

Volker-Hans Rey
Thomasstr. 1
69257 Wiesenbach

Staatsanwaltschaft Berlin
Turmstr. 91
10559 Berlin

Heidelberg, 10 September 2015

**Criminal complaint
against unknown persons
and against Hans-Georg Maaßen
for making false accusations
regarding Netzpolitik.org**

Dear Sir or Madam,

In relation to the following facts, I, Volker-Hans Rey, Thomastr. 1, 69257 Wiesenbach, am bringing a criminal complaint against the President of the BfV (Constitutional Protection Office), Hans-Georg Maaßen, and unknown persons, for making a false accusation (§164 of the Criminal Code, or StGB). In making this criminal complaint, Volker-Hans Rey is backed by the Alliance for Democracy (www.menschenfuerdemokratie.de), a platform for real, direct democracy and the rule of law (against politically acceptable justice).

I. Facts of the Case

1. Publications by Netzpolitik.org

Netzpolitik.org is a platform for digital civil liberties. The operator of Netzpolitik.org is Markus Beckedahl. Netzpolitik.org defines itself as a journalistic entity and addresses important issues related to the Internet, society and politics.¹ It recently posted two critical, but not very sensational, general reports, which are the subject of this action, on the planned expansion of intelligence activities on the Internet, as well as the financing and personnel plans for this expansion. The reports are dated 25/02 and 15/04/2015.

The author of the reports is Andre Meister.

Evidence: Printout of the reports

Geheimer Geldregen: Verfassungsschutz arbeitet an Massendatenauswertung von Internetinhalten (Secret Windfall: Constitutional Protection Office working on mass data analysis of Internet content) (updates), by [Andre Meister](#), 25 February 2015²

Geheime Referatsgruppe: Wir enthüllen die neue Verfassungsschutz-Einheit zum Ausbau der Internet-Überwachung (Secret Unit: We expose the new

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tutional protection unit to expand Internet surveillance) (Updates), by [Andre Meister](#), 15 April 2015³

¹ According to Netzpolitik.org's description of itself. – see <https://netzpolitik.org/about-this-blog/>.

² Available on the Internet: <https://netzpolitik.org/2015/geheimer-geldregen-verfassungsschutz-arbeitet-an-massendatenauswertung-von-internetinhalten/>

In these articles, Netzpolitik.org does not report on the technical details of internet surveillance and possible defence strategies, nor about targets or individual investigative results, but only about the planned financial and human resources for this “Internet upgrade” of the Constitutional Protection Office, or BfV. To substantiate its report, Netzpolitik.org published excerpts of internal BfV documents. The issue here is that the BfV recognises the growing importance of the Internet as a communication platform for extremists, terrorists and foreign intelligence agencies, and consequently puts the Internet in the focus of intelligence service investigations. These BfV investigations are not supposed to be aimed at individuals. Their purpose is the automated gathering and analysis of large amounts of data. The BfV works to establish and upgrade the technical conditions necessary for this. In particular, movement profiles and relationship networks are investigated. Beckedahl/Meister reported that the German government was providing around €2.75 million to fund this expansion. A total of 75 full-time jobs were to be established in the relevant unit, “Expanded Technical Support on the Internet.”

2. Criminal Complaint of the Federal Office for Protection of the Constitution

The BfV filed a criminal complaint for each of these published reports – not with the responsible state prosecutor’s office in Berlin, but with the State Office of Criminal Investigations (*Landeskriminalamt Berlin, or LKA*).⁴

Evidence: Criminal complaint of 25/03/2015
Criminal complaint of 16/04/2015

The LKA is not responsible for cases involving breaches of simple official secrets, but can act when a case involves the betrayal of state secrets. Therefore, the complaint claimed that the documents published by Netzpolitik.org were classified. The complaint does not mention any specific offence. An investigation was requested to determine *all* offences that may have been committed. However, the context (LKA state security division, classified documents) makes it clear that the BfV believes this is not just a simple breach of official secrets but treason.⁵ The criminal complaint was directed against unknown persons, but mentions the operator of the website (Markus Beckedahl) and the author of the articles (Andre Meister).

The criminal complaints were filed in the name of BfV President Hans-Georg Maaßen and signed on his behalf by one Dr. Willems.

3. Investigations by the Attorney General’s Office

In April. The LKA forwarded the criminal complaints to the Attorney General’s Office for review. As with the LKA, the Attorney General is not responsible for cases involving a breach of simple official secrets, but only for matters of national security, i.e. treason.⁶ For

3 Available at: <https://netzpolitik.org/2015/geheime-referatsgruppe-wir-praesentieren-die-neue-verfassungsschutz-einheit-zum-ausbau-der-internet-ueberwachung/>.

