

12 A 10349/99/OVG
3 K 988/98.Köhler

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**HIGHER ADMINISTRATIVE COURT
RHEINLAND-PFALZ**

JUDGMENT

IN THE NAME OF THE PEOPLE

In the administrative action

Vereinigungskirche e.V. [Unification Church], represented by its Board of Directors,
Schillerstr. 18, 63189 Schmitten

- Plaintiff and Appellant -

Litigation agents:

versus

the Federal Republic of Germany, represented by the Federal Minister of the Interior,
Graurheindorfer Str. 198, 53118 Bonn

- Defendant and Appellee -

Litigation agent:

for Refusal of entry

the 12th chamber of the Higher Administrative Court of [the State of] Rheinland-Pfalz in Koblenz has, on the basis of the hearing of June 7, 2002, which was attended by

Judge, Presiding Judge on the Higher Administrative Court
Judge, Judge on the Higher Administrative Court
Judge, Judge on the Higher Administrative Court
Ms., housewife, member of the jury
Mr., wine-grower, member of the jury,

ruled as follows:

The appeal filed by the Plaintiff against the judgment issued by the Koblenz Administrative Court - 3 K 938/98.Köhler - on the basis of the hearing of November 9, 1998 is rejected.

The Plaintiff shall bear the costs of the appellate proceedings and the appellate proceedings on points of law BVerwG 1C 35.00.

The judgment for costs is preliminarily enforceable.

The appeal on points of law is rejected.

Facts of the case

The Plaintiff, a registered association in which the German members of the global “Unification Church” have joined together, petitions for establishment of the illegality of the notice of refusal of entry issued to Mr. and Mrs. Mun.

Mr. Mun is the founder and worldwide leader of the Unification Church. He and his wife are citizens of the Republic of Korea and reside in the United States of America. On the occasion of an event in Frankfurt am Main on November 12, 1995, at which Mr. Mun was to give a lecture, the Chief Office of Border Security in Koblenz issued a notice of refusal of entry pursuant to Art. 95, Para. 2 of the Schengen Transit Treaty (SDÜ) to Mr. and Mrs. Mun for an initial period of three years. This notice was extended several times, most recently until August 2, 2002. The stated reason for issuance of the notice is that Mr. Mun is the leader of the Mun movement and that his wife also assumes a leading role. In the opinion of the federal government, the Mun movement is classified with the so-called youth sects and psycho-groups whose activities could result in endangerment of the social references and personality development of young people. According to the federal government, a public appearance by Mr. and Mrs. Mun would support the proliferation of this movement and would lead to strong reactions among the public.

The petition filed against this action by the Plaintiff was rejected as impermissible by the Koblenz Administrative Court in a judgment dated November 9, 1998. In response to an appeal filed by the Plaintiff, the 11th chamber of the Higher Administrative Court of

Rheinland-Pfalz ruled that the appeal and the action for a declaratory judgment are permissible. In a judgment dated July 10, 2001, the Federal Administrative Court rejected the appeal lodged on points of law by the Defendant against the interim judgment. According to the court, the action for a declaratory judgment filed by the Plaintiff is permissible. In particular, the Plaintiff is entitled to file such action. In the opinion of the court, the basic right of freedom of religious expression does not fundamentally establish an independently enforceable legal position. However, the state is obligated to consider the interests warranting protection of a religious community, provided the refusal of entry does not seriously impair the religious concerns of the community on the basis of its own interpretation of faith. According to the court, this is especially relevant when the visit of the leader to Germany carries considerable significance, according to the respective religious doctrine, for the communal practice of the religion, thereby exceeding the conventional character of a shared encounter. In light of the fact that a central tenet of the religious doctrine of the Unification Church is its strong dependence on the person of its spiritual leader, this argument is at least conceivable.

