Federal Constitutional Court
2nd Senate
PO Box 1771
76006 Karlsruhe

18.9.12

Accession to the constitutional complaint – Preventive legal protection by means of the urgent proceedings against the ESM and Fiscal Pact by lawyer Simon Jacob, Heidelberg of 12.6.2012 and its extended grounds in accordance with his letter of 2.7.2012

As a follow up to my fax of 11.9.2012 (dated 10.9.12) I hereby enclose an original version containing additional text to the fax, with the note that due to the haste of the writing of the fax, some errors had slipped in, which are corrected in the following text to ensure better rendition of the meaning.

Under file ref. 2BvR1296/12, and prior to the enactment of the relevant draft legislation by the Bundestag and Bundesrat, a constitutional complaint had already been submitted as an urgent application, which was further founded by the letter of 2.7.2012 from the law firm of Simon Jakob & Kollegen, Heidelberg. I hereby expressly accede to this constitutional complaint and the above letter, and would like to supplement the grounds by the information provided in a separate letter to Federal Constitutional Court.

I also hereby apply in the form of a

Supplementary urgent application

for

Prohibition of the announcement of the decision scheduled for 12.9. of this year on the above complaint and its supplement in connection with information provided in this letter and my acceding complaint in accordance with the letter of the same date in the appendix.

I justify this application not to make public the decision of the Federal Constitutional Court and its judges of the 2nd Senate of this court on 12.9.12, and that they reconsider and find on it again by my application founded in this respect in accordance with § 42 Para. 1, 2 ZPO, to reject the judges on the grounds of suspicion of partiality. This applies to all judges of the 2nd Senate of the Federal Constitutional Court, because grounds exist which are suitable to justify distrust in the impartiality of one or more judges. If such rejection is not permissible for all judges of the 2nd Senate, I make the application with regard to Judge Müller (CDU), former Minister President of Saarland and now Judge of the Federal Constitutional Court. This application is justified by the principle, derived from that of a state under the rule of law, of fair

proceedings, because it is essential for such fair proceedings that a legal dispute is decided by neutral and impartial judges. Therefore I as the complainant and a person involved in a legal dispute must have the opportunity to ensure that the matter is dealt with only by judges who can deal with the case without bias.

Circumstances exist however which justify legitimate doubts about the impartiality or independence of the judge, and therefore distrust against the impartial exercise of the office of the judge – or in this case several of them – and in the form of objective reasons, which from my point of view and under reasonable consideration have given rise to the suspicion that the judges cannot approach the matter impartially and without bias: a prime example of this is the former Minister President Müller. It is the concern about bias which prompts me, and this should constitute no reproach against the rejected judge in his person, and also no suggestion that it is already known that he has made a mistake.

I give below the reasons which have prompted my concern about the bias of this judge, and also other individual judges:

1. It has been made known in the press that well-known Constitutionalists and also many politicians of the current coalition government of the CDU/CSU and FDP are of the opinion that it has been shown in the past, and that this would also be the case in the future, that the law, and in this case the supreme law of the Federal Constitutional Court, is subordinate to politics.

   The concern is therefore, in terms of observed current policy, that this is causing a slide from democratic principles of basic law into dictatorship, be this either administrative and banking dictatorship or only banking dictatorship, in the course of the mismanagement prevalent in Germany.

   When well-known politicians such as the current Federal Finance Minister Wolfgang Schäuble (CDU) and the FDP financial expert Otto Solms point out that the Federal Constitutional Court has in the past always acted and decided according to the principle of democratic legitimacy, can we therefore assume that it will also act and decide in the same way and within the scope of democratic legitimacy regarding the decision on the ESM and Fiscal Pact, expected for 12.9.

   Democratic legitimacy may not be derived solely from formal legislation, it must also be assessed under quasi-economic aspects. If the Court should agree to that, because the economic considerations also come to the fore in other areas, such as in tax law, then must it apply even more to the lifeblood of a country, namely its budget policy, which is now only referred to as sovereign debt, and nevertheless still as the budget sovereignty of the parliament and supreme law of democracy. Debt sovereignty however cannot qualify as the democratic legitimacy of a legal state, if the parliament has

demonstrably managed on the basis of loans ever since the establishment of the FRG, and has so far conducted only unsuccessful restructuring. Democratic legitimacy is not the turnout and the corresponding percentages that the parties achieve during elections from the nominal percentage for these parties in this case, namely a conversion of these voting percentages into election participation. If these percentages of all parties of the coalition government are converted into election participation, then the level of agreement amongst the people amounts to only about 25%.

To still speak of "democratic" legitimacy from a human and economic point of view, and to take this as a reason that even under this economic perspective of this economic consideration, any legitimacy can still be assumed, is a purely party-political point of view, which although it may withstand formal legal considerations, cannot comply with economical and human exigencies. And when it must also be considered with regard to these reduced percentages of the parties at elections in relation to the overall population that according to opinion surveys, up to 80 % and more of the population are against the ESM and also the current government practice regarding the purchase of junk government bonds through the ECB, there can no longer be any question of democratic legitimacy, and the question must be asked: Who then is still in favour of the rescue package?

