

Authoritarian State Verses Religious Freedom: The Bizarre Lawsuit Surrounding Sun Myung Moon*

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In November 1995 the German Federal Ministry of the Interior instructed customs authorities in Coblenz to refuse Rev. and Mrs. Moon entrance into the country. In accordance with the Schengen Agreement, entrance for the spiritual leader of the Unification Church was not only stopped in Germany but in most states of the European Community as well. This administrative act led to a lawsuit whose preliminary ending in 2004 was based upon a decision by the Federal Administrative Court in favour of the entry ban. The entry ban remains in effect to this day although an appeal is pending at the Federal Constitutional Court since 2003.

At first sight, it seems this case concerns the question of whether the right to exercise religious freedom, guaranteed by Article 4 of the Constitution, applies to the members of the Unification Church, who admire Rev. and Mrs. Moon as "True Parents" and wish to be allowed to receive them in Germany. Upon closer consideration however, it turns out that religious freedom is not the only issue here. An even more fundamental question is raised: to what degree is the granting or denial of civil liberties at the discretion of state authorities? Are we to regard the state as a group of authorities who grant us civil liberties in accordance with their personal discretion or does every law abiding citizen have specific rights which enable him to determine the free unfolding of his character and which can only be limited if they infringe upon the rights of others or violate constitutional order?

The most important stages of this lawsuit, which contains thoroughly bizarre elements, can be described briefly: the Unification Church took legal action against the instruction of the Ministry of Interior in the Administrative Court in Cologne. In March 1998, more than two years later, the court declared itself not responsible for the related local district and referred the lawsuit to the Administrative Court in Coblenz. A decision was reached in November of the same year that the legal action itself was not permissible because "a violation of any subjective public rights of the plaintiff can obviously be ruled out and even the possibility of a violation of rights is deniable and thereby, the complaint is rejected as invalid." [1]

However, the legal position is not quite as clear as the court suggested. In September 2000, the Higher Administrative Court of Rhineland-Pfalz (11th senate) decided that an appeal against the verdict of the Administrative Court in Coblenz is permissible because possibly the right of religious freedom is violated. [2] The Federal Government, however, applied for an appeal at the Federal Administrative Court but it was rejected in July 2001. In explaining the reasons for the decision, the Federal Government pointed out that Article 4 of the Constitution imposes an obligation on the state to "insure that individuals as well as religious communities have free space for the exercise of religious and ideological activities." [3] But, at the same time, the obligation of the state to consider protecting the interests of the religious community may occur "as long as the denial of entrance does not insignificantly affect the religious interests of the community according to their own estimation" which would

especially have to be taken into consideration "when a visit of the leader would have essential significance for the joint practice of the religion in accordance with the religious teachings that goes beyond the normal character of meetings." [4] On these grounds, the argumentation of the Unification Church was seen as legally relevant because, for the members of the church, a personal meeting with Rev. Moon, who is regarded as the "new Adam", means an outstanding spiritual and emotional experience.

After this decision, the possibility of appealing the 1998 verdict of the Administrative Court in Coblenz was opened. However, in July 2002 the Higher Administrative Court in Rhineland-Pfalz (this time the 12th senate), acting as a court of appeal, rejected the appeal. With this, the entry ban imposed by the Federal Government was upheld. The grounds for the verdict were that the Unification Church doesn't have the subjective right for fair consideration of their interests. [5] The court believed to have established that, for the members of the Unification Church, a meeting with Rev. and Mrs. Moon is in no way essential for the practice of their religion, because, "a supernatural and extraordinary religious element is not connected in such a way that the mere presence of Rev. and Mrs. Moon would have the meaning of divine revelation for the believers." [6]

It is truly astonishingly when a court ascribes the competence to itself to be able to decide which experiences have a special religious meaning for the members of a religious community. The verdict should have a good chance, in all its ignorance and prejudice, to be included as one of the jewels in the collection of miscarriages of justice. Nevertheless, it was upheld because legal proceedings were fully exhausted and the appeal was rejected. A grievance filed by the Unification Church against the appeal refusal was rejected by the Federal Administrative Court because of procedural reasons, because, according to the Administrative Court order, no decision of fundamental importance has to be taken in this particular legal case. The judges felt compelled; however, to repeatedly point out "to avoid misunderstandings" that the court of appeal, in making its decision, had incorrectly interpreted the July 10th, 2001 verdict of the Federal Administrative Court. It is particularly inappropriate to insist that the personal presence of the Rev. and Mrs. Moon amounts to a divine revelation for the believers. This measure is far too stringent. Much could be said as to why the Federal Government must take the religious interests of the members of the Unification Church into account. [7] To be more precise, the Federal Administrative Court reprimanded the faulty explanations of the verdict, rejected, however, the complaint of the Unification Church because they were insufficiently justified. [8]

There is nothing sinister when a verdict which is based on faulty assumptions, even in the opinion of a higher court, becomes nevertheless legally binding because the formal grounds for an appeal are not presented. Even if one's normal sense of justice struggles against it, recognition and compliance to formal, procedural rules is the price which has to be paid for certainty of law which maintains the foundation of the state under the rule of law.

