Rethinking the Doctrinal System of Fundamental Rights: New Decisions of the Federal Constitutional Court

By Marion Albers
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A. Introduction

[1] The German doctrinal system of fundamental rights is characterized by the interplay of three components: the scope of protection, the impairment and the explicit justification of restrictions. In the traditional conception fundamental rights serve as individual rights as a defense against governmental or administrative activities which impair the protected freedom without being legitimated by the Basic Law. The impairment occupies the central role: The scope of protection shall not define but leave room for the individual freedom, and that is possible because it refers to present possibilities and to interests like self-determination, freedom of action or freedom of property. In contrast, the "impairment" is strictly defined. It is a governmental or administrative order or prohibition by or based upon law; the order or prohibition includes sanctions; it is addressed to the person protected by a specific fundamental right, and it reduces the freedom protected by this very right. (1) In case of an impairment, the governmental or administrative act has to meet all requirements of Basic Law. One of the most important requirements is the parliamentary legal basis.

[2] This conception has been extended both in jurisprudence and in the scholarly literature. The causes are multifarious. The idea of freedom, which concentrates upon the individual and his or her already existing possibilities, has turned out to be too restricted. The tasks of the State and the forms of governmental or administrative activities have increased. Extensions can be observed with regard to all components. The scope of protection covers new interests, *i.e.* the participation in institutions or the protection of personality. The impairment has been disintegrated, and none of its elements seems to be really necessary. (2) The requirement of a legal basis has been broadened, too: today it refers to impairments as well as to the further refining of a protected interest or, under special conditions, to benefits. (3) All the extensions happened step by step, each with good reasons in regard to the case before the court.

[3] However, these changes have consequences: If the scope of protection takes an extensive shape and if every factual or mediated disadvantage is classified to be an impairment, there is no case which can't be described as an impairment of the fundamental right of a person. For that reason there exists an extensive discussion about the protection fundamental rights offer and about factual or mediated impairments. Up to now reflections usually have concentrated on proposals how to modify the definition of "impairment." Nevertheless many aspects have been contested. (4)

[4] On 26 June 2002 the Federal Constitutional Court took two central decisions about factual or mediated impairments. (5) Realizing the hitherto existing discussion, especially one point is striking: The definition of the "impairment" is not shifted into the foreground. The Court rather takes a look at all components, comprehends them as cooperating elements in a doctrinal system and then even concentrates - in the present cases it has to decide - on the scope of protection and on the justification of restrictions. On this very point its solution is a genuine innovation in constructing the protection of fundamental rights.

B. Facts

I.

[5] The *Glykol-Case* arose from the so-called "Glykol-scandal": In Austria and Germany the authorities discovered, step by step, that a lot of wines sold in the market contained *diethylenglykol* (DEG). This substance was regularly used as an antifreeze or as a chemical solvent but apparently also made bad wines taste better. After an increasing number of reports in the media people were alarmed especially on account of potential damages of their health. The wine market broke down. The events and necessary political reactions became the subject of debates held in parliament. In this situation the Federal Ministry for Youth, Family Affairs and Health published a list of wines which had been found to contain DEG. The list included the exact description of the examined wine, the results of the examination and the name of the bottlers. Further information was given under the caption "Important Advice," *i.e.* that the results listed referred only to the wines examined, that the series number didn't mean that all of the wines of that series contained DEG and that there could be wine on the market with the same description from the same bottler which was not mixed with DEG.

[6] The complainants, two bottling firms, failed in the administrative courts with their demands that the publication of the list should be stopped or that, at least, their names should be deleted. In their constitutional complaint they alleged an infringement of Article 12 and 14 of the Basic Law: Because of the publication it had not been possible for them to sell wine any more, even if it wasn't mixed with DEG. (6) The publication, they argued, would destroy their reputation. In any event, they argued, only the *Länder* (Federal States) and not the Federal Government had the competence to take measures protecting people against risks.

II.

[7] The *Osho-Case* is connected with the rise of new religious and philosophical groups since the 1960s. These groups have been the subject of a heterogeneous but mostly critical public debate. They have been accused of isolating their members from the outside world, alienating them from their own families, manipulating them psychologically and exploiting them financially. They also have been described as "sects," "psycho sects" or "youth religions." Since the 1970s this phenomenon has attracted the attention of governments as well. On many occasions governmental statements have been issued on the problems associated with these groups in reply to parliamentary questions. More than that, the federal as well as the *Länder* governments have informed the public about such groups in brochures, press releases and speeches.