It is therefore unacceptable that a party clan of a coalition government, which is present only to such a small extent, should control the fate of the whole population, and can show as a result of its work only the weakening of the currency, which paves the way only for the end of the free market system with individual payments and services which are also adequately paid, whether in the working or retired population. The government accepts the transition within the social systems into complete collectivism, for which no alternatives have been created because of the transfer systems in the social systems, which today burden the social state, but continues to pile up debts, which are increased even further by rescue packages.

2. The policy of the Chancellor has been confirmed by the decision of ECB Council to allow the purchasing of junk government bonds. The rescue package is now being borne by the ECB, and agreement to or rejection of the ESM has now become irrelevant.

   The bypassing of the supreme German court which this entails means nothing more than that the Chancellor has been able to get rid of some leading politicians – there are probably already over 15 of them – and all the opponents o f the ESM (including the Federal President Christian Wulff, who himself had publicly voiced his opposition to the ESM), and the President of this Federal Constitutional Court, to whom she offered the highest office in the state, to buy him off so to speak. Mr. Vosskuhle fortunately declined the offer.

Following her manoeuvring with the ECB, she can now say to the judges of the Federal Constitutional Court: “You can now decide as you like, that no longer needs to interest me, I have no further use for you.” And the blatantly shocking fact is that someone who wants to lead Europe should presume to support European regulations on prohibited national financing within the countries of the European currency union, while at the same time circumventing and breaking them, and thereby revealing that she cannot really be a “European“ – so why should we have the Euro, just like those politicians before her, who first exceeded the Maastricht Treaty and then the Stability Pact and its corresponding new and total debt limits, and thereby contravened the requirement for stability that prevailed in all the countries of the union; this is now happening in a similar way by intending to circumvent the Federal Constitutional Court of Germany by agreeing to ECB state financing under the guise of preserving money market stability by the ECB, which is only partially true, after she has just given the green light for the purchase of such bonds, and compromised the Bundesbank President who is really responsible here in the ECB for Germany, which have already caused them to consider withdrawal.

The High Court will not consider withdrawal. But the High Court must accept that it is assumed that it must be biased, and under the pressure of these events. Under the pressure of such a procedure by politics, it must be assumed that again the above situation could be the case, which was stated in press and by leading constitutionalists in “Die Welt” (4.9.12, p. 2) as following the principle that the law is again being subordinated to politics.

For the stated reasons, and taking into account the fact of the enclosed supplementary information to the previous grounds in the constitutional complaint submitted by Mr. Jakob of Simon Jakob & Kollegen, Heidelberg, from which it is clear that the delaying of insolvency has already long been the case in Germany with the introduction of Euro-bonds – the ESM is simply a precursor and corresponds in the ideal case to the same support of all the European countries of the Monetary Union, and is tantamount to the introduction of Euro-bonds.
The Association Alliance for Democracy (www.menschenfuerdemo-kratie.de) explains why German and other countries are in a state of delayed insolvency, and Germany is bankrupt, and is only drawing out the bankruptcy situation by passing on the burden and the costs of insolvency to its citizens, which can lead to the protection of creditors, in this case citizens, for private individuals up to the oath of disclosure, and for companies allows for early recourse to the bankruptcy court. Under § 1 of the Insolvency Ordinance, this does not apply for the state, although certainly for a company under civil law. The state however represents a large company under civil law, and its politicians fall under the insolvency conditions for private persons – an absurdity, because despite the insolvency that has been caused by them, in which all citizens are involved, they in their capacity as politicians can extract themselves from the affair without obligation. This is certainly not in line with the principle of “equal rights for all”!

3. This being the case, I have allowed myself to make the application on the grounds of the bias of the individual judge and of all the judges.
   In this connection, I would like to draw attention to the lacking insolvency regulations of the Federal Republic of Germany, which is the main reason why the structure of the ESM/Fiscal Pact has become so complicated – one taboo is broken after the other. I would further like to point out that the agreement of the United Nations on the international combating of corruption– which has been signed by over 160 countries – has not been signed by the relevant German government for 9 years. Is this a sign that the German economy (and press) and/or politics are corrupt? Corrupt, because it is an impossible situation in a democratic constitutional state that prosecutors of the courts have for decades been bound by the instructions of state and national government, and that the control of prosecutors is programmed into the system. And on the other hand that the judges' posts in all supreme courts are occupied only by those amenable to the party – either according to party quotas or part of these quotas.

   It is not called into question that they basically have the option of independent decisions. However, they do have the option of a politicised decision within the framework of asserted independence; such independence is also claimed by the ECB for the purchase of junk government bonds, under its statute that it is only responsible for monetary stability, and is certainly allowed to carry out such transactions (but up to what amount?). To this extent I no longer see the foundations of judicial impartiality as guaranteed.

   This is so especially in the current situation of insecurity of livelihoods, in a future collectivist system to be expected in any event, in which future generations will be burdened more and more. This in itself should be sufficient, apart from the application regarding judicial bias, to justify the application for the suspension of tomorrow's decision.