

312100007

ADMINISTRATIVE COURT WrrnN

I 190 Wien, Muthgasse 62
 Telephone: (+43 1) 4000 DW 38700
 Fax: (+43 1) 4000 99 38 700
 E-Mail :; post (a) vgw.wien. gv.at

GZ : VGW- 7A3 / A4e I 3227 / 2A2r-2
 Freedom Party of Austria, Regional Group Vienna

Vienna, 24.A3.2Q2L
 rum

Business department : VGW-M

IN THE NAME OF THE REPUBLIC

The Administrative Court of Vienna , through its judge Dr. Frank about that
 Complaint of Freedom Paftei Austria, country group Vienna, represented
 by Dr. Christoph Völk, lawyer in 1010 Vienna, Kärntner Ring 4,
 against the decision of the State Police Directorate Vienna, Sicherheits- u.
 Administrative police matters, SVA Section 3 - Association, assembly,
 Media rights angel ,, from 30.01.2a2 !, Gz :? AD / 2L / 167924, with which the for
 37.0L.2a21 Displaying meeting prohibited was, to legal e r ka n n t:

I ' The complaint is a result given and the contested decision resolved.

The prohibition was wrongly done .

II. Against this knowledge is according § 25 a VwGG a ordeniliche revision of the Administrative Court is inadmissible according to Art. 133 Para. 4 B-vG .

Page 2

2

Reasons for decision

With the contested decision, the authority in question prohibited one of the FPOs on the 29th t.2021 indicated meeting on the topic, General information the Freedom Party "that the 37J.2AT of 14:35 bis 18:00 indicator in Vienna 1, Maria Theresa Place should have been held . This was justified with the z1) expected unlawful conduct of the participants and the resulting following Epidemic events as well as a "straw man tactic" described in more detail. It is expected, so also by the FPÖ, that well -reputed straw men would sent forward to the true background illegal to conceal '

In the complaint directed against it , an increased control and Duty to give reasons for the prohibition of meetings put forward, after which the constitutional provision of § 1 par. 3 PartG the activities of a political parlei not restricted by special legislation subject to be allowed. The authority in question has none in this regard

Attempt made in agreement with the complainant a
 Modification in the sense of a milder agent through the change of type and
0.6 of the assembly. The justification component of the "unknown
 Straw man " closed himself completely to the meaning of the complainant. There
the prohibition of a meeting only Ultima ratio be could (VfGH
 03/14/2013, B 3371LI further references) would, because of the already week-long
 Reputation of a high assembly density FTIR the 37.t.2AZI the respondent
 Authority have to initiate contact , uffi in cooperation with the
 Organizers the holding of the meeting to ensure. It hits the
 respondent authority to the effect a positive duty to protect. For example, would have
the respondent authority in the fear of a too tight
 Place of assembly of the complainant proactively an alternative,
 have to offer equivalent meeting often . **Full and** even
 the alleged indirect allegation by the authority concerned should be rejected
 Insinuation that if the complainant, a since lahr tenth in
 political party represented in parliament , any organizational efficiency
 was agreed . This open up from the distrust, if the
 Appellant anticipate that compliance with the health rules do not
 be trusted. The respondent authority carry it out even just to

Escalation because it means the holding of spontaneous meetings
 fired. From the social networks , the service (LVT) is the highly explosive one
 Sentiment against the government measures known.

In summary, a weighing of conflicting
 Fundamental rights positions do not per se lead to a complete prohibition .
 This is a balancing of the public good of health with the
 The fundamental right of freedom of assembly was omitted. Since the FPÖ as in the National Council
 party represented a reputation have what it comes to any price to get

if it would have the provisions of g 12 para. 2 of the 3rd COVID-19-NotMV rigorously monitored. It should be noted that the assessments of

Health service as well as the LVT in general for everyone until then for the 01/31/2021 logged meetings and before the application of the the present assembly had taken place. This is a prognosis for the the specifically intended meeting was already impossible .

