

Berlin Public Prosecutor's Office
FTAO StA Henjes
10559 Berlin

16.06.2011

AZ: 222 Js 1455/11

Grounds for the complaint against the **discontinuation decision of 6.4.2011**

Dear Sirs,

In the above matter, I would like to state the grounds for my complaint as follows:

I. Facts of the matter

In his letter of 21.03.2011, the undersigned requested the Berlin Public Prosecutor's Office for investigation and criminal review on the grounds of misappropriation of tax funds by the government and the Chancellor in the course of the party advertising campaign "Four promises, but first a thank you".

€ 2.763 million from general budget funds were spent on insertion of the advertisement. With regard to the details of the matter, I refer to my letter of 21.3.2011.

II. Discontinuation decision by the Public Prosecutor's Office

By its decision of 6.4.2011, the Berlin Public Prosecutor's Office discontinued the investigations because of lack of initial suspicion in accordance with § 170 II StPO.

This discontinuation was justified essentially with two arguments:

- The government has broad freedom of discretion in budget matters under the Constitution. It was therefore permissible to use budget funds for the advertising campaign forming the subject under dispute (see below III.2.).
- There was no verifiable exchange between the CDU party headquarters and the government with regard to the advertising campaign. No direct party-political reference could therefore be established (see below III.3.).

III. Statement of position and legal appreciation

1. Permissibility of the complaint

According to § 172 I stop, it is a requirement for permissibility that the applicant is also the injured party. The term “injured party” is interpreted broadly here, because the protection of the legality principle within the legal framework of § 172 StPO must be comprehensive (Kleinknecht/Meyer § 172 StPO Rn. 10).

The applicant is a citizen of the Federal Republic of Germany and a taxpayer. He has an essential, legal interest, which must be acknowledged under the penal code, that taxes paid by him should not be used for improper purposes.

2. No budgetary freedom

The Parties Act defines exactly under what requirements the political parties may receive funds from the general national budget and use them for their own purposes (§18 ff. PartG). Apart from these legal regulations, access to national budget funds is impermissible. To this extent, the regulations of the Parties Act restrict the otherwise existing budget policy discretion of the government. A “self-service discretionary freedom” of the political parties by the party-tactical instrumentalisation of political offices (in this case the Chancellor and ministers) does not exist, and especially not when it concerns exorbitant amounts (€ 2.763

million), as is the case here. Obvious party advertising may accordingly not be financed from general budget funds.

By having funds removed from the national budget for improper purposes, financial damage is done to the country, which is particularly serious in times of a debt crisis and general budgetary restraint. By reason of their office, and their oath of office, the Chancellor and the other government ministers are responsible for this financial damage. The responsibility of office-holders – including under the Penal Code – for the misuse of public funds to the detriment of the public purse is generally acknowledged in legal interpretation (see for example BGH of 15.6.1954 - 2 StR 128/54).

The fact that this was not a matter of permissible “objective information” on the work of the government, but transgresses the boundaries to the point of impermissibly financed party advertising, and therefore the misappropriation of state funds, is substantiated by the following:

- The letter is of an advertising character. The (supposed) mastering of the debt crisis is portrayed in particularly positive words (“marketing language”):

“You have made Germany the country which has best weathered the worldwide economic crisis... . The world looks at our country and speaks of a miracle.”

- The advertising refers expressly to the government:

“We in the government have also been working to contain the effects of the crisis.”

and explicitly to the coalition parties:

“Major tasks lie ahead of us. The Christian-liberal government is tackling them decisively.”

The formulation is not aimed generally at the responsible organ of the constitution (the federal government), but makes an explicitly party reference - “Christian-liberal government”. This clearly expresses the intention of the parties involved in the

government coalition: to want to stay in office, or even to have to stay in office so that the problems can be solved. This implies indirectly that all the other parties are incapable of handling this task.

- The advertising campaign has no information content, but restricts itself to generalisations and general statements (securing of finances, education, energy supply and health), which obviously form part of the constitutional obligations of the government and the Chancellor.

In this connection, the following remark must be justifiable:

It is irritating that the Chancellor feels herself able to advertise the mere fulfilment of obligations – which she is bound to do anyway by reason of her oath of office, and for which she is well paid. If she is of this (irritating) opinion, then she should pay the costs of such advertising either out of her own salary or from the relevant party funds, and not out of the national budget, which is intended for the benefit of the general welfare.

- The visual design focuses on the imagery, with the Chancellor in the foreground. The sympathies are supposed to be directed at the head of the CDU party. The low factual content, which is in visual disproportion to the size of the advertisement, confirms the advertising intent.
- The advertising campaign was published one day after the end of the CDU Party Conference. The Chancellor and head of the CDU are one and the same person, making obvious the clear party-political motivation.

3. Exchange with the CDU party headquarters

Whether and in what form there was any exchange with the CDU party headquarters regarding the advertising campaign would have to be the subject of investigations by the Public Prosecutor. The Chancellor and her responsible colleagues may be questioned on this point. Corresponding corroborative documents may be seized. The mere claim in response to a parliamentary question from the opposition that there was no such contact is however not

enough to exclude an initial suspicion.

In the opinion of the undersigned, an exchange with the CDU party headquarters is not a requirement for prosecution, but only affects the degree of the transgression. The impermissible party reference, when financing the campaign from general budget funds, results in any event from the content of the advertisement and the “personal union” of the office (Chancellor) and party function (Party Chairperson).

ALLIANCE FOR DEMOCRACY