[8] The complainants were meditation societies of the Osho (previously Bhagwan) movement. They demanded in several original proceedings that the Federal Republic of Germany desist from issuing specific statements about the religious movement and the societies belonging to it. This was induced by two replies of the Federal Government to parliamentary questions and by a speech of the Federal Minister for Youth, Family Affairs and Health held at a public meeting. In these statements the Osho movement was characterized as a "sect," a "youth sect," a "youth religion" and a "psycho sect." It was also described with the attributes "destructive" and "pseudo-religious." More than that, the accusation was raised that its members were being psychologically manipulated. After the complainants had been unsuccessful in all instances, they lodged a constitutional complaint. They alleged that their freedom to profess a religious or philosophical creed under Article 4.1 of the Basic Law has been infringed. (7)

C. Decisions

[9] In the *Glykol-Case* the First Senate of the Federal Constitutional Court rejected the constitutional complaint. It commented, in particular, on the scope of protection: Neither the occupational freedom nor the constitutional guaranty of the right to property protects the complainants against the government's publication of the list informing of DEG in wines and of the bottlers. In the *Osho-Case* the First Senate granted the complaint in part. Here it commented on the scope of protection as well as on the impairment and on the justification of restrictions: The freedom to profess a religious or philosophical creed does not protect the complainants against any critical statement made by the government. They are protected against defamatory, discriminatory or distorting statements. Factual or mediated disadvantages can be judged to be an impairment. However, governmental statements do not require a special parliamentary legal basis.

I. The Glykol-Case: The protection of fundamental rights with regard to the government´s dissemination of information about products or producers.

1)

[10] Article 12.1 of the Basis Law protects the freedom to choose and to practice an occupation or profession. This right has been outlined by several former decisions of the Constitutional Court: The protection includes individual choices regarding how to act as well as the participation in the market, i.e. as a seller or a buyer. (8) But the protection of participation does not reach so far that it guarantees success in competition or future chances to sell products. (9) In the *Glykol-Case* the Court had to deal with a new problem: How can one describe the scope of protection with regard to governmental information about products or producers which lead to disadvantages because people don't buy the products any more or, at least, buy less than before? Is the protection against the governmental or administrative information of consumers a protected interest?

[11] The Court referred to the generally accepted findings that the participation in the market is not guaranteed or protected in an unlimited way. But in this context it evolves rather extensive statements: If the practice of an occupation takes place in the market according to the principles of competition, the scope of protection of the occupational freedom is also influenced by the legal rules which make competition possible and set limits on it. So, Article 12.1 of the Basic Law guarantees participation in the market according to the conditions of its functioning. A firm active in the market exposes itself to communication and with that to criticisms concerning its activities or the quality of its products. Against disadvantageous contributions to market communication it can defend itself with its own information or advertising. Article 12.1 of the Basic Law does not grant a firm the right to be depicted by others

only as it sees itself and its products or as it wishes to be seen. (10) On the contrary, the functioning of the market is based upon a high degree of the information, which the market participants have about all relevant aspects. Deficiencies threaten the self-regulation. Because the market as an institution does not ensure this high standard its functioning may be promoted by additional governmental or administrative information. The legal system aims to encourage market transparency. The Court pointed, as an example of this kind of market interference, to the precautions against unfair competition. (11)

[12] These considerations lead to the result the Court came to: Article 12.1 of the Basic Law does not protect market participants against the dissemination of market-relevant and otherwise accurate information by the State, so long as the measures the Basic Law sets with respect to information activities are observed. (12) The Court also chose the formulation that market-related governmental or administrative information does not impair the scope of protection of the occupational freedom provided that this influence does not distort the market relations and provided that the measures the Basic Law sets are observed. (13) Then the Court identified three requirements: the existence of a task, the observation of competences, and the accuracy and objectivity of the information disseminated.

