COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF LEELA FÖRDERKREIS E.V. AND OTHERS v. GERMANY

(Application no. 58911/00)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/02/2009

This judgment may be subject to editorial revision.

In the case of Leela Förderkreis E.V. and Others v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President,*
Rait Maruste,
Volodymyr Butkevych,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*
Otto Mallmann, ad hoc *judge,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 30 September 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 58911/00) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five associations registered under German law, Leela Förderkreis e.V., Wies Rajneesh Zentrum für spirituelle Therapie und Meditation e.V., Osho Uta Lotus Commune e.V., Dharmadeep Verein für ganzheitliches Leben e.V. and Osho Meditations Center Berlin e.V. ("the applicant associations"), on 12 April 2000.

2. The applicant associations were represented by Mr C. Gambke, succeeded by Mr R. von Katzler, lawyers practising in Gräfelfing. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. The applicant associations alleged, in particular, that the length of the proceedings before the domestic courts had been excessive and that the German authorities had interfered with their right to manifest their religious belief.

4. On 26 June 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The parties filed written observations (Rule 54A of the Rules of Court). In addition, third-party comments were received from the Helsinki Foundation for Human Rights (Warsaw) which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant associations are religious associations or meditation associations belonging to the Osho movement, formerly known as the Shree Rajneesh or Bhagwan movement. The movement was founded by the Indian mystic Rajneesh Chandra Mohan, who was first called Bhagwan by his followers, and then later Osho. According to their statutes, the applicant associations promote the teachings of Osho, who maintained that the aim of spiritual development was enlightenment. One precondition was to become free of all socialisation, through a comprehensive programme of traditional and new meditation techniques and a range of therapies. The applicant associations run Osho meditation centres, organise seminars, celebrate religious events and carry out joint work projects. They also protect the religious rights of their members against discrimination.

7. The applicant associations belong to a group of previously unknown religious communities which first surfaced in Germany in the 1960s. They were described as "sects", "youth sects", "youth religions", "psycho-sects", and "psycho-groups" or given similar labels. The groups quickly became the subject of critical public debate due to the fact that their actions are seen to be predominantly influenced by their religious and philosophical views and due to the way they treat their members and followers. The focus of concern was the potential danger that these groups could pose to adolescents' personal development and social relations, which could lead not only to their dropping out of school and vocational training, radical changes in personality, various forms of dependence, lack of initiative and difficulties in communication, often aggravated by the group structure characteristic of certain communities, but also to material loss and psychological harm.

8. Since 1970 the Federal Government and the governments of the *Länder* have been confronted with these issues. To draw attention to the potential dangers of such groups, both to the individual and to society, the Federal Government launched a large-scale information and education campaign designed to increase public awareness and stimulate a critical discussion on the aims and activities of sects and sectarian groups. Since 1979 the German Government has given several official warnings concerning so-called sects with a view to informing the public about the practice of these groups. The Rajneesh, or Bhagwan, movement was mentioned as one of these new religious and spiritual movements. As part of their public relations work, State agencies have characterised the applicant associations as a "sect", "youth sect", "youth religion" and "psycho-sect". The adjectives "destructive" and "pseudo-religious" have also been used to

describe them, and the accusation has been raised that their members are manipulated.

9. These expressions were contained in Government statements, namely, in replies to members of the German Parliament of 27 April 1979, 23 August 1982 and 10 October 1984, in a report by the German Government to the Petition Board of the Federal Diet on youth sects in the Federal Republic of Germany dated February 1980 and published by the Federal Minister of Youth, Family and Health, and in a speech by the Federal Minister of Youth, Family and Health delivered on 8 December 1984.

10. In the reply of 27 April 1979 on the subject "Recent religious and philosophical communities (so-called youth sects)" the "Shree Rajneesh Movement" was counted among the so-called religious and philosophical communities. The Federal Government stated that these were labelled with general terms such as "youth sects", "destructive religious groups" or "destructive cults". The Federal Government itself referred to them as "youth sects" "pseudo-religious and psycho-groups" as well as generally referring to them as "sects".

In their reply dated 23 August 1982 the Government mentioned the "Bhagwan-Shree-Rajneesh movement" in connection with questions concerning the membership structure of "so-called new youth sects". Furthermore, in the preliminary remarks the term "so-called psycho-sects" was used, while throughout the main text the Government referred to "youth religions".

In their reply of 10 October 1984 concerning the "economic activities of destructive youth religions and psycho-sects" the Government mainly used the terms "youth religion" and "psycho-sect". The Government further stated that it appeared to be difficult to apply labour law regulations to associations the conduct of whose members was manipulated.

In its report to the Petititions Board of the Federal Diet of February 1980 the Federal Government pointed out in the introduction that the terms "youth religion" or "youth sect" encompassed a number of highly varied groups. The "group based around "Bhagwan (i.e. God) Shree Rajneesh" was presented as one of these groups, and was included as one of the "psycho-movements".

In the speech he gave on 8 December 1984 at a conference on the topic "New youth religions – Protecting the freedom of the individual" the Federal Minister of Youth, Family and Health used the terms "youth religion", "youth sect", "sect", "destructive religious cults", "pseudo salvation teachings" and "pseudo-religion" with reference to the groups dealt with.

11. On 1 October 1984 the applicant associations instituted legal proceedings before the Cologne Administrative Court (*Verwaltungsgericht*). They requested that the Government desist from issuing the above-

mentioned statements about the religious movement and the associations belonging to it, maintaining that such statements were incriminating. They essentially alleged that their freedom to profess a religious or philosophical creed under Article 4 §§ 1 and 2 of the Basic Law (*Grundgesetz*) had been infringed.

12. According to the applicant associations, the teachings of the community were based on the idea of achieving transcendence in all essential areas of life. These teachings were continuously shared by them and their community. The various statements of the Government had breached the obligation of neutrality required by Article 4 of the Basic Law by discrediting the teachings of the movement. The expressions used were either actually defamatory or were meant to be, and there was no factual or legal basis which would justify using those terms. The applicant associations did not pursue any activities contrary to the basic rights of other persons, groups or organisations. The Government had misinterpreted the concepts of Osho's teachings and thus interfered with the essential religious beliefs of their movement.

13. By a judgment of 21 January 1986 the Cologne Administrative Court prohibited the Government from calling the Rajneesh movement in official statements a "youth religion", "youth sect" or "psycho-sect", from using the adjectives "destructive" and "pseudo-religious" and from alleging that members of the Rajneesh movement had been manipulated.