From an epidemic medical point of view, there has so far been one for clusters on the occasion of one Assembly given no evident perception . The peer review for the Protective effect of FFP 2 protective masks is inconsistent, yes by the WHO and the European Commission negative in terms of the benefits of Schutzwirkung answered.

Since the authority concerned in terms of mitigating means and own actions to Minimizing the risk of an acute epidemic no considerations employed, the constitutionally guaranteed procedure was a mere one

Display of meetings on an approval system . A Approval within the framework of a concession system for meetings is with incompatible with the fundamental right to freedom of assembly (VfSlg. tl.65I / L} BB and 11866/19888 for a ban on meetings of a previous official Authorization subject to further information).

Why was it to be assumed that at a meeting of an im Political liability represented in parliament to violate g 12 para. 2 of the 3rd COVID-19-NotMV should come , remain completely open. That would make this Determining the basis of a completely arbitrary and arbitrary

Moreover, lacking the 512 section 2 of the third COVID-19 NotMV the
 Applicability for assemblies according to the Assembly Act. This set

namely, meetings with events equal to what a total
 Misunderstanding of the legal situation . An assembly, and such a lie
 here before, enjoy the highest protection according to Art. 12 StGG and Art '11 ECHR,
 which prohibits a restriction through mere regulation .

When assessing the anticipated violations of disease regulations
 is referred to "numerous media reports" by the authority concerned .

Thus giving the respondent authority to recognize, investigate and order
 Evidence to have remained guilty . A final basis for consideration is missing
 with it, so that not just a lack of justification, but the lack of
 There is unfoundedness. The assessment of the LVT Vienna from 28.t'2021 is
 not a suitable basis for decision-making because this is done before the registration of the
 Meeting took place and something could not be divided, which could not even be
 had not yet been communicated. Furthermore, the VfGH in VfSlg. 5.08717966, for
 the assessment of a "health hazard" that on "concrete, determined,
 objectively ascertainable circumstances " rekurriert is. Coming in from the respondent authority
 The requested health service of the City of Vienna only answered in a very general way
 Be wise and do not go into the specific event . If you followed this
 Arguments, all meetings could in future be prohibited without further ado
 will. As a single recommendation of the health service is still
 to emphasize that an increased risk of transmission would only exist if
 if contacts without compliance with the necessary distance and one wearing
 a full-face protection unterbleibt, the respondent authority support their
 Prohibition of an alternative absence.

The Vienna Administrative Court has considered:

Facts:

On December 26th, 2027 , police chief Dr. Gerhard Pürstl via email a request
 to the Senior Physics Councilor of the City of Vienna, Dr. Ursula Karnthaler, concerning

„ demonstrations on WE 3a.131.1 " with the request for information from health point of view ^{zr-r} the following questions;

1) „ is at a meeting of several hundred to **uu** several a thousand people who the prescribed minimum distance of **2** meters not adhere to and, moreover, mostly no tight- fitting NMS wear so to expect that under consideration of the fact that the People in the rule, chanting loudly and their demands so free **Running** can also in regard to the newly occurring Mutation variants of the virus (and the thus related worrying media reports) - a significant risk of Infection among arise Assembly participants will and thus with an uncontrollable spread of the virus in the Population can be counted ?

2) such crowds would defeat the efforts of the

Food and Drug Administration , the 7 -day incidence continues to decrease, significantly counteract? "

On 27.01.2021 the submitted health service of the city of Vienna via email one Answer to the police chief personally with the following content:

" Dear Mr. State Police President Dr, pürstl,

the Corona Commission, **as** an advisory body **for** health responsible federal minister **welst** in the last recommendation of ZL7.ZAZ1 the increased portability of the SARS-CoV-2 Vlrus mutant 8.1.1,7 and to the resulting risk of another very strong exponential increase **the** number of cases . **Before** this background and to **remain** high Fall event has the corona Commission recommended that the set preventive **Continue** to implement measures **to** reduce contact . **It was** too

noted that the acceptance of the population necessary is, to also continue the necessary reductions of case events reach to be able.

