

For our files

Jakob & Kollegen

Lawyers

Supreme Court
Elßholzstr. 30-33
10781 Berlin

Heidelberg, 09.02.2012
My ref.: 00133-11

COMPLAINT ENFORCEMENT APPLICATION

In the

**Investigative proceedings by the Berlin Public Prosecutor's Office
AZ: 12 Zs 3294/11**

**against Chancellor Dr. Angela Merkel
 The Federal Government**

on the grounds of breach of trust

I make application

for a court decision against the rejecting decision of the Berlin Public Prosecutor's Office of 30.01.2012, to the effect that a judgement be handed down to institute public proceedings against the above the survey of the public action against the above-mentioned defendants.

Grounds:

I. Facts of the matter

One day after the end of the CDU Party Conference, the Chancellor Dr. Angela Merkel addressed herself to her “fellow citizens” in a letter.

This letter was published over the period from 17.11. to 22.11.2010 in regional and national daily newspapers (e.g. Frankfurter Allgemeine Zeitung), tabloids (e.g. Bild), periodicals (e.g. Spiegel) and online (e.g. Web portal of GMX). This “letter” is still on the website of the Federal Government and is attached as an appendix.

In this letter, the Chancellor expresses her thanks to the public: “Thank you dear fellow-citizens, you have made Germany the country which has best weathered the worldwide economic crisis.” The letter then continues in praise of the CDU-FDP coalition government.

According to the information of the Federal Government, the publication of the letter in all the above media cost € **2.763 million**. These funds were taken from the general national budget.

This “letter” was already the subject of a parliamentary question by the Bündnis 90/Die Grünen faction. The answer of the government (BT printed matter 17/4158) is also attached as an appendix.

II. Course of the proceedings

The undersigned lodged a criminal complaint against this action on 06.09.2011. In the opinion of the undersigned, this advertising campaign was carried out with the use of tax funds for ultimately private purposes – namely party advertising – in a criminally relevant context.

In its decision of 19.10.2011, the Berlin Public Prosecutor’s Office rejected the institution of investigative proceedings. The complaint lodged against this action (24.11.2011) was also rejected by the Berlin Public Prosecutor’s Office in its decision of 30.01.2012. The decision of the Berlin Public Prosecutor’s Office did not specify any further legal recourse.

The opinion of the Public Prosecutor’s Office was founded essentially on the following arguments:

- Under the Constitution, the Federal Government has brought powers of budgetary discretion. Budget funds may therefore also be used for the advertising campaign under dispute (see III.2. below).
- There was no verifiable exchange between the CDU Central Office and the Federal Government with regard to the advertising campaign. A directly party-political connection therefore cannot be established (see III.3. below).

III. Legal appreciation

1. Injured property

According to § 172 I StPO, it is a requirement for admissibility that the applicant is also the injured party. The concept of the 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). It is intended only to “screen out” applicants who have nothing to do with the matter.

The applicant is a citizen of the Federal Republic of Germany and a taxpayer. He has a fundamental, legally - even criminally - justified interest that tax funds paid by him are not used for other than state purposes.

The narrow interpretation of the Public Prosecutor’s Office, which denies the injured property of the undersigned, leads to a legally questionable restriction of legal protection.

2. No budgetary discretion

The Parties Act defines the conditions under which political parties may receive funds from the general national budget and use them for their own purposes (§ 18 ff. PartG). Outside of this legislation, access to the national budget is not allowed. In this respect the provisions of the Parties Act restrict the otherwise existing broad budgetary discretion of the Federal Government. There is no “self-service discretion” of political parties by the party-tactical exploitation of political offices (here: Chancellor/Ministers),

and particularly not when - as here – such exorbitant sums (€ 2.763 million) are involved. Party advertising must accordingly not be funded from general budget funds.

By withdrawing funds from the national budget for inappropriate purposes, the Federal Republic of Germany suffers financial loss, which weighs particularly heavily in times of the debt crisis and the general budgetary constraint. By virtue of their office and their oath of office, the Chancellor and the other members of the government are responsible for this financial loss. The criminal liability of office-holders for misuse of public funds to the detriment of the public purse is generally recognised in law (see BGH of 15.06.1954 - 2 StR 128/54).

The following demonstrates that this is not a matter of permissible “objective information” about the work of the government, but exceeds the bounds of impermissibly financed partly advertising, and therefore the misuse of state funds:

- The letter is of an advertising character. The (alleged) resolution of the debt crisis is represented in very positive terms (“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 explicitly to the coalition parties:

“Great tasks lie before us. The Christian-liberal government will face these tasks with decisiveness.”

The wording is not aimed generally at the responsible constitutional body (Federal Government), but makes an explicit party reference to the “Christian-liberal government”. This expresses the intention of the parties involved in the governing coalition to want to stay in office, or even to have to stay in office, just so that the problems can be solved. Indirectly this denies that all other parties are unequal to this task.

- The advertising campaign has no informational content, but is limited to general empty platitudes and general statements (safeguarding of finances, education, energy and health), which of course are in any case the constitutional obligations of the government and Chancellor.

- In the visual layout, the image part (Chancellor) stands in the foreground. This is intended to direct empathy to the party chairperson of the CDU. The low factual content, which is visually disproportionate to the size of the advertisement, confirms the advertising intention.
- The advertising campaign started one day after the end of the CDU Party Conference. The German Chancellor and leader of the CDU are one and the same person, so that the clear party political motivation is obvious.

The argumentation of the Public Prosecutor's Office, that according to legal interpretation of the Federal Constitutional Court, public relations work is only subject to constitutional restrictions during election times (BVerfG, verdict of 02.03.1977, Az. 2 BvE 1/76) and there are apparently no regulations prohibiting tax-financed public relations work, are ultimately not to the point: this is not a question of public relations work, but merely party advertising.

The basic assumption of the Public Prosecutor's Office, that the advertising campaign had no connection with elections, is also untenable. The advertising campaign of the Chancellor under dispute was the party-tactical opening of the 2011 state parliament election season (Hamburg, Sachsen-Anhalt, Baden-Württemberg, Rheinland-Pfalz). The advertising campaign of the Chancellor was designed to translate the good mood at the national level into corresponding election successes of the government parties at the state level.

3. Exchange with the CDU Central Office

Whether and in what form there was any exchange with the CDU Central Office with regard to the advertising campaign should also be the subject of investigations by the Public Prosecutor's Office. The Chancellor and the responsible staff should be questioned on this point. Appropriate documentary evidence should be seized. The simple statement, following a parliamentary question by the opposition, that there was no such contact is in any case not sufficient to exclude an initial suspicion.

In the opinion of the undersigned, an exchange with the CDU Central Office is not a requirement for criminal liability, but has only contributory significance.

The impermissible party reference (with financing from general budget funds) results in any case from the contents of the advertisement and the “personal union” of the office-holder (Chancellor) and party function (party chairperson).

4. Possibility of free notification by press conference

Furthermore, the Chancellor could have avoided the costs without further ado. The Chancellor could have just called a press conference. The press would have reported accordingly. The Chancellor could have addressed the German people over the public TV and radio channels. This would also have involved no costs to be charged on to the taxpayer.

The fact that funds were taken from the general national budget without any need proves that this criminal charge is indicated.

Finally I would like to refer to the website of the Alliance for Democracy, where further information may be found (<http://menschenfuerdemo-kratie.de>).

Simon G. Jakob
Lawyer

Appendices

Letter from the Chancellor

Reply of the Federal Government to the parliamentary question of the “Grünen”