14. The Administrative Court found that those terms evoked a negative connotation of the basic contents of the applicant associations' religious beliefs and that the use of those terms infringed their religious freedom guaranteed by Article 4 § 1 of the Basic Law. It considered, however, that the use of the term "sect" as such had no negative impact on the applicant associations' religious belief.

15. The Administrative Court pointed out that there was no indication that the applicant associations pursued exclusively commercial aims or that the teachings of Osho or the methods employed by the applicant associations were contrary to human dignity. The right protected by Article 4 of the Basic Law obliged the State to maintain strict neutrality regarding religious activities and prohibited negative judgments on a determined religious belief. Furthermore the use of such general terms was not appropriate for the prevention of danger.

16. On 28 April 1986 the Government appealed against that judgment. A hearing was held before the Administrative Court of Appeal of the *Land* North Rhine-Westphalia (*Oberverwaltungsgericht für das Land Nordrhein-Westfalen*) on 22 May 1990. By a judgment of the same day the Administrative Court of Appeal quashed the impugned judgment and dismissed the applicant associations' claim as a whole, as well as the appeals of two applicant associations who had contested the findings of the

first-instance court as regards the use of the term "sect". It did not allow an appeal on points of law.

17. The Administrative Court of Appeal found that the contested statements interfered with the applicant associations' basic rights guaranteed by Article 4 §§ 1 and 2 of the Basic Law. However, the right to religious freedom was not absolute. It was subject to limitations by other provisions of the Basic Law. Limitations and interferences by the State had to be accepted where important reasons of public interest required the protection of basic rights which were in conflict with the right to freedom of religion. Where a mere suspicion of a possible violation of these rights existed, relevant information and warnings were appropriate and necessary for their protection. Under Article 65 of the Basic Law, which vested governmental functions in the Government, taken together with the positive obligations under Article 2 § 2, first sentence, which guarantees the right to life and to inviolability of the person, and Article 6 of the Basic Law, which protects the rights of the family, the Government had the right to impart information. The views expressed by the Government were acceptable and respected the principle of proportionality.

18. On 13 March 1991 the Federal Administrative Court (*Bundesverwaltungsgericht*) dismissed the applicant associations' appeal against the decision of the Administrative Court of Appeal refusing leave to appeal. The court considered that the case had no fundamental importance. It noted that the legal questions raised in connection with public declarations of the Government in respect of new religious movements had already been dealt with in its previous case-law and that of the Federal Constitutional Court (*Bundesverfassungsgericht*). The applicant associations' submissions did not raise any new issue. The Government's constitutional right to inform the public and to protect the human dignity and health of citizens justified the interference with the freedom of religion or belief. The right to inform the public included the right to warn the public and to consider the conduct of others as dangerous.

19. On 3 May 1991 the applicant associations filed a constitutional complaint against the above-mentioned court decisions. On 23 April 1992 the Federal Constitutional Court informed the applicant associations in reply to their letter of 10 April 1992 that it was not able to indicate when a decision would be given. On 13 January 1993 it wrote to the applicant associations that the case had been communicated to the Federal Government and the *Land* of North-Rhine-Westphalia. On 2 November 1993 the Federal Government submitted their observations, which were served on the applicant associations on 4 November 1993. On 21 September 1994 the applicant associations submitted their observations in reply. By letters of 8 March 1993, 6 August 1995, 8 July 1998 and 3 February 2000 the applicant associations enquired about the state of the proceedings.

20. On 26 June 2002 the Federal Constitutional Court ruled that the judgment of the Administrative Court of Appeal of the *Land* North Rhine-Westphalia of 22 May 1990 violated the applicant associations' basic rights guaranteed by Article 4 §§ 1 and 2 of the Basic Law. It quashed the judgment insofar as the applicant associations' claim had been dismissed in respect of the use of the expressions "destructive", and "pseudo-religious", and the allegation that they "manipulated their members" and referred that part of the complaint back to the Administrative Court of Appeal for a new decision. However, it found that the Government was authorised to characterise the applicant associations' movement as a "sect", "youth religion", "youth sect" and "psycho-sect" and was allowed to provide the public with adequate information about it.

21. According to the Federal Constitutional Court, the right to freedom of religion or belief guaranteed by Article 4 §§ 1 and 2 of the Basic Law did not prevent the State from entering into a public and even critical discussion about the aims and activities of religious groups. The limitations on the freedom of religion were to be found in other basic rights and freedoms guaranteed by the Basic Law, such as the protection of human dignity, the right to life and physical integrity and the protection of marriage and the family.

22. The power to manage State affairs derived directly from the Basic Law and authorised the Federal Government to provide information in all matters coming within the sphere of their overall State responsibility. Providing direct public information helped them to resolve conflicts within the State and society, to face challenges even if they occurred at short notice, to react quickly and adequately to the problems and concerns of citizens and assist them in finding guidance. This activity did not require an express legal provision, since it did not constitute a direct interference with the applicant associations' rights. It merely influenced the conduct of others *vis-à-vis* the applicant associations. Moreover, it was not possible to establish rules for the Government's information-imparting role, given the wide variety of the subject matter dealt with and methods used. When acting in the exercise of their power to direct State affairs, the Federal Government were entitled to provide information to the public, even if basic rights were indirectly affected as a result.

23. However, the State had to restrict itself to neutral terms and act with moderation in matters of religion or belief. Defamatory, discriminating or deceptive statements were prohibited. The Government also had to respect the separation of powers between the Federal State and the *Länder*. The Government were authorised to impart information relating to supra-regional matters and where nationwide information helped to resolve problems efficiently. Providing information in these circumstances did not exclude or impair the powers of the *Länder* governments to impart

information themselves, nor did it prevent the administrative authorities from carrying out their administrative tasks.

24. Furthermore, the Federal Government had to respect the principle of proportionality when imparting information. Statements affecting the very essence of the right guaranteed by Article 4 §§ 1 and 2 of the Basic Law had to be appropriate in relation to the cause for concern.

25. As to the term "sect", the Federal Constitutional Court found that the Government were not prohibited from using the term, which at the material time corresponded to the general understanding of new religious movements. Similarly, the use of the terms "youth religion" and "youth sect" described the prevailing situation at the material time and the term "psycho-sect" reflected the Osho movement's meditation practices. These terms were employed without discriminatory differences of treatment in respect of these groups on grounds of their religion or belief. They complied with the obligation of the State to neutrality in matters of religious and philosophical beliefs and did not affect the very essence of the right guaranteed by Article 4 §§ 1 and 2 of the Basic Law.

26. In contrast, the use of the terms "destructive" and "pseudo-religious", and the allegation that members of the movement were manipulated, did not satisfy the requirements of constitutional law.