The epidemiological situation with a rising number of infections in which first test results for mutated variants of the SARS-CoV-2 virus point, has to geführt, that in wide areas for protection against Contagions wearing of prescribed FFP2 protective masks was and

Page 6

6th

the prescribed minimum distance has been extended to 2 meters. Current Surveys show that with the new virus variants, contacts without compliance the necessary distance and without wearing of Schutzmasken due to the increased transferability can lead to more secondary cases in a few days , than observed so far . If people, the the virus excrete, to the Assembly took part, without the required distance to be observed and without a full-face protection to carry, can it before this background to Transmissions come, the special also because of the lack of Traceability of contacts and efforts to reduce the number of cases counteract. "

The drawing and the email address is in the act blackened, so that a personal assignment has been made impossible .

On the official homepage of the "Corona Commission" (Evaluation criteria I Corona Ampel (csona-ampel.gv.at) there is a current risk assessment and evaluation criteria.

On July 28, 2021, the State Office for the Protection of the Constitution and Counter-terrorism a file note for the " assessment re . Corona Demos on July 30th and 31st, 2002 ". In it it was essentially stated that it

referring to previous meetings - to further ones

Meetings on violations of the Covid 19 measures would come. Unknown "straw men" would be sent in advance for the registrations , which because of their integrity to circumvent an official Prohibition would find use, Furthermore , on the part of the, leading figures of the Scene "has been called to register as many meetings as possible , the authority to employ and possible many policemen decentralized to tie. Only through the prohibition of all gatherings could ensure are that the one or other not prohibited Gathering at the pool for presumptive participants of others Gatherings would. Finally , the situation was summarized verbatim as follows:

Page 7

7th

"Because of the large- scale mobilization and because of the great success the "Corona-Demos" on January 16, 2021 is with a very large number of participants (several thousand) to be expected. A compliance of the prescribed A minimum distance of 2 m therefore seems impossible from a ha, point of view. About that in addition is due to relevant calls as well as Eahrungen with past Events thus to be expected that a large part of the subscriber the COVID-19 Provisions (distance as well as MNS protection) purposefully and deliberately will be disregarded . "

Editor and draftsman were blackened again in the act .

both the stellungnahme the LVT as well as the information of Health Service of the city of Vienna were issued in general and especially before the notification of an intended meeting by the Fpö (sict).

The FPO Freedom Party Österreichslandesgruppe Wien brought with them
29.t.2a27 a meeting (dicte rally) on the subject „ General

Information of the Freedom Party " on 3r.r.zezr from 14:34 to 1 g: 00 uhr of
State Police Directorate Vienna for information. Protection zone and distance will be
adhered to. Shortly afterwards there was a change in the office space of Heldenplatz
shared on Maria Theresien Platz ,

Then brought the National Police Directorate of Vienna, Department of association,
Assembly and Media Law, the display the magistrate
the Wien, MA 15, for knowledge and asked to „ further inducement. ' . around
Notification of objections to the holding of the meeting of
health authority point of view is requested.

With 3A 1.2A21 taught in representation of the Head of Unit for the association,
Assembly and media law matters of the State Police Directorate
Vienna the Freedom Party of Austria-FPÖ the intended prohibition of
Assembly made, as justification is the feared disregard of
prescribed minimum distance and mouth / nose protection. This in turn
on the expected large number of participants of at least 10,000 people. The
FPÖ went in their display of 2,000 from.

In another episode of fared prohibition order

These finding are based on the in the act of succumbing documents

Legally follows:

According to 56, para. 1 Assembly law BGBl, no. 98/1953 amended BGBl. I No. 63 / 2A77 are assemblies, the purpose of which is contrary to criminal law or the holding of which endangers public safety or the public good, to be prohibited by the authority .

According to Art. 11 Para. 1 ECHR BGBl. No 210/1958 'dr BGBl. III No. 30/1998, have all the people the right to peaceful assembly and free with to associate others , including the right to protect their Interests to form trade unions and these join.