[13] The first requirement is the existence of a task. The Court based its judgment upon the Federal Government's duty to direct the State. It started with a description of the functions: This task aims at political legitimation. It includes the participation in the accomplishment of concrete public tasks unless they are assigned to the administration. The direction of the State is not only realized by means of legislation or influence in the execution of law but also through the provision of public information. Then the Court broadened the understanding of governmental information of the public. Traditionally the attention was focused on the illustration of the activities or projects of government and on recruiting support. (14) Today the governmental information provided to the public also covers assistance with coping with conflicts within the State and society, reacting properly to crises and helping citizens to find their bearings. The Court pointed to present-day crises in the agriculture and food areas as examples of the importance of government-authorized, publicly accessible information in coping with such situations. (15)

[14] The second requirement is that competences have to be observed. The Federal Government must especially respect the division of powers between the federation and the *Länder,*. Its competences to direct the State are not laid down explicitly. But they are implied in several Articles of the Basic law. From this and from the description of the task developed before the Court drew an extensive conclusion: The Federal Government is legitimated in providing information wherever it has federative responsibility which can be fulfilled by the aid of information. Therefore it may, for example, disseminate information if events are related to foreign countries or of national importance and if the provision of information nation-wide contributes to a more effective handling of the problem. This competence does not exclude the powers of the *Länder* governments to provide information nor does it prevent the administrative authorities from fulfilling their administrative duties. (16)

[15] The third requirement is the accuracy and objectivity of the information disseminated. This requirement ensues from the description of the scope of protection: Only accurate and objective information improves the transparency and the functioning of the market. In this context the Court approached the problem of uncertainty. The government or the administrative authorities must investigate the facts carefully. In cases where doubts are left information may be provided if the public interest necessitates the informing of market participants about important circumstances, *i.e.* about a consumer risk. However, market participants should be advised of the remaining uncertainties. (17)

[16] After all these considerations the "impairment," as a component of the doctrinal system of fundamental rights, no longer plays a central role. The Court justified its decision by making concrete and limiting the scope of protection of occupational freedom. The dissemination of information can be judged to be an impairment if it's not restricted to the provision of market-relevant information which enable the market participants to make self-determined decisions. In particular, it can be judged to be an impairment if it's only a substitute for an action which would be an impairment by traditional standards. The scope of protection is also impaired if the government furthermore disseminates or does not correct information which has proven to be inaccurate. (18)

[17] The publication of the list of wines that were found to contain DEG satisfied the constitutional standards the Court derived from Article 12 of the Basic Law. As the list was distributed for the purposes of coping with a nation-wide crisis and restoring faith in the national wine market, the Federal Government could base its information upon the task and competences to direct the State. The statements and information were - considering, in particular, the further information given under the caption "Important Advice" - accurate and objective. So the list created market transparency. It enabled suppliers and customers in the wine market to deal with the situation in an informed way.

[18] Article 14 of the Basic Law guarantees the fundamental right to property. It covers present and concrete legal positions, which have the value of an asset. (19) In the *Glykol-Case*, the Court had to deal with a new question. The complainants alleged an infringement of Article 14 of the Basic Law because the publication of the list would destroy their reputation. Indeed, the reputation of a firm active in the market is a very important factor to survival and success.

But is it a position which is protected by the fundamental right to property?

[19] The Court didn't follow the complaint on this point. Here again, it reasoned that with the contents and the limits of the scope of protection: The reputation of a firm is produced permanently by the performance of the firm on the one hand and by the judgments of the consumers on the other hand. Being the fluctuating result of market communication it is not a position that can be regarded as property. Thus Article 14 of the Basic Law does not protect the "good reputation" of a firm. (20)

[20] All in all, the Court came to the result that the publication by the government impaired neither the occupational freedom of the bottlers which were identified by their products and by name nor their fundamental right to property.

2)

[21] Is the solution of the Constitutional Court convincing? In any case, a new solution is necessary. The Court is right in concentrating on the scope of protection instead of redefining the "impairment". The traditional descriptions of protected interests don't fit. The protection of the choices how to act must be distinguished from the protection against the information of others as well as from the protection of the social role or the position in market. As these interests refer to individual positions within society the contents and extent of protection the relevant fundamental right offers has to be described carefully. This is an important distinction in comparison with the traditional doctrinal concept.

[22] However, in outlining Article12.1 of the Basic Law the Court didn't differentiate in a sufficient way. It just derived the contents and the limits of the scope of protection of the occupational freedom from the normative model of an institution, namely of the market. It didn't give reasons for its opinion that this model should serve as a foundation by the terms and meaning of Article 12.1 or, at least, by other Articles of the Basic Law. The reference to the statutes aiming to encourage market transparency and the precautions against unfair competition can't be a sufficient reason, because these provisions of law are not on the level of the Basic Law. So, the Court does not succeed in drawing out of the fundamental right of occupational freedom an exact description of the protected interest a firm can claim against governmental information of other market participants. At this place, a better solution has to be developed.