27. Even if the employment of such terms could not be criticised on the ground that it exceeded the powers of the Federal Government, the terms used nonetheless infringed the neutrality requirement and were thus not justifiable according to the proportionality principle. In particular, no substantiated reasons had been advanced which could have justified the statements regarded as defamatory by the complainants, nor were any such reasons otherwise apparent. That decision was served on the applicant associations on 30 July 2002.

28. On 8 November 2002 the Federal Government withdrew their appeal against the judgment of the Cologne Administrative Court of 31 January 1986 as the appeal was again pending before the Administrative Court of Appeal following the decision of the Federal Constitutional Court of 26 June 2002.

29. On 27 December 2005 the applicant associations' representative informed the Court that the fourth and fifth applicant associations, Dharmadeep Verein für ganzheitliches Leben e.V. and Osho Meditations Center Berlin e.V, wished to withdraw their application.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. The relevant provisions of the Basic Law read as follows:

Article 2 § 2, first sentence

"Everyone has the right to life and to inviolability of his person"

Article 4 §§ 1 and 2

"The freedom of belief and conscience and the freedom to profess religious and philosophical beliefs are inviolable.

The undisturbed practice of worship is guaranteed."

Article 6 § 1

"Marriage and family enjoy the special protection of the State."

Article 65

"The Federal Chancellor shall determine and be responsible for the general guidelines of policy. Within these limits each Federal Minister shall conduct the affairs of his department independently and of his own motion. The Federal Government shall resolve differences of opinion between Federal Ministers. The Federal Chancellor shall conduct the proceedings of the Federal Government in accordance with rules of procedure adopted by the Government and approved by the Federal President."

31. By a judgment of 23 May 1989 the Federal Administrative Court ruled that the German Federal Government was entitled to provide information and publish warnings by virtue of their constitutional responsibility to inform the public about new religious and ideological communities and "psycho-groups" (BVerwGE 7 C 2/87, see Judgments and Decisions of the Federal Administrative Court, vol. 96, pp 82 et seq.). On 15 August 1989 the Federal Constitutional Court, sitting as a bench of three judges, did not accept the constitutional complaint of the Maharishi Organisation (Transcendental Meditation) for adjudication, confirming that the Federal Government was entitled to provide information on new religious and ideological communities and "psycho-groups" in compliance with its constitutional obligations, namely to express opinions and submit recommendations and warnings to the public within the limits of the proper execution of the powers granted by the Basic Law (1 BvR 881/89).

32. In 1996 the Federal Diet (*Deutscher Bundestag*) charged an expert commission to prepare a report on "so-called sects and psycho-cults". In its final report issued in June 1998 the Commission of Enquiry stated that negative sentiments were typically evoked when the term "sect" was used. However, only a small number of the movements characterised as "sects" were problematic. The Commission recommended that in official

statements, information leaflets or legal texts the word "sect" not be employed in future.

THE LAW

I. AS REGARDS THE FOURTH AND FIFTH APPLICANT ASSOCIATIONS

33. On 27 December 2005 the fourth and fifth applicant associations, Dharmadeep Verein für ganzheitliches Leben e.V. and Osho Meditations Center Berlin e.V., informed the Court about their wish to withdraw their application.

34. The Court notes that these applicant associations do not intend to pursue their application within the meaning of Article 37 of the Convention which, in so far as relevant, reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;
>
> ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires..."

35. The Court considers that the conditions of Article 37 § 1 (a) are fulfilled. Furthermore, the Court finds no special circumstances relating to respect for human rights as defined in the Convention and its Protocols which require it to continue the examination of the application.

Accordingly, the application should be struck out of the Court's list of cases insofar as it relates to these two applicant associations.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The remaining applicant associations complained that the length of the proceedings before the administrative courts and before the Federal Constitutional Court had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

37. The Government contested that argument.

A. Admissibility

1. The Government's submissions

38. In the Government's view, Article 6 § 1 of the Convention was not applicable in the present case, as the dispute did not refer to "civil rights and obligations" within the meaning of that Article. According to the Government, the subject of the proceedings, namely the alleged violation of the applicant associations' freedom of religion by certain governmental statements, did not concern the violation of asset rights, but of legal interests of a non-pecuniary nature. Neither did the result of the impugned proceedings constitute a necessary prerequisite for bringing an action for damages against the Government before the civil courts.

39. The Government further maintained that the contested warnings issued by the Government had no direct effect on or substantive consequences for the applicant associations' legal position under civil law. Although it could not be ruled out that individual citizens may have been motivated by the Government's warnings to distance themselves from the applicant associations, it was impossible to determine whether this actually occurred and whether it had any financial consequences for the applicant associations. In any event, any such consequences could not be considered as immediate. The mere fact that the warnings may possibly have had financial consequences for the applicant associations was not sufficient to bring the proceedings within the scope of Article 6 § 1.

40. Neither could the applicability of Article 6 § 1 of the Convention be derived from the Court's case-law, according to which the right to a good reputation was a "civil right" within the meaning of that provision. Firstly, the applicant associations did not assert the right to a good reputation or to personal honour under domestic law before the domestic courts, but only their right to the freedom to profess and practise a religion undisturbed without state interference. Secondly, the right to protect good reputation and personal honour could only be accorded to individual persons, but not to groups of persons such as the applicant associations.

2. The remaining applicant associations' submissions

41. The applicant associations contested those arguments. They considered that their right to freedom of religion had to be regarded as a "civil right" within the meaning of Article 6 § 1. They pointed out that the right to choose and profess one's religion was an original individual right which was not bestowed by the State. They further maintained that the Convention did not limit the applicability of Article 6 § 1 to rights of a pecuniary nature. The field of "civil rights" traditionally encompassed a number of non-pecuniary rights including those relating to religious questions, such as the right to religious education.

42. Even assuming that the right to freedom of religion should not be generally accepted as a "civil right" within the meaning of the Convention, Article 6 was applicable to the specific circumstances of the present case. The impugned Government actions had been aimed at influencing citizens' behaviour relating to the applicant associations' religious groups. Furthermore, the impugned statements had had a direct effect on the applicant associations' and their members' honour and reputation and their possibility to publicly profess their religion.

43. The applicant associations finally maintained that the proceedings before the administrative courts were a prerequisite for bringing an action for damages against the Government before the civil courts, as the administrative courts were better placed than the civil courts to examine the legality of governmental actions.