It can not be avoided in any legal system that a court passes an incorrect sentence and, regarded as exceptional cases, there is no reason to doubt the existence of a liberal national constitution. The victims who are affected by this miscarriage of justice, that is, the members of the Unification Church, see it less calmly and

understandably doubt whether this state respects and protects their rights. This is therefore understandable because this state opposes them from two fronts: on the one side, there is the legal front and on the other the Federal Government. The state has imposed itself on both these fronts in such a way which can only be interpreted as an expression of authoritarian arrogance and disdain of the citizens concerned.

How can one interpret it differently when a court requires more than two year to recognize that it is not responsible for a case because it lies outside of its district? Mind you, this has nothing to do with an administrative lawsuit concerning the question whether a tree may be cut down or not but about the possible violation of a basic constitutional right. If one does not want to assume that the court holds contempt for the constitution, then it must hold contempt for the people here who are fighting for their rights. Members of a "sect?" They can wait! Two years to inform them that they should not go to Cologne but to Coblenz!

A court could hardly express its disdain for the plaintiffs more strongly without violating technical legal procedure. It is the language and behaviour which subtly signals contempt of the plaintiffs which makes this lawsuit so depressing. Perhaps one also encounters similar arrogance in other proceedings; but here, it is obviously the case that the plaintiffs are members of a religious minority who must endure representatives of the state in the role of the authorities. It is not mere ignorance of the law when judges inadmissibly reject a grievance because it is "obvious" that rights are not infringed upon and that "even the possibility of a violation of rights is deniable." [9]

It is unavoidable to have some bad jurists. But the arrogance expressed in the wording which states that a violation of the subjective rights of the believers does not even have to be taken into consideration not only shows legal incompetence, but disdain of the plaintiff's interests. In the end, perhaps nobody will be impaired in his faith, but the exercise of religious freedom has nothing to do with "banning entrance for the spiritual leader of a religious community into the Federal Republic of Germany." [10] Now, a state under the rule of law differentiates itself from an authoritarian state by the fact that the granting or refusal of constitutional rights is not left to its arbitrary discretion. Perhaps the state does not have "to allow" its citizens to pursue their own style of blessing but it should have good reasons for this. The judges thought, however, that it was not at all necessary to take these reasons into consideration since anyway a violation of fundamental rights "obviously" does not exist when the state does not allow something to the members of a religious minority which it by all means grants to members of other religions.

Exactly how "obvious" the situation is becomes apparent. Both the 11th senate of the Higher Administrative Court in Rhineland-Pfalz and the Federal Administrative Court absolutely regarded it as possible that the entrance ban led to a violation of constitutional rights. Nevertheless, the appeal against the initial verdict was finally rejected.

After a free-hand exegesis of the teachings of the Unification Church, the court of appeal thought itself able to recognize that a visit from Rev. and Mrs. Moon would have "no essential significance for the general religion practice." [11]

Also here, it not so much the erroneous legal decision which stirs up anger upon reading the verdict. After all, the Federal Administrative Court has reprimanded this verdict for "inadequate argumentation"[12] unequivocally, although this remained ineffective because of procedural reasons. Even worse than the legal incompetence is the wording which contains a recognizable disdain of the interests of law abiding citizens who are denied rights which are granted to others.

It must have been absolutely clear and comprehensible for the court that the members of the Unification Church "attach a particularly important value to the personal meeting with Rev. and Mrs. Moon." [13] Unfortunately this request cannot be considered because the plaintiff "doesn't have the subjective right for fair consideration of their interests in meeting with their spiritual leader". [14] Because of this, it should be left to the discretion of the Federal Government not to grant this request. Because it is the responsibility of the state to consider the interests of a religious community, but only as far as "the religious interests of the community may not be insignificantly impaired - in accordance to their own religious understanding." [15] It was this wording of the Federal Administrative Court which was later picked up. Admittedly, the court claimed to know the beliefs of the Unification Church better than its members and therefore came to the conclusion that their religious interests would not be significantly affected.

Let us put this faulty legal argumentation aside for now. Then the question remains why the state does not take the interests of its citizens into account when it costs nothing and does not harm the public welfare. Why is there an entrance ban on Rev. and Mrs. Moon? We can recreate the argumentation of the Federal Government only from the indirect quotations of the courts:

"The presence of Rev. and Mrs. Moon impairs the interests of the Federal Republic of Germany. Because the Moon movement belongs to the so-called psycho-groups and youth sects, according to their aims and intentions, they do not correspond to a religious community. Their activities endanger the social welfare and the character development of young people, especially leading toward psychological dependence and emotional damage. Their ideas of marriage and family contradict the constitutionally protected civil understanding of marriage and family. The political aim of the Moon movement is to strive by any means for world rule under the leadership of Korea, which contradicts the basic order of democracy and the values set forth in the constitution." [16]

If these remarks are correct, there would indeed be comprehensible reasons for an entrance ban. Now we have a lot of alarming assertions which are claimed here, but none of them have been properly investigated. If Rev. and Mrs. Moon are striving by all means for world domination, there should be concrete evidence for this. Likewise, the emotional damage allegedly caused by the Unification Church should be provable. None of the courts involved have, however, considered it necessary to check the degree of truth of any of these assertions.

