

Public Prosecutor's Office Berlin

222 Js 1455/11

Please quote file ref. in all correspondence

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Staatsanwaltschaft Berlin, 10548 Berlin

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Berlin, 6th April 2011
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für Briefsendungen: 10548 Berlin

(Keine Straßenangabe) für

Paketsendungen: Turmstraße 91,

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Sprechzeiten

Montag, Dienstag und Donnerstag 8.30- 15

Uhr Mittwoch und Freitag 8.30 -13 Uhr

Weitere Termine nach Vereinbarung

Your ref.: 00045-11

Received 13th April 2011

Dear Sir,

With regard to your application of 21st March 2011 for criminal proceedings against members of the German government, I have reviewed the matter as presented by yourself under all relevant legal aspects, and have also evaluated the Bundestag record 17/4158. Under the following considerations, the result of my review gives no cause for bringing a public prosecution:

You accuse the Chancellor and the government of non-constitutional use of tax funds in the form of concealed party advertising for the benefit of the funds of the government parties. When you refer in this matter to the advertisement published on 17th November 2010 entitled "Vier Versprechen, doch zuerst ein Dank" (*Four promises, but first a thank you*), I find that the initiation of the incriminating advertisement of the government does not fulfil the requirements for criminal breach of trust.

Criminal breach of trust (§ 266 of the Penal Code) requires the occurrence of a financial loss either by means of abuse of a disposal or obligation authority over external assets (1st alternative) or contravention of a qualified duty of financial care (2nd alternative). Neither of these two cases is fulfilled here.

The 1st alternative, the so-called abuse, requires a valid obligation or disposal to the detriment of the damaged party with infringement by the person or body of the legally imposed limits to their

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Dienstgebäude Kirchstr. 7: Busse 245, TXL; U-Bhf. Turmstr., S-Bhf. Bellevue

actions. It is not evident in this case that either the Chancellor or one of the government ministers exceeded the legally imposed limits to their actions. Concrete infringements against the Budget Act are not evident; German legal statutes allow the government broad freedom of action and discretion in budget questions, in order to ensure the greatest possible political freedom of action of the government; legally, the government is unquestionably acting within the bounds granted to it by the Constitution. Even individual expenditure which might subsequently be found to be mistaken cannot therefore be combated on a criminal prosecution level, but only at the political level, or if applicable be subject to objection by the Audit Courts.

Contravention of the 2nd alternative of § 266 of the Penal Code, the so-called breach of faith, is also not evident. This requires the breach of an obligation of care of external assets. For the variant of the breach of faith, the basic constitutional decision also applies, of granting the government wide discretion in budgetary questions. On the basis of the above considerations, there is no adequate justification for a breach of the duty of care of the country's assets.

The answers of the government to the brief enquiry on the advertising campaign in question also justify no initial suspicion which might substantiate criminal prosecution; questions on whether an exchange had taken place in advance with the CDU (party headquarters) with regard to the placement of the advertisement were answered in the negative.

For the above reasons, there are no adequate grounds, with regard to the matter as described by you, to suspect the existence of breach of faith in the sense of § 266 of the Penal Code. Other punishable offences to the detriment of the country's assets are also not apparent. I have therefore discontinued the proceedings due to the lack of adequate factual grounds for punishable offences in accordance with § 170 Para. 2 StPO.

With kind regards
Henjes
Public Prosecutor

Certified

Schneider
Judiciary