[23] The Court restricted its statement that Article 12.1 of the Basic Law does not protect the complainants against the governmental dissemination of market-relevant information: The measures the Basic Law sets with respect to information activities have to be observed. It follows from the description of the scope of protection that the information disseminated has to be accurate and objective. But the other requirements the Court stated are not well founded. If there is no impairment, why does the fundamental right require the existence of a task and the observance of competences? Anyway, the task the Court then referred to – the government's duty to direct the State - is described in a very extensive way (assisting with coping with conflicts within the State and society, reacting to crises). Even if the Court is right in broadening the understanding of governmental information of the public the chosen description contains nearly no limits. Perhaps this is not the place where limits can be developed. That substantiates the necessity to describe the scope of protection and the protected interests with regard to governmental information in a more convincing way.

II. The Osho-Case: The protection of fundamental rights with regard to the government´s statements about religious movements.

1)

[24] Articles 4.1 and 4.2 of the Basic Law protect the freedom to profess a religious or philosophical creed. Just as in the *Glykol-Case* the Court firstly had to deal with the problem describing the scope of the protection with regard to potentially harmful governmental information about religious movements. The consequences of such information could be, for example, that people won't judge the movement and its adherents in an unprejudiced manner and some may not join the movement where they otherwise might have.

[25] The Court began by recapitulating earlier decisions: The freedom to profess a religious or philosophical creed covers the freedom to proclaim the creed, to constitute an association, to make propaganda and to recruit new members. (21) From this description of the rights of protected persons or organizations the Court changed - rather abruptly - to a description of the State's duties. Pursuant to Articles 4.1 and 4.2 of the Basic Law as well as Articles 3.3., 33.3 and 140 of the Basic Law (incorporating Articles 136.1, 136.4 and 137.1 of the Weimarer Constitution) the State has the duty to be neutral in questions of religious or philosophical creeds. (22) This duty to be neutral is not contested. The Court outlined the contents and limits of this protection: It does not reach so far that it obliges the State to abstain from any critical discussion about these groups, their goals and their activities. However, it prohibits the State from depicting a religious or philosophical community in a defamatory, discriminatory or distorted manner. If these standards are observed, information of the parliament, of the public or of interested citizens about religious

groups is possible. From these duties the Court derived a corresponding right: The complainants are protected against defamatory, discriminatory or distorting statements. But they are not protected against any critical statement. (23)

[26] According to these standards, the Court found that the characterization of the Osho-movement as a "sect", "youth religion", "youth sect" and "psycho sect" does not affect the scope of protection under Articles 4.1 and 4.2 of the Basic Law. In the context in which the statements were made, especially as they often included the qualification "so-called" before the use of the descriptive terms (sect, youth sect, psycho sect), the characterizations could be understood as a general description, which focused on the minority-status of the movement or its activities in psychological services. In this meaning they are not discriminating. (24)

[27] Labels such as "destructive" and "pseudo-religious" and an accusation of manipulation, however, do not meet the State's duty to be neutral. (25)

[28] The Court concluded that the use of these labels and the accusation of manipulation impaired the fundamental right of the complainants that the State be neutral and cautious in its treatment of religious or philosophical creeds. No doubt, the governmental statements or information are no impairment by traditional criteria. But the Court emphasized that the protection of fundamental rights is not strictly connected with the traditional definition of an "impairment." The Basic Law does not lay down the definition. As the governmental statements had factual and mediated consequences and as they impaired the fundamental right provided by Articles 4.1 and 4.2 of the Basic Law they have to be justified by the Constitution. (26)

[29] After these explanations the Court had to deal with the question of constitutional legitimation. In the doctrinal system of fundamental rights the necessity of constitutional legitimation is part of the (entire) guaranty. And it is generally accepted that, in case of an impairment, one of the most important requirements of the Basic Law is the parliamentary legal basis. In the *Osho-Case* there was no legal basis, which would have covered the governmental statements. But the Constitutional Court developed a new, rather surprising solution.