As grounds for its petition, the Plaintiff essentially argues that Mr. and Mrs. Mun are afforded a special role as founders of the religion, and that this is a role that cannot be replaced by other church elders. According to the Plaintiff, the special significance of the Muns is reflected in the theology of the Unification Church. The Plaintiff argues that the Unification Church emphasizes the importance of resurrection in the present, and that this is best achieved in a personal encounter with the Muns, who embody the role model of “true parenthood.” The special significance of the Muns, according to the Plaintiff, is also expressed in the rituals of the Unification Church. The Plaintiff argues that only Mr. and Mrs. Mun can dedicate buildings and facilities of the Unification Church to church services by granting a special blessing. In addition, the Plaintiff argues, so-called holy grounds can only be blessed by Mr. and Mrs. Mun. The theology of the Unification Church provides that a piece of earth be dedicated as “holy ground” in every country and in every major city, and that this is where the members of the Unification Church meet to pray and to communicate with God. According to the Plaintiff, only Mr. Mun can open “the door to the sacred kingdom” at such locations by granting his personal blessing on site. Finally, the Plaintiff argues, the central sacrament of the Unification Church, the blessing of marriage, can only be given by the Muns. Although the blessing of marriage can also be given by telephone conference, this is considered completely inadequate by the affected parties, who desire the personal presence of the Muns. As the Muns could not visit the Unification Church in Germany, they lack the opportunity to experience the essence of the church directly and to accompany it with their advice. The Plaintiff argues that this represents a serious deficit for the German members of the Unification Church, and that Defendant failed to consider these issues in reaching a decision regarding the notice of refusal of entry.

The Plaintiff petitions for

amendment of the judgment issued by the Koblenz Administrative Court on November 9, 1998 and determination that the notice of refusal of entry issued by the Defendant against Mrs. Hak Ja Har Mun and Mr. Sun Myong Mun is illegal.

The Defendant petitions for

rejection of the appeal.

The Defendant is of the opinion that the specific significance of the physical presence of the Muns is lacking in the religious life [of the Unification Church]. Even if one were to view their physical presence as being especially significant in terms of the shared practice of the religious faith of the members of the Plaintiff, this would not result in a different decision. According to the Defendant, permitting entry to the Muns is not in the interest of the Federal Republic of Germany.

The additional details relating to the facts of the case and status of the dispute can be found in the briefs and exhibits filed by the parties involved, as well as the Defendant's administrative records submitted to the court. All records were the subject of the hearing.

Grounds

The appeal is unsuccessful.

The action for declaratory judgment filed by the Plaintiff is without merits. The notice of refusal of entry issued against the Muns is not illegal in terms of the legal relationship to the Plaintiff, which is at issue in this case, and in particular does not represent an abuse of discretion. The Plaintiff is not entitled to a subjective right to the suitable consideration of its interests in an encounter with its spiritual leader, as his intended visit does not exceed the threshold of the conventional character of a shared encounter between the members of a religious community and their spiritual leader.

An obligation on the part of the state, as derived from the basic right of freedom of religious expression, to give consideration to the interests warranting protection of a religious community in addressing the legal relationship, as determined by the law concerning aliens, between the state and the community's foreign leader only exists if the religious affairs of the community are not insignificantly impaired - based on its own interpretation of faith - by the respective actions taken pursuant to the law concerning aliens (in this case, the notice of refusal of entry pursuant to § 60, para. 3, and § 7, para. 1 and 2 in connection with Art. 96, para. 2 SDÜ). Only under these circumstances is the scope of protection provided by Art. 4, para. 1 and 2 GG affected in a legally significant manner, and only then must the key provisions of the law concerning aliens be given subjective legal character in favor of the religious community. In terms of the visit of the leader of a religious community to the Federal Republic of Germany, this requires that the visit, according to the respective religious doctrine, is of considerable importance to the shared practice of the faith, thereby exceeding the conventional character of a shared encounter (cf. BVerwG, judgment dated July 10, 2001 - BVerwG 1 C 35.00-).

Under this legal standard, the visit of the Muns, according to the theology of the Unification Church, is not afforded any special significance in terms of the shared practice of religious faith. Instead, the significance of such a visit does not exceed the significance customarily held by meetings between church leaders and religious church members. In terms of the conclusions of the court, at which it especially arrived as a result of the arguments set forth by the Plaintiff's attorneys and the impression based on these arguments, it is clear that a visit by the Muns to the Federal Republic of Germany would primarily represent to the members of the Plaintiff an extraordinary experience of a shared encounter characterized by the personality and charisma of Mr. Mun. By contrast, this visit bears no further significance in terms of the shared practice of religious faith. The shared practice of religious faith can also be achieved without restriction without the (temporary) presence of the Muns.