3. Assessment by the Court

44. The Court notes, firstly, that the Government have not denied the existence of a dispute within the meaning of Article 6 § 1. However, they maintained that the dispute in question did not concern the determination of the applicant associations' civil rights within the meaning of Article 6 § 1 of the Convention. The Court reiterates that, under its case-law, the concept of "civil rights and obligations" cannot be interpreted solely by reference to the domestic law of the respondent State. On several occasions, the Court has affirmed the principle that these concepts are "autonomous", within the meaning of Article 6 § 1 of the Convention (see, among other authorities, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, §§ 88-89, and *Maaouia v. France* (dec.), no. 39652/98, ECHR 1999-II). Accordingly, whether or not a right is to be regarded as "civil" must be determined in an autonomous way by reference to the substantive content and effects of the right – and not only its legal classification – under the domestic law of the State concerned (see *König,* cited above, § 89).

45. The Court observes that the proceedings at issue concerned the question whether the remaining applicant associations could prevent the Government from using certain terms when publicly referring to their religious groups. According to the domestic courts' case-law, such a right could be derived from the right to freedom of religion, as enshrined in Article 4 §§ 1 and 2 of the Basic Law. It remains to be determined whether this right could be regarded as a "civil" right within the meaning of Article 6 of the Convention.

46. The Court considers that possible negative consequences for the applicant associations' financial situation did not form the direct subject matter of the present proceedings. However, while the Court has found on many occasions that the pecuniary nature of an asserted right brought a dispute within the ambit of Article 6 § 1 (see, for example, *Salesi v. Italy*, judgment of 26 February 1993, Series A no. 257-E, § 19, and *Woś v.*

Poland, no. 22860/02, §§ 76, 77, ECHR 2006-...), this does not mean that disputes of a non-pecuniary nature necessarily fall outside the scope of that provision. In this context, the Court draws attention to its established case-law as to the "civil" character of the right to enjoy a good reputation (see *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 14, § 27, and *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, § 58). Furthermore, the Court has recently held that the right to use state-owned premises for religious ceremonies had to be considered as directly decisive for the respective applicant's "civil rights and obligations", thus leading to the applicability of Article 6 (see *Tserkva Sela Sosulivka v. Ukraine*, no. 37878/02, § 42, 28 February 2008).

47. The Court does not find it necessary to determine if the right to freedom of religion generally has to be considered as a "civil right" within the meaning of Article 6 § 1. Having regard to the particular circumstances of the case, in particular its relation to the applicant associations' good reputation, the Court considers that the dispute at issue concerned a "civil right" within the meaning of Article 6 § 1.

48. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

49. The period to be taken into consideration began on 1 October 1984, when the applicant associations instituted legal proceedings before the Cologne Administrative Court, and ended on 8 November 2002, when the Federal Government withdrew their appeal, which was pending before the Federal Court of Appeal following remittal. It thus lasted eighteen years and one month for four levels of jurisdiction.

1. The Government's submissions

50. The Government submitted that the length of the proceedings before the Cologne Administrative Court had been reasonable and that any delays which had occurred during the proceedings before the Administrative Court of Appeal had been primarily imputable to the applicant associations, who, on 22 January 1988, requested that the next date for a hearing not be set for another six months, then filed a substantial cross-appeal on 3 October 1988, applied twice for a hearing to be postponed and submitted further, extensive written statements and pleadings.

51. While conceding that the length of the proceedings before the Federal Constitutional Court was considerable, the Government considered that it was justified by the circumstances of this particular case. They pointed out that the subject matter had to be regarded as particularly

complex, as the underlying question whether the Government was entitled to issue warnings had been the subject matter of a number of complaints lodged at that time. The Federal Constitutional Court grouped these cases and, following the leading decisions given by the full Chamber – including the decision in the present case – disposed of the remaining complaints by decisions given by panels of three judges. According to the Government, the complexity of the case was further demonstrated by the wide coverage of the topic both in legal literature and in the general media. The Government pointed out that the case had been heard by the full Chamber – as opposed to a panel of three judges – which would not have been the case if the constitutional issue addressed had been simple, and that the applicant associations had submitted extensive material to the Federal Constitutional Court.

52. The Government emphasised the Federal Constitutional Court's special role as "guardian of the Constitution" as recognised by the Court in its previous case-law. They further stressed the unique political background of German reunification, which had occurred just one and a half years before the present complaint was lodged. By way of example, they presented a list of twelve decisions relating to reunification issues taken by the Federal Constitutional Court's first Chamber between July 1991 and July 1997. Furthermore, that court had had to decide on a great number of other complaints of considerable political and social importance as they concerned a great number of citizens, which had been given priority.

53. The Government emphasised that the length of the proceedings could not be attributed to the fact that the Federal Constitutional Court was overburdened or that its ability to function was restricted. It pointed out that that court had taken adequate steps to address the problem of its extraordinary workload following German reunification, ensuring that an average of some 88 % of constitutional complaints received between 1994 and 2005 had been dealt with within the first two years and that only 4.4 % were still pending after more than four years.

54. According to the Government, the applicant associations themselves had caused delays in the proceedings before the Federal Constitutional Court by submitting their comments to the Government's submissions of 4 November 1992 only eleven months later, namely on 21 September 1993. Furthermore, they had submitted extensive written observations throughout the proceedings.

55. As to what was at stake for the applicant associations, the Government considered that the level of alleged interference with their freedom of religion was comparatively low. It was further diminished by the fact that the Government, following the recommendations made in the final report of the expert commission on "so-called sects and psycho-cults" (see § 32, above) in 1998, refrained from using the terms under dispute in its information campaign.

2. The remaining applicant associations' submissions

56. According to the applicant associations, the excessive length of the proceedings before the Federal Constitutional Court was a result of a structural deficiency. That court had been overburdened since as early as the late 1970s, as was established in the Court's earlier case-law. The applicant associations contested the claim that the Federal Constitutional Court had taken adequate steps to amend the Constitutional Court's chronic overburden either before or after reunification. While the majority of the cases had been dealt with expeditiously, this was not the case for the more important ones which were decided by the full chamber. They further considered that the majority of the cases which had, according to the Government, been granted priority over their case, had also lasted an excessively long time. There had been, furthermore, no sufficient reasons to grant those cases priority over the applicant associations' complaint.

57. As regarded the complexity of the subject matter, the applicant associations considered that it was complex, but not extraordinarily so. In any event, it was the Federal Constitutional Court's task to decide on complex constitutional issues and this could not justify the excessive length of the proceedings.

58. As regarded the applicant associations' own conduct, they alleged that they had refrained from replying immediately to the Government's submissions after a competent staff member of the Constitutional Court had informed them that the complaint would not be dealt with for years. Further submissions had been necessitated by new developments and could have been avoided if the court had processed the case in due time. The extent of these submissions had been justified by the complexity of the case.