[30] The justification, the Court held, can be based upon the Federal Government's task to direct the State. Just as in the *Glykol-Case* the Court outlined this task in a very extensive way: The direction of the State is not only realized by means of legislation or influence on the execution of law but also by governmental information of the parliament, of the public or of interested citizens. It includes assistance with coping with conflicts within the State and society and the reaction to the concerns of citizens by providing them with information.

[31] The Federal Government's task to direct the State, the Court stated, can legitimate the provision of information even if the information leads to factual or mediated impairments of fundamental rights. Apart from this task or duty no special authorization of the government's activities by parliament is required. A special legal basis is only necessary if the provision of information is a substitute for an action, which would be an impairment by traditional standards. (27)

[32] Choosing this solution the Court was required to address the fact that the requirement of a legal basis is laid down in the Basic Law, especially in the wording of most fundamental rights. It reasoned that there have been different reasons to extend the definition of an impairment, on the one hand, and the requirement of a legal basis on the other hand. This requirement – which means the participation and responsibility of parliament – made sense only if it contributed to the functions following from the rule of law and the principle of democracy. (28) Then the Court stated that the preconditions for the governmental provision of information cannot be regulated properly by statute: The subjects, purposes and modalities of the information are so multifarious that at the most they could only be covered by broadly drafted formulae and general clauses. The results of the information are not predictable and it depends on several factors if they really lead to disadvantages. So the Court concluded that the participation of the parliament by demanding a legal basis makes no sense. (29)

[33] Nevertheless, the Court took two further requirements to be necessary. In its provision of information, the Federal Government must respect the division of powers between the federation and the *Länder*. Furthermore, it is bound by the standards inherent in the proportionality principle. Statements, which impair the scope of protection contained in Articles 4.1 and 4.2 of the Basic Law, must be appropriate, in particular, in relation to the event that provoked them. (30)

[34] In the *Osho-Case*, the Court came to the result that the Government's use of the terms "destructive" and "pseudo-religious," as well as the accusation of psychological manipulation do not satisfy the requirements of constitutional law. The Federal Government was not lacking competences. However, these statements were not justifiable according to the proportionality principle. In particular, no substantiated reasons were advanced, which could justify the statements, nor were any such reasons otherwise apparent. They also do not emerge from the situation in which they were made.

2)

[35] The solution the Constitutional Court developed in the *Osho-Case* differs in several aspects from the solution in the *Glykol-Case*. In the *Osho-Case* the Court also emphasized the scope of protection. The freedom to profess a religious or philosophical creed is relevant. But the concrete description of its contents and limits is, as opposed to the *Glykol-Case*, facilitated by the possibility of referring to a duty of the State, namely the State's duty to be neutral in its treatment of religious or philosophical creeds. There are no objections to the corresponding individual right the Court derives. And this right evidently offers a specific protection against the governmental information about religious movements.

[36] It is true, however, that the Court neglected the problem, if Articles 4.1 and 4.2 of the Basic Law include relevant rights beyond the right that the State be neutral. Nevertheless, the result that the complainants are not protected against any potentially harmful critical statement made by the government is generally convincing. In detail, one needn't agree with all opinions of the Court, for example, that the qualification as a "psycho sect" isn't discriminating.

[37] The use of labels such as "destructive" or "pseudo-religious" and the accusation of psychological manipulation are judged to be an impairment. Before rejecting the traditional definition of an "impairment" the Court treats it at full length. But this isn't necessary. If Article 4.1 and 4.2 of the Basic Law contain a duty and a corresponding individual right that the State be neutral in its statements about religious creeds or movements the disregard of this duty is an impairment of the right. Viewed this way it's not surprising that the Court does not formulate new criteria which could define an "impairment." That does not mean that every case can be solved without a restricting definition.

[38] The following thesis of the Court will be of great consequence for the doctrinal system of fundamental rights: Although the above mentioned governmental statements are judged to be an impairment no special parliamentary legal basis is required. The explanations the Court gave in the *Osho-Case* lead to the supposition that it rethinks the requirement of a parliamentary legal basis generally. However, besides the proportionality principle the requirement of a legal basis is the most important component of the doctrinal system. As a part of the (entire) guaranty it is also a part of the protection the fundamental right offers, namely the necessity of parliamentary participation in justifying restrictions of individual freedom. Therefore this thesis has to be discussed very carefully even if general concerns about over-regulation may be appreciated.