According to paragraph 2 first sentence leg. Cit. must the exercise of these rights does not be subject to other restrictions than those of the law provided, that in a democratic society in the interest of national and public security, order and maintenance the Verbrechensverhutung, the protection of health and the morality or the Protection of the rights and freedoms of others are necessary .

The statements in the complaint must be agreed on in all points, Des Furthermore, the decision lacks a tenable one for the following reasons Reason for a prohibition:

All inquiries were already before the announcement of the procedural assembly . The answers do not take into account in any way the specific assembly of the FPÖ '

In addition , the commissioned "Information from a health point of view" Below to auszufü hear .

The Health Service of the City of Vienna uses the words "number of cases"

, "Test results", "Case history" and . "Number Of infections" .. This Cluttering the terms becomes a scientific assessment of the

Disease situation not just for the WHO (WHO Information Notice for IVD Users

202 AtA5, Nucleic acid inq {NAT} technology at use polymerase chain {PCR}

{ql = {lcleqli.al -qt \$ AB-S: Qav-2, 20 January 2021) decisive is the number of

Infections / patients and not the positive tested persons or other

„ number of cases. " This leaves it been so open, of which figures the

"Information" goes out. The "Information" refers to the recommendation of the

corona commission from 2L.7.2a21 ,. There is lack of information not

understandable whether the figures on which this recommendation is based are only those

Persons included, the according to the guidelines of the WHO for the interpretation of

PCR tests dated 20.01.2A27 were examined, specifically it is not shown

what CT value a test result had, whether a person tested had no symptoms

re- tested and then tested clinically was. This is followed by the WHO

the inventor of the PCR tests, Dr. Cary Mullis (

<https://www.youtube.com/watch?v=LvNbvDOYi54>). Mutatis mutandis says he

so that, a PCR test is not for diagnostics suited is therefore to be

alone does not say anything about a person's illness or infection .

According to a study from the year 2a2o (Bullard, J., Dust, K .. Funk, D., strong, J.

E., Alexander, D., Garnett, 1., .., & Poliquin, G. (2e20). predicting infectious

severe acute respiratory syndrome coronavirus 2 from diagnostic samples.

Clinical Infectious Diseases, 71U, q, 2663-2666.) Is greater than 24 for CT values

no more reproducible virus detectable and a PCR test not included

suitable to determine the infectivity .

If one goes from the definitions of the Minister of Health, „ Case definition Covid-

19 "from 23.r2.2a20 ALRS, so is a „ confirmed case" 1) each person

With

Detection of sARS-cov-2 specific nucleic acid (pcR test, note),

regardless of clinical manifestation or 2) any person with SARS-CoV-2

specific antigen that meets the clinical criteria or 3) any person with

Detection of SARS-CoV- specific antigen, which the epidemiological

Criteria met.

It fulfills therefore none of the three from the Health Minister definierten confirmed ,,
Cases " the requirements of the term " sick / infected " of the WHO.

The WHO is solely responsible for relying on the PCR test (confirmed case 1)
rejected, see above.

Basing on an antigen determination with clinical criteria (confirmed
Case 2) leaves open whether the clinical work-up was carried out by a doctor to whom she was asked
reserved exclusively ; in other words: if a person sick is or healthy,
needs of one are taken physician (see. § 2 para. 2 Z L and 2 Arztegesetz
1998, BGBl. L No. 169/1998 as amended by BGBl. I No. 31/2021).

To the antigen test is also to be noted that this in missing
High error of symptoms are ([https://www.aqes.at/service/ service-press / press releases / evaluation nq-von-sars-cov-2-antigen-rapid-tests](https://www.aqes.at/service/service-press/press-releases/evaluation-nq-von-sars-cov-2-antigen-rapid-tests) * from

e

nasopharyngeal swabs /). Nevertheless , the Corona Commission supports itself for the
current analyzes exclusively on antigen tests (see Monitoring the Covid-
19 Protective measures, short report 21. 7.202t).

An antigen test confirms a case (3) even if a

Contact follow-up to the person to be confirmed was successful . In order to
then two people who encounter each other and tested positive for antigens
once on the confirmed case even without clinical manifestation and without PCR
Test under application of the WHO guidelines.

