

Cutting-in On the Dance: The Federal Constitutional Court Rejects a Motion for a Temporary Injunction from Berlin's *Love Parade*

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Rave: verb: 1a: to talk irrationally in or as if in delirium b: to speak out wildly c: to talk with extreme enthusiasm 2: to move or advance violently . (1)

At a rave, the DJ is a shaman, a priest, a channeller of energy, . . . (2)

[1] To characterize the administrative lead-up to the 12th Annual *Love Parade* in Berlin it might be more appropriate to invoke the violent, thrashing *mosh pits* of the grunge scene from a decade ago rather than the pulsing, rhythmic harmony expected of a *rave*, of which the *Love Parade* may be the world's largest and most celebrated. Held on July 14 each year since 1989, the *Love Parade* in recent years has drawn more than a million people for a day-long dance/party/festival all set to the distinctive drive of techno-music. The *Love Parade* has become so popular that in 1997 it spawned an alternative, opposition festival called the *Fuck Parade*, which has been held each year on the same day at another location in Berlin, promising a more authentic, less commercialized *rave*. (3)

[2] Both festivals, though well organized, and in the case of the *Love Parade* the subject of considerable commercial interest and investment, got caught out of step when the Berlin Police Department refused to issue the permits needed for the gatherings to be held on July 14, 2001. After appealing the Berlin Police Department's decision through the various levels of the administrative courts without success, and with the July 14 date fast approaching, both organizing groups asked the Federal Constitutional Court to cut-in and issue a temporary injunction against the administrative decision prohibiting the festivals. In a decision addressing both cases, the First Chamber of the First Senate rejected the Article 32 motions. (4)

For the Uninitiated – A Rave Primer

[3] *Raving* has come to describe a sub-cultural lifestyle centered on the post-yuppie demographic known as Generation-X and characterized by its pronounced relativism, as demonstrated by its passivity, technological assimilation (and attending blase) and carelessness pursuit of extreme sports. (5) *Raving*, suited to a class weaned on deconstruction and multi-cultural relativism, itself deliberately resists definition. One *rave*-commentator explains: "Raves are, if anything, the ultimate subjective experience." (6) There are, however, sufficient common elements to permit a glimpse into the heart of *raving*. "In general practice, a 'rave' usually refers to a party, usually all night long, open to the general public, where loud 'techno' music is mostly played and many people partake in a number of different chemicals, though the latter is far from necessary." (7) It is a party, by another name, and not terribly original. What does appear to be unique about *raving* is the emphasis placed on the experience that can be attained/achieved in the practice of the art. The pulsing, redundant nature of the purely electronic "techno" music and prolonged bouts of uninhibited dancing, often in combination with drugs (now predominantly Ecstasy) are thought to induce a trance-like bliss that some liken to a meditative-state. One *raver* described the spirituality of the experience in Buddhist terms: "relaxed and close to, if not at, [a] non-thinking state." "Techno" music plays a fundamentally important role with respect to this objective. Of course, *ravers* resist assigning a strict definition to "techno" music as well. It consists of styles ranging from "House," "Breakbeat," "Ambient" and "Trance." "Overall, techno music is denoted by its slavish devotion to the beat, the use of rhythm as a hypnotic tool. It is also distinguished by being primarily, and in most cases, entirely, created by electronic means." (8) Most techno music is assembled from pieces or "samples" of other recordings by a DJ, who usurps the role played by a live musician and who orchestrates turntables and mixing boards rather than instruments. (9)

The Decision of the Federal Constitutional Court

[4] Since 1996 (its 8th year) the *Love Parade* has proceeded down *Strasse des 17. Juni*, (10) which splits Berlin's central *Tiergarten*, ending at a stages near the Brandenburg Gate from which DJ's play "techno" music and the parade converts itself into a rave more than a million people strong. The damaging effects of the *Love Parade* to the vast, lushly green *Tiergarten* are all too easy to imagine. Concerned with this damage, an organization calling itself *Tiergarten gehört allen Berlinern* (The Tiergarten Belongs to All Berliners) out maneuvered the *Love Parade* and obtained a permit for a public gathering on July 14, 2001, on *Strasse des 17. Juni* and the surrounding *Tiergarten*. The Berlin Police Department rejected the *Love Parade's* subsequent request for a permit (11) because of the conflict with the *Tiergarten* gathering. (12) The Berlin Police Department decision also concluded that the denial of the permit did not constitute a violation of the constitutional right to freely assemble because the *Love Parade* did not qualify as a protected public gathering, lacking as it does the objective of developing and expressing opinions. (13) The Berlin