Starting out with the assumption that a real danger existed, the German Bundestag set up an investigation commission on "So-called Sects and Psycho-groups" to find out about these supposedly dangerous groups. In June 1998, after two years of investigation, they presented a final report claiming that none of the assertions put

forward could be confirmed.[17] The investigative commission found no accusations against the Unification Church which could be proven or which seemed well-founded.

One must certainly take into account that at a time when the entrance ban of Rev. and Mrs. Moon was put into effect in 1995, the sect-hysteria had reached its height and the investigation commission had just been set up. Therefore, it is most probable that the representatives of the Federal Ministry of the Interior acted upon the best available knowledge at that time. This, however, no longer applies to the subsequent extensions of the entrance ban. Although it should have been known that there was absolutely no evidence available for any alleged dangers attributed to the Unification Church, the Federal Government insisted on its decision and still instructed the court in 2002 that "a public appearance of the Rev. and Mrs. Moon would encourage the spreading of this movement and would lead to intense reactions by the public." [18]

What a revealing sentence! So it is the aim of the Federal Government to hinder the spreading of the Unification Church by enforcing the entrance ban. It is not violations of the law which shall be prevented here or even a disturbance of the public order. It is the spreading of a religion which shall be stopped. The basic order of democracy and the values set forth in the constitution have taken a new twist. The state shall now assume a new protective roll by deciding whether a religion is good or bad for its citizens. The spirit of the authoritarian state is alive and well! This spirit seeks to accuse individuals who peacefully meet their religious needs of being a possible cause for "intense public reaction" instead of accepting them for what they are. But is it not the task of the liberal state to actually protect its citizens from religious intolerance?

In these proceedings, the spirit of the authoritarian state reveals its contempt of the powerless, be they religious minorities or other outsiders without economic and political influence. This is what is so alarming, not some legal slips of single judges or ministry officials. When finally this spirit spreads and creeps into the offices and courts and, eventually, reaches the high courts as well, freedom and equality before the law will become mere empty phrases. It is the powerless, who require state protection of their basic rights. Disregarding their religious freedom undermines the validity of all our civil rights.

If it were not for the authoritarian contempt of the legitimate interests of citizens who are accused of nothing but belonging to a religion which the state does not approve, the proceedings could already have been ended in a sensible way. Also, it cannot have remained secret to the Federal Government that its assessment of 1995 is shared by no other European state and, owing to developments of the past ten years it is in urgent need of revision. Much fuss and loss of face could have been avoided if the periodic expiration of the entrance ban was not always extended. But when the arrogance of power joins together with a piece of bad legal advice, common sense and reason will stray from their path. So, it is now up to the Federal Constitutional Court to exorcize the spirit of the authoritarian state.

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[1] Administrative Court in Coblenz, verdict of November 9th, 1998 in administrative proceeding the Unification Church e.V. vs. the Federal Republic of Germany, p. 8.

- [2] Higher Administrative Court in Rhineland-Pfalz, interlocutory verdict of September 13th, 2000 (11 A 10349/99. OVG)
- [3] BVerwG, decision of 10-7-2001 in the Administrative Court, Federal Republic of Germany vs. the Unification Church e.V., p. 10.
- [4] *ibid.*, p. 11.
- [5] OVG Rhineland-Pfalz, verdict of 7-7-2002 in legal proceedings, the Unification Church e.V. vs. Federal Republic of Germany., p. 7
- [6] *ibid.*, p. 10.
- [7] BVerwG 1 B 288.02 OVG 12 A10349/99, decision of 4-9-2003 in the administrative proceedings, the Unification Church vs. Federal Republic of Germany, p. 4 f.
- [8] *ibid.*, S 6.
- [9] Administrative Court in Coblenz, verdict of November 9th, 1998 in the administrative proceedings, the Unification Church e.V. vs. the Federal Republic of Germany, p. 8.
- [10] *ibid.*, p. 11.
- [11] OVG Rhineland-Pfalz, verdict of 7-7-2002 in the administrative proceedings, the Unification Church e.V. vs. Federal Republic Deutschland., p. 7.
- [12] BVerwG 1 B 288.02 OVG 12 A10349/99, decision of 4-9-2003 in the administrative procedure, the Unification Church vs. the Federal Republic of Germany, p. 4 cf. also p. 5.
- [13] OVG Rhineland-Pfalz, verdict of 7-7-2002, p. 9.
- [14] *ibid.*, p. 7.
- [15] *ibid.*, p. 6.
- [16] VG Coblenz, verdict of November 9th, p. 5.
- [17] Final report of the investigation commission on "So-called Sects and Psychogroups" of 9-6-1998 (German Bundestag, printed matter 13/10950).
- [18] OVG Rhineland-Pfalz, verdict of 7-7-2002, p. 3.