

Note: This English translation is an abridged edition of the original decision in German language from 12. September 2014, including the main decision and a number of relevant details.

Bern, September 12, 2014

Case Number: 984 - Ro

Order

in the matter

Robert Doetsch, Venloer Strasse 57, 50672 Cologne - complainant -

Versus

1. **Osho International Foundation**, Bahnhofstrasse 52, 8001 Zurich
2. **Michael O'Byrne** (since 2013: Michael Byrne), President of the Foundation Board,
3. **John Andrews**, Vice President of the Foundation Board
4. **D'Arcy O'Byrne**, Board Member
5. **Klaus Steeg**, Board Member
6. **Rudolf Kocher**, Board Member - respondents 1-6 -

Concerning

Repeal of provisory regulatory measures in accordance with the Order of June 2, 2014

(Complaint of May 20, 2014)

The Federal Department of Home Affairs (EDI)

has abstracted from the files:

- A. By order of June 2, 2014 the EDI had suspended the complete Board of Directors, i.e. Respondents 2-6, of the Osho International Foundation, and appointed attorney Andreas G. Keller as administrator. Simultaneously the debtors of the Osho International Foundation, i.e. the PostFinance and Credit Suisse Banks, were instructed, until revocation by the EDI, not to pay out or transfer any funds to the respondents or others. [...]

B. As became apparent shortly after the initiation of the above-mentioned Order and once the administrator had commenced his work, the allegations raised in the regulatory complaint regarding improper use or even illegal appropriation of Foundation funds by bodies of the Foundation, could not be substantiated. In particular, there were also no indications whatever of any conduct by the Foundation's bodies that would be of relevance as far as criminal law is concerned, as had been repeatedly indicated by the complainant (e.g. page 39 of the May 20, 2014 regulatory complaint). The fact that Osho International Foundation realizes only marginal revenues through the copyrights of the works of Osho is accounted for by the purpose of the Foundation and by the Founder's wishes, in accordance with which the works of the master are to be sold at affordable prices. Thus, economic success is to be subordinated to the widest possible dissemination of the Works. At the same time the over- indebtedness of Osho International Foundation originates from the fact that through lack of its own financial resources, it had to take loans from related organizations so that, from 1991 on, it could start financing the urgently needed preservation and maintenance of the archives of the original recordings of Osho's talks. The loans in question contain priority waivers by the creditors, so that notification of a bankruptcy judge is not required from either the auditors' perspective and also not from the supervisory authority's perspective. In addition, the Foundation has meanwhile started to work on a long-term financial restructuring of the balance sheet.

The investigations of the EDI, the extensive work of the administrator, and the disclosure of internal relationships by the respondents themselves, have showed that the Osho International Foundation thoroughly fulfills its purpose of spreading the teachings and messages of Osho, both directly through "Publishing Agreements" with publishers as well as indirectly via the Osho International Foundation in India, which in its turn has entered into agreements with publishers in India. [...]

The central allegation by the complainant, that a purposive, global, confusing network of companies was established in order to siphon off assets in favor of the respondents, has proved to have no substance. One sole subsidiary of the Foundation exists, the Osho International Corporation in New York, which produces books and eBooks under license, manages "Publishing Agreements" on the Foundation's behalf, and in the USA, grants sublicenses for the local book market. The licenses for the digital rights to the works of Osho are held by an Osho Multi Media Trust in Belize. This trust maintains an O International Digital Media in Hong Kong, which in turn owns an Osho Media International in Ireland. The latter has the task to promote the commercialization of digital rights and to operate the website www.osho.com. There, works by Osho are directly accessible in 13 languages.

- C. Through its August 12, 2014 response to the Complaint, the legal representative of respondents 2- 6 requested that the complaints not be accepted or respectively that the complaints be dismissed in full. [...]

As grounds for this, it is stated that the complainant has not acted out of concern for the preservation of the teachings and writings of Osho, but from purely "selfish" and economic motives. Since the year 2000, the complainant and related parties have attempted to take legal action against Respondent 1 in different countries, with the aim to "bring down" the trademarks and copyrights of Osho International Foundation. The complainant himself apparently conducts lucrative business affairs under the name Osho through various enterprises. The EDI had been unaware of this background; the supervisory complaint of May 20, 2014, in its section "motivation and legitimacy of the complainant" (Rz 4-6 of the petition), makes no mention of this, so that the impression was created that the complainant was acting as an individual and not as a representative of interested parties or actually of competitors of respondent 1.

Further arguments from the response to the Complaint will be discussed in more detail as necessary in the following points of consideration.