3. Assessment by the Court

59. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant associations and the relevant authorities and what was at stake for the applicant associations in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

60. The Court observes that the parties agree that the subject matter of the present proceedings concerned constitutional issues of a certain legal complexity. The Court endorses this assessment.

61. As to the applicant associations' conduct, the Court takes note that the applicant associations have not contested having caused a certain delay in the proceedings before the Administrative Court of Appeal by requesting that court on 22 January 1988 not to schedule a hearing within the next six months and by requesting for hearings to be re-scheduled twice. As regards

the proceedings before the Federal Constitutional Court, the Court observes that the Government have not contested the applicant associations' submissions that they had refrained from replying immediately to the Government's submissions as that court had informed them that the case would not be dealt with for years. There is, furthermore, no indication that the extent of the applicant associations' submissions to the Federal Constitutional Court had been excessive, having regard to the complexity of the subject matter. It follows that the applicant associations' conduct cannot be considered to have contributed to the length of the proceedings before the Federal Constitutional Court.

62. As regards the domestic courts' conduct, the Court observes that the proceedings were processed within one year and four months by the Cologne Administrative Court, within four years and one month by the Administrative Court of Appeal and in less than a year by the Federal Administrative Court. Having regard to the applicant associations' contribution to the length of the proceedings before the Court of Appeal (see paragraph 61, above) and to the complexity of the subject matter, the Court still considers this length to be acceptable.

63. As to the proceedings before the Federal Constitutional Court, which lasted approximately eleven years and three months, the Court observes that it has frequently held that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. Although this obligation also applies to a Constitutional Court, when so applied it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court to take into account on occasion considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice (see, among other authorities, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1174, §§ 55-57; *Niederböster v. Germany*, no. 39547/98, § 43, ECHR 2003-IV; *Wimmer v. Germany*, no. 60534/00, § 30, 24 February 2005; and *Kirsten v. Germany*, no. 19124/02, § 45, 15 February 2007).

64. The Court observes that the length of the instant proceedings cannot be explained by the exceptional circumstances of German reunification taken alone, as not more than twelve major decisions quoted by the Government which had been issued by the first chamber of the Federal Constitutional Court between July 1991 and July 1997 concerned issues related to German reunification as such (see, *mutatis mutandis*, *Hesse-Anger v. Germany*, no. 45835/99, § 32, 6 February 2003; and *Kirsten*, cited above,

§ 47). Neither can the overall length of the proceedings be justified by the fact that the Government grouped a number of cases concerning similar subject matters, as all these cases had been lodged within a short period of time and the applicant associations' case served as one of the pilot cases on the subject matter.

65. The Court has previously held that a length of three years and nine months (see *Schwengel v. Germany* (dec.), no. 52442/99, 2 March 2000) and a length of four years and eight months (see *Goretzki v. Germany* (dec.), no. 5244/99, 24 January 2002) before the Federal Constitutional Court might still be acceptable, particularly in the unique context of German reunification. However, the length of the present proceedings, which had been pending before the Federal Constitutional Court for more than eleven years, exceeded the margin set by these cases by far.

66. Summing up, the Court does not consider that the arguments put forward by the Government can justify the length of the proceedings in the instant case. It follows that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

67. The applicant associations complained that the Government's information campaign constituted an unjustified interference with their right to manifest their religion, as provided in Article 9 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

68. The Government contested that argument.

A. Admissibility

69. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The remaining applicant associations' submissions

70. The applicant associations maintained that since 1978, by referring to their movement as a "youth sect", "youth religion", "sect" and "psycho-sect", the Federal Government had infringed their duty of neutrality in religious matters. The scope of their complaint could not be limited to the five examples mentioned in the domestic proceedings (see paragraphs 9-10, above) and to the period of time between 1979 and 1984, but also encompassed numerous statements made by the Government before and after this period of time. They pointed out that the majority of the publications were not made in reply to requests submitted by members of parliament, but were issued by the Government of its own motion.

71. According to the applicant associations, the statements in issue had had a clearly negative connotation and had been made in a climate of interference and oppression by the State and the mainstream churches, and had effectively prevented them from exercising their right to freedom of religion. According to them, this campaign had aimed to denigrate the movement's teachings, to reduce the movement's influence in society, to sever all links with its members and their religious community and also to prevent other people from joining the movement. It had thus directly affected the exercise of the applicant associations' rights under Article 9.

72. The Government's warning and indoctrination campaign had had no legal basis. Neither of the constitutional norms quoted by the Government was sufficiently clear to allow the infringement of the applicant associations' Convention rights. They considered that the principle of proportionality did not set sufficiently clear limits to the exercise of the Government's discretionary power where interferences with the freedom of religion derived directly from other constitutional rights. The importance of the right to freedom of religion required a strict adherence to legal principles and at least some procedural rules concerning the involvement of the religious communities in the process of defining the scope of the State powers and safeguards against abuse of authority. In the applicant associations' view the authorities had failed in their duty to enact an adequate legal framework in this respect.

73. The applicant associations further maintained that the interference with their Convention rights was not justified by any of the legitimate aims set out in Article 9 § 2 of the Convention. There could never be a justification for judging religious groups' beliefs as contrasted to their actions. The Government had failed to submit any concrete facts which would allow the Court to verify the assumption that their movement was in any way dangerous or that urgent social needs necessitated the actions in question. Their movement could not be criticised for any activity which was

illegal or contrary to public order and the existing legislation. Accordingly, their treatment by the political authorities had been persecutory and unjustified, and had not been necessary in a democratic society.

2. The Government's submissions

74. The Government accepted that the applicant associations could refer to their right of religious freedom under Article 9 § 1 of the Convention. They considered, however, that the statements under dispute did not interfere with this right, as they were neither aimed at restricting the applicant associations' right to exercise their religion undisturbed nor did they directly bring about such an effect. Any possible indirect factual impact on the applicant associations' right under Article 9 did not amount to an interference with that right, given that the Government observed their obligation to neutrality in religious matters.

75. Even assuming an interference with Article 9 § 1, the Government considered this to be justified under § 2 of that same Article, as the contested statements remained within the margin of appreciation accorded to the Contracting States, that is, they were in accordance with the law and necessary in a democratic society. Based on its constitutionally assigned task of governance as set out in Article 65 of the Basic Law, the German Government was both entitled and obliged to inform the parliament and public about the applicant associations' religious community. The Government and its members had the task of addressing topical issues that had a considerable impact on the public. They further pointed out that the statements had been made in reply to questions submitted to them by members of parliament and that the Government was obliged to reply to those questions.

