant to Paragraph 54 sentence 2 Constitutional Tribunal Act. Accordingly, the Constitutional Court may decide immediately on a constitutional complaint filed before exhaustion of all legal remedies if it is of general importance or if the complainant would suffer a serious and unavoidable disadvantage if he or she had to exhaust before all legal remedies. A constitutional complaint is of general significance if it is expected to clarify fundamental constitutional issues and if the decision is relevant to numerous similar cases (cf. Heusch, in: Heusch/Schönenbroicher, Landesverfassung NRW, 2nd ed. 2020, Article 75 marginal no. 72). This is not the case here. In particular, the question of whether the statements of the Landtag infringe the rights of the complainants is a matter of individual cases. It is therefore not evident that the decision would be relevant to numerous similar cases. Nor is it shown or apparent that the complainants suffer a serious and unavoidable disadvantage as a result of the referral to the administrative courts.

III.

Their expenses are not to be reimbursed to the complainants. Paragraph 63(4) of the Constitutional Tribunal Act provides for the reimbursement of expenses only in the case of a successful outcome of the complainants, which is not the case here.

Dr. Brandts Prof. Dr. Heusch Prof. Dr. Dauner-Lieb

Dr. Gilberg Dr. Nedden-Boeger Dr. Röhl Prof. Dr. Wieland

VERFASSUNGSGERICHTSHOF FÜR DAS LAND NORDRHEIN-WESTFALEN

Beglaubigt
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