- D. The August 12, 2014 response to the complaint was also shared with the administrator. The EDI requested RA Keller to assess whether, and if yes to what extent, the daily business operations of the Osho International Foundation could already be entrusted back to the Foundation's Board of Directors.. In his September 8, 2014 opinion statement, the administrator also concludes that the complainant's allegations, in particular with respect to any self-enrichment by respondents 2-6, are invalid. The administrator points out that respondents 2-6 have given detailed comments regarding every complaint that was raised, and that in his view the respective explanations are credible. This applies especially as far as the developed corporate structure is concerned (see in this regard FIG. Bst. B, para. 3), which was created primarily for tax reasons. The Osho International Foundation itself, however, is not a tax free entity; it has never submitted an application for tax exemption to the concerned cantonal tax authority. It is thus in no way true that Osho International Foundation's tax exemption was revoked, as has been repeatedly, and partially also publicly, claimed by the complainant (e.g., in a report dated August 28, 2014 in Oshonews Online Magazine¹).

¹ <http://www.oshonews.com/2014/08/european-lm-case-and-swiss-oif-ruling/>

[...]

The Federal Department of Home Affairs

takes into consideration:

1. The so-called Foundation supervisory complaint is a unique instrument of law [...]
In order to take recourse to this instrument one needs to fulfill the condition of having a legitimate ground of complaint. Besides the members of the

board of the Foundation , only a person who could realistically be expected at some point to come into a position of gaining services or another benefit from a Foundation, or someone who can demonstrate a special closeness to the Foundation, should be qualified to submit a complaint. In the June 2, 2014 Order this legitimacy within this framework regarding the complainant was confirmed. Due to the current file situation, however, this question appears to be open again [...]. The re-evaluation of the legitimacy of the complainant shall be reserved for the final decision in the present complaint on completion of the customary exchange of correspondence. [...] For the suspended board members the existence of the legitimization is generally assumed [...]. Based on case law of the Federal Court and consistent practice of the ESA, the Respondents are legitimized in any case to exercise party rights in these proceedings and to file submissions. [...]

2. [...] As stated earlier in sBst. B, C and D, the intended clarifications undertaken since the enactment of the June 2, 2014 Order, have found no indications of any inappropriate behavior by the board of the Foundation. In fact, the accusations by the complainant, were contradicted by the submission of corresponding documentation. In particular, no imminent danger for the Foundation's assets could be found.

In this context, the supervisory measures decided on and taken by the order of June 2, 2014, prove to be no longer justified today. Obviously, the suspension of the Foundation's Board needs to be canceled. The complete board of directors is to be reinstated in its functions and work [...]

3. With the cancellation of the appointment of the administrator in this function, the Osho International Foundation again becomes fully entitled to act. The management and direction of the entire day-to-day affairs thus passes back to the Board. [...]
4. For respondents 2-6 to be able to dutifully perform their tasks and functions, they must have accessibility to Osho International Foundation's accounts, to the same extent they had before the adoption of the June 2, 2014 decree. In addition, as established, there is no basis or indication to show that there is a danger of misuse of the Foundation's assets. [...]
5. It has to be avoided that through the instigation of a legal measure against the cancellation of the provisory legal supervision, irretrievable damage should be created for the Foundation's assets (e.g. concerning the imminent renewals of numerous license agreements). A potential complaint against this Order should therefore not have any suspensive effect. .
6. The ESA specifically reserves the right for further procedural orders and regulatory measures, as per Art. 84a or Art 83d ZGB.
7. The August 12, 2014 response to the complaint does not only invalidate the raised accusations and allegations against respondents 2-6; the corresponding statements additionally place the complainant himself in an unfavorable light. For this reason alone he should be legally heard and

have an opportunity to respond Thereupon he should get the opportunity, in the framework of a second round of written exchanges, to reply to the content points of the main issue.

For this reason, a copy of the response to the complaint is being made available to the complainant's legal representative, for a position statement to be submitted by October 13, 2013. Currently excluded hereby are attachments 1-83 of the response to the complaint. The legal representative of respondents 2-6 argues on page 6 of the complaint response that in case of disclosures of material which includes confidential business trade secrets, these could well be used again by the complainant to initiate further legal confrontations. As announced by the legal representative of respondents 2-6, he will provide the relevant documents with appropriate 'black-out' of edited information and will send this version to the complainant's legal representative.

[...]

On these grounds it is ordered:

1. The suspension of the complete Board of Directors of the Osho International Foundation, ordered by the June 2, 2014 Decree of the EDI, is revoked. The following persons are reinstated in their offices and functions, together with their collective signing authority of two:
 - **Michael O'Byrne** (since 2013: Michael Byrne), President of the Board
 - **John Andrews**, Vice President of the Board
 - **D'Arcy O'Byrne**, Board Member
 - **Klaus Steeg**, Board Member
 - **Rudolf Kocher**, Board Member

[...]

5. The instruction, until further notice to the contrary, to not make payments or bank transfers to the respondents or to third parties – an instruction which, after the June 2, 2014 Order by the EDI, was communicated to the debtors of the Osho International Foundation, and in particular the PostFinance AG, 3030 Bern – is revoked.
6. The prohibition for the Board of Directors to have availability of the assets of the Osho International Foundations, imposed on them through the June 2, 2014 Order, is revoked.

[...]

Signed by
Helena Antonio
Head of Federal Department of Home Affairs (EDI)