76. The Government further submitted that the contested statements had pursued the legitimate aim of protecting the health of their citizens and their rights and freedoms, especially human dignity, from the potential dangers which new religious communities could pose to these rights.

77. As regarded the proportionality of the Government's action, they pointed out that the contested statements had been made at a time when the public had expected the Government to explain their policy towards the new religious groups. Given the situation at the time, the Government had been justified in suspecting that the activities of these new religious groups could endanger the health, rights and freedoms of others. On account of the high value of the legal interests to be protected, this suspicion had been sufficient to justify the contested statements. The Government further maintained that they had used the mildest means at their disposal by restricting themselves to providing objective information – thus observing the principle of neutrality in religious matters – and had not in any way restricted the applicant associations' activities. Given the historical context and the widespread use of the contested terms, these statements did not contain any

defamatory or distorting representation of the applicant associations. While employing the contested terms, the Government had made it clear that these were collective terms which the Government knew were being used in the underlying public debate and which it had not coined itself. They further maintained that, in the relevant period between 1979 and 1984, the contested terms were used as collective terms in the public debate to refer to all smaller religious communities and did not contain any value judgment. The Government did not rule out that the same terms might nowadays possibly be used in public debates in other States Parties with clearly negative and defamatory connotations, as submitted by the third party (see paragraph 78, below). This did not, however, apply in the instant case.

3. The third party's submissions

78. The Helsinki Foundation submitted that the labelling of religious groups as "sects" or "cults" was widespread in Poland and other European countries. They considered that the term "sect" had an unclear meaning and a clearly negative connotation and should be regarded as defamatory when used by public officials. Consequently, such labelling should be considered as indirect interference which could not be justified as it was not necessary in a democratic society.

4. Assessment by the Court

79. The Court reiterates at the outset that a Church or an ecclesiastical body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 72, ECHR 2000-VII). In the present case the first and second applicant associations may therefore be considered applicants for the purposes of Article 34 of the Convention.

80. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists a number of forms which manifestation of one's religion or belief may take, namely, worship, teaching, practice and observance. Furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9, would be likely to remain a dead letter (see, amongst many authorities, *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I). Nevertheless, Article 9 does not protect every act motivated or inspired by a religion or belief (see, amongst many other authorities, *Kalaç v. Turkey*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1209, § 27). The freedom of thought, conscience and religion

denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see *Campbell and Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A no. 48, p. 16, § 36).

81. According to their statutes, the applicant associations promote the teachings of Osho. They run Osho meditation centres, organise seminars, celebrate religious events and carry out joint work projects. According to the teachings of their community, the aim of spiritual development is enlightenment. Their conception of the world is based on the idea of achieving transcendence in all essential areas of life and is continuously shared by them and their community. The Court considers that these views can be considered as the manifestation of the applicant associations' belief. Their complaints therefore fall within the ambit of Article 9 of the Convention.

82. The Court must consider whether the applicant associations' right under Article 9 was interfered with and, if so, whether the interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention.

a) Whether there was interference

83. The remaining applicant associations maintained that the information campaign and the expressions used to describe their movement demonstrated a failure by the Government to remain neutral in the exercise of their powers. The contested statements had had a negative impact on their reputation and the credibility of their teachings in society and reduced the number of their members.

84. The Court notes that the measures taken by the Government did not amount to a prohibition of the applicant associations' activities or those of their members. The applicant associations retained their freedom of religion, both as regards their freedom of conscience and the freedom to manifest their beliefs through worship and practice. However, the terms used to describe the applicant associations' movement may have had negative consequences for them. Without ascertaining the exact extent and nature of such consequences, the Court proceeds on the assumption that the Government's statements in issue constituted an interference with the applicant associations' right to manifest their religion or belief, as guaranteed by Article 9 § 1 of the Convention.

b) Whether the interference was prescribed by law

85. The remaining applicant associations maintained that the Government's information campaign had had no legal basis. They considered that the principle of proportionality did not set sufficiently clear limits to the exercise of the Government's discretionary power where interferences with the freedom of religion derived directly from other constitutional rights.

86. The Court reiterates its settled case-law that the expression "prescribed by law" requires firstly that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct (*Gorzelik and Others v. Poland* [GC], no. 44158/98, § 64, ECHR 2004-I).

87. Further, as regards the words "in accordance with the law" and "prescribed by law" which appear in Articles 8 to 11 of the Convention, the Court observes that it has always understood the term "law" in its "substantive" sense, not its "formal" one (*De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, p. 45, § 93). "Law" must be understood to include both statutory law and judge-made "law" (see, among other authorities, *The Sunday Times v. the United Kingdom* (no. 1), judgment of 26 April 1979, Series A no. 30, p. 30, § 47, and *Casado Coca v. Spain*, judgment of 24 February 1994, Series A no. 285-A, p. 18, § 43). In sum, the "law" is the provision in force as the competent courts have interpreted it.

88. The Court further reiterates that the scope of the notion of foreseeability depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed. It must also be borne in mind that, however clearly drafted a legal provision may be, its application involves an inevitable element of judicial interpretation, since there will always be a need for clarification of doubtful points and for adaptation to particular circumstances. A margin of doubt in relation to borderline facts does not by itself make a legal provision unforeseeable in its application. Nor does the mere fact that such a provision is capable of more than one construction mean that it fails to meet the requirement of "foreseeability" for the purposes of the Convention. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice (see *Gorzelik,* cited above, § 65, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 141, ECHR 2008-...). Furthermore it is, in the first instance, for the national authorities, and in particular the courts, to interpret and apply domestic law (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 86, ECHR 2005-).

89. The Court notes that in its decision of 26 June 2002 the Federal Constitutional Court found that the legal basis of the interference under consideration was provided by the Basic Law. The duty of imparting information on subjects of public concern was one of the governmental tasks directly assigned by the Basic Law to the Government. The Court accepts that it can prove difficult to frame law with a high precision on

matters such as providing information, where the relevant factors are in constant evolution in line with developments in society and in the means of communication, and tight regulation may not be appropriate. In these circumstances, the Court considers that the Government's information-imparting role did not require further legislative concretisation.

90. As to the applicant associations' argument that the legislature had failed to enact adequate legal rules to protect them against arbitrary interferences by public authorities with their right to manifest their religion or belief, the Court observes that, according to the Federal Constitutional Court, the Basic Law did not grant an unfettered discretion to the Government when imparting information. Statements affecting the very essence of the right guaranteed by Article 4 §§ 1 and 2 of the Basic Law must be appropriate in relation to the cause for concern. The State had to observe neutrality in religious or philosophical matters and was forbidden from depicting a religious or philosophical group in a defamatory or distorted manner.

