



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva

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Ms Beatriz Balbin
Chief
Special Procedures Branch
OHCHR

Michael von Ungern-Sternberg

Ambassador, Permanent Representative
of the Federal Republic of Germany

Ref: AL DEU 2/2019

Geneva, 2 September 2019

— Dear Ms Balbin,

Having received your letter dated July 5th 2019 regarding a joint communication from Special Procedures, please find attached the reply by the German Government.

Please extend to the Special Rapporteur on minority issues, Fernand de Varennes, and the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, that we remain at their disposal if further questions arise.

Yours sincerely,

Michael von Ungern-Sternberg

Answer by the German Government regarding Communication “AL DEU 2/2019” by the UN Special Rapporteur on minority issues and the UN Special Rapporteur on freedom of religion or belief of 5th July 2019:

Questions 1 and 2 will be addressed jointly due to the factual connection.

With its decision of 22nd March 1995, the German Federal Labour Court (decision of 22nd March 1995, Federal Labour Court decision 79, 319 et seqq.= NJW (Neue Juristische Wochenschrift) 1996, 143, 147) found that the status of a religious community or a community professing a philosophical creed in the sense of Article 4 of the German Basic Law could not be assigned to the Scientology organisation. This corresponds to the position of the Federal Government. On the one hand, the goals of the Scientology organisation are clearly geared towards commercial activities. On the other hand, there are factual indications that the Scientology organisation has aspirations opposing the free democratic constitutional system in a targeted and goal-oriented way. This applies to the Scientology organisation including its entities (ABLE, OSA, WISE).

Regarding their actions, contracting authorities are obligated to uphold the free democratic constitutional system of the Federal Republic. For this purpose, the declaration “Schutzklausel” (safeguard clause) was developed within the framework of public procurement. It comprises special conditions for the performance of contracts awarded by the Federal Republic (so-named contract performance conditions) for certain counselling or training services. Under German and European law, contracting authorities are basically free to determine contract performance conditions (section 128 para. 2 Act against Restraints of Competition). In the circular letter the use of contract performance conditions is recommended to the *Länder* without obliging them to do so.

The clause itself exclusively refers to the non-use of a certain technology (by I. Ron Hubbard, Scientology founder) with regard to training and further education measures. This way, it is designed in a non-discriminatory way, both as regards the service provider (company) and the persons commissioned to provide services. The declaration also makes reference to the specific object of service provision, as required by European law, by exclusively addressing the non-use of a certain technology by the personnel responsible for the service provision. Consequently, this does not constitute an inadmissible requirement for the general corporate policy of service providers.

Concerning the question of whether Scientology can be viewed as a religion, the European Court of Human Rights (ECHR) has, up until now, followed the assessment of the respective national authorities and has found violations of the European Convention on Human Rights only with regard to contradictory behaviour within one country. As soon as commercial activities are concerned, companies may not claim protection of the freedom of religion according to the case-law of the ECHR, even if they are “managed by a philosophical association”.

Against this background, the application of the safeguard clause does not pertain to the scope of human rights and/or is not viewed as an impairment of human rights.