Verwaltungsgericht (Regional Administrative Court) and the *Oberverwaltungsgericht* (Higher Regional Administrative Court) upheld the decision of the Berlin Police Department, both concluding that the *Love Parade* did not merit Article 8 protection because it lacked, as a central element of the gathering, the development and expression of opinion. (14) The *Oberverwaltungsgericht* explained that these aims could not be established by mere dancing and music, without more. To so hold, the *Oberverwaltungsgericht* concluded, would be to devalue the important opinion-building role of the right to freely assemble secured by Article 8 of the Basic Law. (15)

[5] With its Article 32 motion to the Federal Constitutional Court for a temporary injunction, the *Love Parade* asserted that the denial of the permit threatened a serious detriment of its constitutional right to freely assemble. The Court summarized the *Love Parade's* argument in the following way:

The challenged decisions [of the lower courts] represent wide-ranging meaning for the right to freely assemble because the courts relied upon a too narrow concept of what qualifies as a protected assembly. For an assembly it is sufficient if several people meet together and their togetherness is based upon a shared will or belief. Political demonstrations with the objective of expressing opinion are an important, but in no way exclusive, example of an Article 8 protected assembly. (16)

[6] The Court deferred to the factual and legal findings of the lower courts in denying the *Love Parade's* motion. The Court reasserted the standard of review it applies in such cases, which are heavily dependent on an analysis of the facts (as the central question in the case is whether the *Love Parade* develops or expresses opinion to a sufficient degree as to qualify for Article 8 protection) and which come to the Court with very little time to explore the factual basis of the matter. The Court explained that, in these circumstances, it does not disturb the factual or legal findings of the lower courts except when they are obviously flawed or unsupportable. (17)

[7] The Court found the factual findings and legal reasoning of the lower courts to meet this threshold standard, especially with respect to the characterization of the concept of a protected assembly. (18) The Court affirmed the high-ranking status of the right to freely assemble in the life of Germany's democratic order, explaining that the right to freely assemble plays a central role in the formation of public opinion. (19) The Court explained, however, that simply because a group of people are bound together by a shared goal or perspective, the assembly of those people does not alone involve the formation and expression of an opinion. (20) The Court expressed its comfort with the standards applied by the administrative authorities in drawing these distinctions because the importance of the public interests served by Sections 14 and 15 of the *Versammlungsgesetz* and because the administrative authorities are under clear directives to give priority to the protections secured by Article 8 of the Basic Law. (21) In light of these considerations, the Court found no cause to take issue with the findings and reasoning of the lower courts, especially their insistence on judging the opinion-forming nature of the *Love Parade* by evaluating the event as a whole and not distinct or isolated elements thereof. The Court agreed with the conclusion of the lower courts that, taken as a whole, the *Love Parade* constitutes a mass-spectacle or party with its main focus being entertainment (particularly its primary commercial objective, which its organizers conceded) and not the development and expression of opinion.

[8] The *Love Parade*, after losing its motion for a temporary injunction from the Federal Constitutional Court, applied for and received permission to march and assemble along *Strasse 17. Juni* on July 21, 2001. The last-minute change led to the withdrawal of a number of sponsors and considerable confusion and inconvenience for thousands of ravers who had planned to make the pilgrimage the week before (many of whom, unwittingly, still came to Berlin on July 14). (22) Attendance at this year's *Love Parade* was estimated at 800,000 (considerably fewer than recent years). (23) The organizers have reported losses of over DM 2.5 million. (24) The event closed, as is its tradition, with a speech from its co-founder Dr. Motte:

We are the largest demonstration for peace in the world: we will go on, dancing to our music in the streets, thereby demonstrating our ideals. The music is our life. (25)

The organizers of the *Love Parade* plan to press the underlying, substantive constitutional challenge seeking to clarify the event's status as a protected, Article 8 assembly, in a complaint to the Constitutional Court.