Should the Corona Commission the case definition of the Minister of Health have based, and not those of the WHO, so is every statement of Numbers for "sick people" wrong,

For the rest, it should be noted that even when using the case numbers according to the definition of the WHO the respective models of the epidemic occurrence and the relation of the numbers are decisive for a correct assessment . Both in the evaluation criteria and in the current risk assessment of the Corona Commission of 27J.2A21 there are only secondary sources.

Page 11

11

It is referred to the AGES (Austrian Agency for Health and Food Safety GmbH) and to CÖC qCesundheit Österreich GmbH) referenced. Releases of these are obviously unaudited basis and the scientific sources used by them, as well as statistical prognostic methods not mentioned . Particularly noteworthy was that The sharp rise in the number of cases is due not least to the sharp rise in tests are.

Overall it is about the "information" of the city health service Vienna and the reasons for the prohibition notice based on it It should be noted that there are no valid and evidence-based data on the epidemic Statements and findings are available.

This is underlined by the „ limitations "of the corona Commission, denominated „ It can not draw conclusions on the effectiveness of individual measures taken be, since it be assumed is that this in another interaction stand and influence each other in their effect . "

For the legal assessment of non- disposable information

to

The epidemic situation and the assessment of the LVT must also be stated:

The mere, abstract fear of an operation contrary to consensus can - here in the
Installation law - not to a prophylactic refusal of a
Authorization lead (see. VwGH from 27.72.2AA4, 2AO2 /} a / Aea; from
30 06 200 4 ZOAL / 04 / A204).

All the more so at a basic and liberty rights, which the freedom to
Meetings / to apply. As the Constitutional Court constantly judiziert has
(see VfGH dated 06/30/2AA4, B49UA3; 08/30/2008, 8663/08, beginning with
RGH from 01.23.1905, 697 / 79A4), rich mere not general fears
out for a prohibition of a meeting.

The prohibition of the meeting was wrong, which is why according to the ruling zvr
was decided .

The ordinary revision is inadmissible as there is no legal question within the meaning of
Art. 133 para. 4 B-VG was to be assessed , which is of fundamental importance.

Neither gives way to the objective decision of the previous
Jurisdiction of the Administrative Court AEB still missing it to a
Law, Furthermore, is the to present law of
Administrative Court also not to be judged as inconsistent . Likewise
There are no other markings on a fundamental importance of to
solving legal question,

Instruction

There is the possibility of filing a complaint against this knowledge at the Constitutional Court and / or an extraordinary review at the Verwaltungsgerichtshof.

The appeal or extraordinary appeal is within about six weeks from the day of delivery of the knowledge by an authorized representative Attorney drafted and is the complaint when Verwaltungsgerichtshof and / or the extraordinary appeal to the Administrative Court at Administrative Court Vienna einzubringen.

There is an entry fee for the complaint or the extraordinary revision of each 240 euros at the tax office for fees, transfer taxes and gambling to be paid, a related receipt must be attached to the entry.

There is the possibility of legal aid for the proceedings before the Administrative Court (see § 61 VwGG) or Verwaltungsgerichtshof (see § 35 VfGG in connection with Section 64 Paragraph I ZPA),

Dr. Frank

Judge

Is sent to:

1) Freedom Party of Austria, Regional Group Vienna, attn: Dr. Christoph

Völk, lawyer, 1010 Vienna, Kärntner Ring 4, RSb

- 2) State Police Directorate **Vienna, security and** administrative police
Affairs, SVA Referat 3 - Association, Assembly, Media Law Fault,
1010 Vienna, Schottenring T-9, (1 E + Akt) ZNW

A large, bold, black serif letter 'W' is centered on the page. It is a simple, graphic representation of the letter, likely serving as a logo or a placeholder for a signature.

This document has been officially signed.
Information on testing the electronic
Signature and the expression will find you at:
<http://vrww.verwaltungsgericht.wien.gv.at/Content.Nodeiamtssignatur/Amtssignatur.html>