This is initially applicable in terms of the blessing of so-called holy grounds. Irrespective of the question as to whether, under the religious doctrine of the Unification Church, such a blessing can only be performed by Mr. and Mrs. Mun, this alleged special significance of the "holy grounds" for the practice of faith by the members of the Plaintiff cannot be determined. In particular, it is not evident that prayer and meditation by the members of

the Unification Church would only be possible on “holy grounds.” This is already contradicted by the Plaintiff’s own arguments (cf. brief dated February 4, 2002; page 468 of the court file), in which it is stated that - only - a piece of earth is dedicated as “holy ground in every country or major city.” Thus, a larger number of “holy grounds” covering a large area is neither intended nor necessary to practice the faith. The faithful have at their disposal trees for prayer and meditation located in public parks in Berlin, Essen and Frankfurt am Main which were personally blessed by Mr. Mun. Apparently, Mr. Mun himself saw no need to dedicate additional sites as “holy grounds.” Although he has visited the Federal Republic of Germany five times thus far, he has never taken the opportunity to do so.

According to the Unification Church’s own interpretation of faith, the fact that buildings and facilities in Germany cannot be dedicated for religious services by the Muns as a result of the refusal of entry also does not significantly impair the religious affairs of the Plaintiff. According to statements made by the representatives of the Plaintiff during the court hearing, there are no buildings (anymore) in the Federal Republic of Germany that have been dedicated for religious services by a special blessing given by Mr. or Mrs. Mun. Consequently, the desire to have such a facility at its disposal once again is understandable. Beyond this desire, however, the special blessing of facilities and buildings owned by the Unification Church by the Muns has no further significant bearing on the shared practice of religion. This is especially evident in light of the fact that a building owned by the Plaintiff that had been provided with such a special blessing did exist in Frankfurt am Main. The Plaintiff recently sold this building for financial reasons. The sale of the sanctified building was given preference, in spite of the fact that another piece of property which has not been sanctified, namely the Plaintiff’s seminary center in Bad Camberg, could also have been made available for sale. This decision on the part of the Plaintiff was not motivated by religious reasons characterized by the theology of the Unification Church. Instead, the bulk of the recollections of Mr. Mun - insignificant in terms of the practice of religion - held by the members of the Plaintiff were associated with this seminary center in Bad Camberg. Furthermore, Mr. Mun has not used his previous visits to the Federal Republic of Germany as an opportunity to sanctify additional buildings. This is especially applicable to the seminary center in Bad Camberg, where Mr. Mun was a guest.

The refusal of entry also does not lead to significant impairment of the affairs of the religious community of the Plaintiff in terms of the central sacrament of the “marriage blessing” (so-called blessings), which can only be given by Mr. or Mrs. Mun. The personal presence of the Muns is not a prerequisite for receiving the marriage blessing. Instead, the Unification Church itself provides for global participation in the ceremony of marriage blessing via satellite and the Internet. For example, on the occasion of a marriage blessing given by the Muns in Washington in late April 2002, about 140 individuals participated in a simultaneous event in Stuttgart, which was transmitted to the main event in Washington via the Internet. The sacrament is also effective when transmitted by technical means. A personal, direct blessing by the Muns is not required. The fact that those receiving the blessing desire the personal presence of the Muns, who issue the marriage blessing, is understandable in light of the special spiritual encounter experienced by the faithful of the Unification Church. However, this does not translate into any significant importance, in terms of the shared practice of religion, that would exceed the special character of an encounter normally achieved during the visits of religious leaders.

Finally, a divergent judgment is not justified on the grounds of the position of the Muns as founders of the religion and of their importance to the theology of the Unification Church. According to the religious doctrine of the Unification Church, the Muns are the model of “true parenthood” worth achieving by all church members, and therefore represent the guiding principle for the members of the Plaintiff. In this light, it is understandable that a personal encounter with the Muns bears special significance. According to the explanation provided by the representatives of the Plaintiff in the court hearing, a personal encounter also serves as an inspiration to church members, generates enthusiasm for the concept of true parenthood, and spreads optimism. According to the Plaintiff, a corresponding effect cannot be imparted through the media. However, this (simply) describes the customary and typical nature of an encounter with a spiritual leader of a religious community. This experience, however, is not associated with a farther-reaching, supernatural and special religious element, such as the simple presence of the Muns signifying a divine revelation for the followers of the Unification Church.

The court order as to costs - to be reached uniformly - is issued pursuant to § 154, para. 2 VwGO. The preliminary enforceability of the order as to costs follows from § 167 VwGO.

The appeal on points of law is not permitted, as there are no grounds of the nature specified in § 132, para. 2 VwGO.