91. Having regard to the above, the Court accepts that the interference with the applicant associations' right to manifest their religion may be regarded as being "prescribed by law".

c) Legitimate aim

92. The remaining applicant associations maintained that, in the absence of any attempt on their part to infringe the rights of others and in the absence of any such objective in their statutes, the restriction on the exercise of their right to manifest their religion or belief had not pursued any legitimate aim within the meaning of Article 9 § 2 of the Convention.

93. The Court reiterates that States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 113, ECHR 2001-XII).

94. The Court observes that the purpose of the Government's warnings was to provide information capable of contributing to a debate in a democratic society on matters of major public concern at the relevant time and to draw attention to the dangers emanating from groups which were commonly referred to as sects. Considering also the terms in which the decision of the Federal Constitutional Court was phrased, the Court considers that the interference with the applicant associations' right was in pursuit of legitimate aims under Article 9 § 2, namely the protection of public safety and public order and the protection of the rights and freedoms of others.

d) "Necessary in a democratic society"

95. The remaining applicant associations submitted that the statements in issue were not necessary in a democratic society.

96. Applying the principles established in its case-law (as summarised in *Leyla Şahin v. Turkey* ([GC], nº 44774/98), ECHR 2005-..., §§ 104-110), the Court has to weigh up the conflicting interests of the exercise of the right of the applicant associations to proper respect for their freedom of thought, conscience and religion, and the duty of the national authorities to impart to the public information on matters of general concern.

97. The Court notes in the first place that the Basic Law empowers the Government to collect and disseminate information of their own motion. In reviewing the constitutionality of this activity, the Federal Constitutional Court has developed case-law limiting the Government's power in this field. The Government, in fulfilling the functions assumed by it, must take care that information is conveyed in a neutral manner when dealing with religious and philosophical convictions and is bound by the standards inherent in the proportionality principle. Even when circumscribed in this way, such information clearly cannot exclude on the part of the Government certain assessments capable of encroaching on the religious or philosophical sphere.

98. Having regard not only to the particular circumstances of the case but also to its background, the Court notes that at the material time the increasing number of new religious and ideological movements generated conflict and tension in German society, raising questions of general importance. The contested statements and the other material before the Court show that the German Government, by providing people in good time with explanations it considered useful at that time, was aiming to settle a burning public issue and attempting to warn citizens against phenomena it viewed as disturbing, for example, the appearance of numerous new religious movements and their attraction for young people. The public authorities wished to enable people, if necessary, to take care of themselves and not to land themselves or others in difficulties solely on account of lack of knowledge.

99. The Court takes the view that such a power of preventive intervention on the State's part is also consistent with the Contracting Parties' positive obligations under Article 1 of the Convention to secure the rights and freedoms of persons within their jurisdiction. Those obligations relate not only to any interference that may result from acts or omissions imputable to agents of the State or occurring in public establishments, but also to interference imputable to private individuals within non-State entities (see, *mutatis mutandis, Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I, and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 103, ECHR 2003-II).

100. An examination of the Government's activity in dispute establishes further that it in no way amounted to a prohibition of the applicant associations' freedom to manifest their religion or belief. The Court further observes that the Federal Constitutional Court, in its decision given on 26 June 2002, carefully analysed the impugned statements and prohibited the use of the adjectives "destructive" and "pseudo-religious" and the allegation that members of the movement were manipulated as infringing the principle of religious neutrality. The remaining terms, notably the naming of the applicant associations' groups as "sects" , "youth sects" or "psycho-sects", even if they had a pejorative note, were used at the material time quite indiscriminately for any kind of non-mainstream religion. The Court further notes that the Government undisputedly refrained from further using the term "sect" in their information campaign following the recommendation contained in the expert report on "so-called sects and psycho-cults" issued in 1998 (see paragraph 32, above). Under these circumstances, the Court considers that the Government's statements as delimited by the Federal Constitutional Court, at least at the time they were made, did not entail overstepping the bounds of what a democratic State may regard as the public interest.

101. In the light of the foregoing and having regard to the margin of appreciation left to the national authorities, whose duty it is in a democratic society also to consider, within the limits of their jurisdiction, the interests of society as a whole, the Court finds that the interference in issue was justified in principle and proportionate to the aim pursued.

There has accordingly been no violation of Article 9 of the Convention.

IV. FURTHER ALLEGED VIOLATIONS OF THE CONVENTION

102. The applicant associations further complained that by defaming their religious community and embarking on a repressive campaign against them, the Government had subjected them to discriminatory treatment contrary to Article 9, taken together with Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

103. The applicant associations also relied on Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

104. The Court notes that these complaints are linked to the one examined above and must therefore likewise be declared admissible.

105. The Court notes that these complaints concern the same facts as the complaint under Article 9. Having regard to the finding relating to Article 9 (see paragraphs 79-101 above), the Court considers that they do not raise a separate issue under these provisions.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

107. The first, second and third applicant associations claimed at least 30,000 euros (EUR) each in respect of non-pecuniary damage for the disadvantages they allegedly suffered as a result of the Government's statements.

108. The Government did not express an opinion on the matter.

109. The Court notes that, while the remaining applicant associations claimed compensation for the alleged violation of their right to freedom of religion, they have not claimed compensation for any non-pecuniary damage suffered because of the excessive length of the proceedings. Accordingly, the Court does not see fit to award the applicant associations any compensation under this head.

B. Costs and expenses

110. The first, second and third applicant associations also claimed EUR 13,810.86 for the costs and expenses incurred before the domestic courts and EUR 16,926.57 for those incurred before the Court. They submitted documents in support of their claims.

111. The Government did not express an opinion on the matter.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicant associations have not established that the costs and expenses claimed for the proceedings before the domestic courts were incurred by them in order to seek prevention or rectification of the specific violation caused by the excessive length of the proceedings. However, seeing that in length-of-proceedings cases the protracted examination of a case beyond a "reasonable time" involves an increase in the applicant's costs (see, among other authorities, *Sürmeli v. Germany* [GC], no. 75529/01, § 148, ECHR 2006), it does not find it unreasonable to make to the applicant associations, who were jointly represented by counsel, a joint award of EUR 1,500 under this head. With regard to the costs incurred in the proceedings before it, the Court, deciding in equity, jointly awards EUR 2,500.

C. Default interest

113. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides* unanimously to strike out the application in so far as it concerns the complaints of the fourth and fifth applicant associations (Dharmadeep Verein für ganzheitliches Leben e.V. and Osho Meditations Center Berlin e.V);

2. *Declares* unanimously the remainder of the application admissible;

3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* by five votes to two that there has been no violation of Article 9 of the Convention;

5. *Holds* unanimously that no separate issue arises under Article 14 taken in conjunction with Article 9 and Article 10 of the Convention;

6. *Holds* unanimously
   (a) that the respondent State is to pay the first, second and third applicant associations, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable to them, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* unanimously the remainder of the applicant associations' claim for just satisfaction.