(1) Merriam-Webster Collegiate Dictionary (Online) <http://m-w.com/cgi-bin/dictionary>

(2) Chris Hilker, The Official alt.rave FAQ (visited July 31, 2001) <http://www.hyperreal.org/raves/altraveFAQ.html>.

(4) The Federal Constitutional Court denied a motion for a temporary injunction from the Fuck Parade in the same decision, applying the same reasoning to both applications. For the sake of expedience, this report focus only on the application of the *Love Parade*.

(5) See above, in this issue., *The Federal Constitutional Court's Emergency Power to Intervene: Provisional*

Measures Pursuant to Article 32 of the Federal Constitutional Court Act.

(6) Dave Eggers bestseller from a year-ago, *A HEARTBREAKING WORK OF STAGGERING GENIUS*, has been promoted by some as a Generation-X manifesto. It portrays a sarcasm, cynicism beyond its author's years. It begins with the dedication page ("I am tired. I am true of heart!") and the biting ironic "Rules and Suggestions for Enjoyment of this Book" and the tone runs strongly through the Preface and Acknowledgements: "Further, this edition reflects the omission of a number of sentences, paragraphs, and passages. Among them: . . ." and "the author wishes first and foremost to acknowledge his friends at NASA and the United States Marine Corps, . . ."

(7) Chris Hilker, The Official alt.rave FAQ (visited July 31, 2001) <http://www.hyperreal.org/raves/altraveFAQ.html>.

(8) *Id.*

(9) *Id.*

(10) The use of samples of other recordings to create "techno" music has generated its own line of legal issues as the holder of the rights to sampled recordings fight to preserve those rights from takings by DJ's.

(3) The main thoroughfare running east-west through Berlin's central Tiergarten and the Brandenburg Tur, the street was named in honor of the uprising in East Berlin and throughout East Germany on June 17, 1953. The movement was put down by the occupying Soviet forces.

(11) The right to freely assemble is protected by Article 8(1) of the German Basic Law: "All Germans shall have the right to assemble peacefully and unarmed without prior notification or permission." This right is qualified by Article 8(2) with respect to "outdoor assemblies," which "may be restricted pursuant to a law." The law governing assemblies is Germany's *Gesetz über Versammlungen und Aufzüge (Versammlungsgesetz) vom. 24. Juli 1953* (Assembly and March Act of 1953). The Act provides for registration of an outdoor assembly or march in Sections 14 and 15.

(12) BVerfG, 1 BvQ 28/01 vom 12.7.2001, Para. 7 <http://www.bverfg.de>.

(13) *Id.*

(14) *Id.* at Para. 8.

(15) *Id.*

(16) *Id.* at Para. 10.

(17) *Id.* at Para. 13, citing BVerfGE 34, 211, 216; BVerfGE 36, 37, 40; BVerfG 1. Kammer des Ersten Senats, NJW 2001, p. 1411.

(18) BVerfG, 1 BvQ 28/01 vom 12.7.2001, Para. 15 <http://www.bverfg.de>.

(19) *Id.* at Para. 16; see Donald P. Kommers, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* 395 (1989).

(20) BVerfG, 1 BvQ 28/01 vom 12.7.2001, Para. 16 <http://www.bverfg.de>.

(21) *Id.* at Para. 18 <http://www.bverfg.de>.

(22) *Interview with Dr. Andreas Scheuermann*, Max Magazine July 19, 2001 (visited at the Love Parade website July 31, 2001, <http://www.loveparade.de>).

(23) Bilanz der Love Parade, N-TV Online (visited July 31, 2001) <http://de.news.yahoo.com>.

(24) *Id.*

(25) *Id.*