[39] In any event, the decision in the *Osho-Case* is not suited to general application. It raises the specific question of the protection against statements the *government* makes to inform the parliament or the public. First of all, the Court should have distinguished between the governmental information of the parliament, on the one hand, and the governmental information of the public, *i.e.* by brochures, on the other hand. Replies of the government to parliamentary questions, as they were subject in the original proceedings, fall under the paradigm of the responsibility of government with regard to parliament. This is a completely different context, and the Court didn't enter into it at all. Thus there are a lot of questions and doubts left.

D. Conclusion

[40] In its new decisions the Federal Constitutional Court rethought the doctrinal system of fundamental rights with regard to the problem of factual or mediated disadvantages. It also offered new concepts. It was right to concentrate on an adequate description of the contents and limits of the scope of protection of the relevant fundamental right. The "impairment" no longer plays the central role. In particular, comprehension of the impairment depends partly on the description of the scope of protection. The theses of the Court concerning the requirement of a parliamentary legal basis are not induced by the cases the Court had to decide and, understood as general theses, too far-reaching.

[41] All in all, the new decisions will not finish the discussion about the contents, extent and limits of the protection fundamental rights provide. But they will broaden, enrich and innovate this discussion.

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(1) Gallwas, *Faktische Beeinträchtigungen im Bereich der Grundrechte* 10 et. seq., 21 et. seq. (1970); Eckhoff, *Der Grundrechtseingriff* 175 (1992).

(2) BVerfGE 46, 120 (137 et. seq.); 61, 291 (308); BVerwGE 71, 183 (190 et. seq.); 75, 109 (115 et. seq.); 87, 37 (39

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et. seq.); 90, 112 (118 et. seq.).

(3) BVerfGE 57, 295 (319 et. seq.); 73, 118 (152 et. seq.); 80, 124 (131 et. seq.).

(4) Albers, "Faktische Grundrechtsbeeinträchtigungen als Schutzbereichsproblem", 1996 DVBl 233, 236.

(5) BVerfG, Decisions of 26 June 2002, 1 BvR 558, 1428/91 - Glykol -, 1 BvR 670/91 - Osho -; http://www.bverfg.de.

(6) Article 12 of the Basic Law provides for occupational freedom; Article 14 protects the right to property.

(7) Article 4.1 provides: "Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable."

(8) BVerfGE 32, 311 (317); 85, 248 (256); 94, 372 (389).

(9) BVerfGE 34, 252 (256).

(10) *See also*, BVerfGE 97, 125 (149); 97, 391 (403); 99, 185 (194); 101, 361 (380).

(11) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Paras. 41 - 46; http://www.bverfg.de.

(12) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Para. 40; http://www.bverfg.de.

(13) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Para. 47; http://www.bverfg.de.

(14) BVerfGE 20, 56 (100); 44, 125 (147 et. seq.); 63, 230 (242 et. seq.).

(15) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Paras. 51 - 52; http://www.bverfg.de.

(16) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Para 53 - 56; http://www.bverfg.de.

(17) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Paras. 57 - 59; http://www.bverfg.de.

(18) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Paras. 60 - 61; http://www.bverfg.de.

(19) BVerfGE 68, 193 (222); 77, 84 (118); 81, 208 (227 et. seq.); 95, 173 (187 et. seq.).

(20) BVerfG, Decision of 26 June 2002, 1 BvR 558, 1428/91, Para. 77; http://www.bverfg.de.

(21) BVerfGE 12, 1 (3 et. seq.); 24, 236 (245 et. seq.); 53, 366 (387); 83, 341 (354 et. seq.); 93, 1 (15 et. seq.).

(22) BVerfGE 93, 1 (16 et. seq.); 102, 370 (383, 394).

(23) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Paras. 52 - 54; http://www.bverfg.de.

(24) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Paras. 56 - 63; http://www.bverfg.de.

(25) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Paras. 64 - 67; http://www.bverfg.de.

(26) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Paras. 68 - 70; http://www.bverfg.de.

(27) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Paras. 72 - 76; http://www.bverfg.de.

(28) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Para. 78; http://www.bverfg.de.

(29) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Paras. 79 - 82; http://www.bverfg.de.

(30) BVerfG, Decision of 26 June 2002, 1 BvR 670/91, Paras. 83, 92; http://www.bverfg.de.