Done in English, and notified in writing on 6 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following partly dissenting opinions are annexed to this judgment:
(a) Partly dissenting opinion of Judge Lazarova Trajkovska;
(b) Partly dissenting opinion of Judge Kalaydjieva.

P.L.
C.W.

PARTLY DISSENTING OPINION OF JUDGE LAZAROVA TRAJKOVSKA

Unfortunately, I cannot share the opinion of the majority of my Fifth Section colleagues, and it is regrettable that they could not accept my views on the scope of Article 9. I find a violation of the applicant's rights under Article 9 of the Convention.

I will start by referring to the Court's settled case-law to the effect that freedom of thought, conscience and religion, as enshrined in Article 9, is one of the foundations of a "democratic society" within the meaning of the Convention. Here I will mention the cases of *Metropolitan Church of Bessarabia and others v. Moldova* (no. 45701/99, § 113, ECHR 2001-XII) and *Kokkinakis v. Greece* (judgment of 25 May 1993, § 31, Series A no. 260-A). The Court has also said that in a democratic society in which several religions coexist within the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and to ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, § 33).

In the light of Article 9 of the Convention, religious pluralism is an important part of a democratic society. Freedom of thought, conscience and religion is also freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see *Kokkinakis v. Greece*, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I). The Convention clearly stipulates that this right includes also the right to manifest religious belief, in worship, teaching, practice and observance.

However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial. It is this Court that established (see *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX) that the role of the authorities is to ensure that the competing groups tolerate each other. This is with the idea that only by neutral and impartial behaviour will a State preserve pluralism and the proper functioning of democracy.

In this particular case (*Leela Förderkreis E.V. and Others v. Germany*) the interference of the Government lay in not observing the requirement of neutrality in the exercise of their powers. It is clear that the applicant associations belong to a group of religious communities which have existed in Germany since the 1960s. Despite the fact that the applicant associations were not prohibited in all these years, the terms used by the German State agencies and in Government statements to describe the applicant associations' movement ("sect", "youth religion", "youth sect" and "psycho-sect") had negative consequences for them. The adjectives "destructive" and "pseudo-religious" have also been used to describe them. This interference was not prescribed by law (Federal Constitution and Basic

Law) and the Government have not submitted any proof of the assumption that these religious communities were a danger to society. Instead, the Government's statements are a clear indirect interference contrary to the obligation of neutrality required by Article 4 of the Basic Law and cannot be justified as "prescribed by law" and "necessary in a democratic society".

According to its settled case-law, the Court leaves the States Parties to the Convention a certain margin of appreciation in deciding whether and to what extent interference is necessary, but that goes hand in hand with European supervision of both the relevant legislation and the decisions applying it. In this case there were no indications that the teachings of Osho or the methods employed by the applicant associations were contrary to the rights and freedoms of others or that public safety and public order were in danger.

PARTLY DISSENTING OPINION OF JUDGE KALAYDJIEVA

I regret being unable to join the majority's view that imparting opinions, guidance or warnings on any beliefs may be seen as *"a power of preventive intervention on the State's part* [...] *consistent with the Contracting Parties' positive obligations under Article 1 of the Convention*" (paragraph 99). The very notion of a State duty to *"launch a large-scale campaign designed to ... stimulate a critical discussion"* and *"give official warnings"* of *"the potential dangers"* (paragraph 8) of certain religious groups sounds familiar to anyone who experienced such "protection" for decades.

I fail to see the active role of the State in a pluralistic society as a participant in the public discussion of beliefs. In the absence of data on any specific risks, this notion appears to be in contrast with the principle of State neutrality in religious matters established in *Kokkinakis v. Greece.* In the fifteen years following 1998 the Court consistently held the view that any interference in freedom of thought, conscience and religion must have "*regard to what is at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society"* (*Kokkinakis,* § 31), and that *"the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other"* (see, for example, *Serif v. Greece,* § 53*,* and *Metropolitan Church of Bessarabia v. Moldova,* § 115, amongst other authorities).

In the present case the majority pointed out that "*the States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety"*. However, the Court has reiterated that the right to freedom of religion "*excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate" (Manoussakis v. Greece,* § 47). The Respondent Government failed to demonstrate that the *"need to secure religious pluralism"* had been taken into consideration at any time before or during the impugned information campaign. There are neither facts, nor even submissions, indicating that prior to distributing warnings and information using the impugned expressions the authorities attempted to verify whether the applicants' activities were *"harmful to the population* or *to public safety"*. In my opinion the observation that *"by providing people with explanations it considered useful at the time... the German Government ... was aiming to settle a burning public issue and attempting to warn citizens against phenomena it viewed as disturbing"* (paragraph 94) does not suffice to conclude that the interference was in pursuit of or proportional to any of the legitimate aims under Article 9 § 2 of the Convention.

By accepting the findings of the Federal Constitutional Court on the legal ground for the information imparted on the motion of the authorities, the majority seems to interpret the Basic Law of Germany as one not only permitting, but also requiring State intervention in a domain where the Convention prescribes a duty to neutrality in the name of preservation of pluralism. A State duty to impart information on subjects of public concern may be reasonably interpreted as relevant in the event of urgent and objective risks such as imminent calamities and the like, which beliefs as such may hardly be considered to constitute. Furthermore, formulating such a duty in general terms provides no clarity or foreseeability as regards *"the field it is designed to cover and the number and status of those to whom it is addressed"* (see, among many other authorities, *Hasan and Chaush v. Bulgaria,* § 84, with further references); nor does it *"indicate with sufficient clarity the scope of the discretion conferred on the competent authorities and the manner of its exercise"* (see also *Rotaru v. Romania,* § 55). In contrast with these standards of clarity and precision, where a broadly defined provision authorises or even requires interference in religious matters it may legitimise the exercise of far-reaching discretion.

Noting that "*The* ... [impugned] *terms, even if they had a pejorative note, were used ... quite indiscriminately for any kind of non-mainstream religion",* the majority concluded that the interference *"did not entail overstepping the bounds of what a democratic State may regard as the public interest"* (paragraph 100). In my view this is sufficient to agree that the applicants endured treatment to which the mainstream religion was not subjected – a fact for which the respondent Government offered no justification.

I find a violation of the applicants' rights under Articles 9 and 14 of the Convention.