4 The criminal complaints are posted on the Netzpolitik.org website: <https://netzpolitik.org/2015/landesverrat-die-strafenzeigen-gegen-uns/>.

5 § 94 StGB.

6 §§ 120 I No. 3, 142a I 1 GVG.

the Attorney General's Office to act, therefore, the case must concern state secrets. That's why the Attorney General asked the Office of Constitutional Protection for an opinion. The BfV responded with a detailed legal opinion affirming the betrayal of state secrets.⁷ Apparently, Range did not fully trust the expertise of the BfV and sought another external legal opinion. Nevertheless, he initiated the investigation in May and officially notified the journalists in question, Beckedahl and Meister.⁸

Evidence: Notice of the Attorney General's Office of 24/07/2015

The notice is signed by Senior Prosecutor Greven. Due to the organisational structure of the office, however, it is assumed that Attorney General Harald Range ordered the investigations.

4. Suspension of the Investigations

In the meantime, Attorney General Range has been placed on retirement. The Attorney General's Office suspended the investigation for the following reason:

“The Attorney General's Office has suspended the investigation of a suspected criminal disclosure of a state secret under §170 Par. 2 StPO. Along with the Federal Office for the Protection of the Constitution, it assumes that the published information does not involve a state secret in the sense of §93 StGB. Moreover, the Attorney General's Office does not consider that the conditions of subjective intent exist. The suspicion that hitherto unknown persons may have breached an obligation not to disclose official secrets (§353b StGB) is not affected by this decision. To this extent, the matter shall be referred to the local prosecutor's office with jurisdiction.”

Evidence: Printout of the press release on the website of the Attorney General's Office of 10/08/2015⁹.

II. Legal Appraisal

1. No Treason

Treason requires the following incriminations, among others:

- The existence of a state secret and specific risk of serious harm to the external security of the Federal Republic of Germany
- The intention to harm the Federal Republic of Germany or benefit a foreign power

a. No State Secret / No Specific Risk

⁷ Unfortunately, this report has not been made public.

⁸ The document of the Attorney General is posted on Netzpolitik.org. *Verdacht des Landesverrats: Generalbundesanwalt ermittelt doch auch gegen uns, nicht nur unsere Quellen*, by Andre Meister, 30/07/2015, see: <https://netzpolitik.org/2015/verdacht-des-landesverrats-generalbundesanwalt-ermittelt-doch-auch-gegen-uns-nicht-nur-unsere-quellen/> (retrieved on 11/08/2015)..

⁹ Available on the Internet at: <https://www.generalbundesanwalt.de/de/showpress.php?themenid=17&newsid=561>

The legal definition of state secrets in §93 StGB is as follows:

“State secrets are facts, objects or knowledge to which a restricted group of persons have access and which must be kept secret from a foreign power to prevent the risk of serious harm to the external security of the Federal Republic of Germany.”

An abstract risk is not sufficient for treason. There must be a *specific* risk of serious harm to the external security of the Federal Republic (unanimous opinion, see Tröndle/Fischer §94 marginal note 6). This is the case, for example, if the defensive strength of the armed forces were impaired. Treason would also be conceivable if the information specifically harmed the ability of intelligence agencies to fight foreign terrorist groups, such as Islamic terrorist groups.

Regarding the reports that were the subject of the complaint: Do they help terrorists to evade the detection of the intelligence services?

The fact that the intelligence services monitor the Internet, investigating movement profiles and relationship networks was already the subject of critical press reporting prior to the reports of Netzpolitik.org and can be considered common knowledge. There is no potential risk identifiable in the information about funding (€2.75 million) and personnel (75 employees). Specific technical details about the way the investigative and spy software works could give away defence strategies to terrorists, but Netzpolitik.org did not report such details.

On the basis of the facts, it is difficult to see any harm to the external security of the Federal Republic of Germany. Moreover, treason requires not just any harm but *serious* (!) harm. It is ludicrous to imply any serious harm in this case.

b. Intent

Treason is an intentional act. The objective realisation of the offence is not enough. The perpetrator must betray a state secret with knowledge and consent and at least approve of specific harm to external security.

For the relevant alternative act of §94 I No. 2 StGB – “public disclosure,” subjective intent is qualified in that publication from the viewpoint of the (alleged) perpetrator would have to be specifically intended to harm the Federal Republic and/or benefit a foreign power, i.e. treason requires an intent to harm in this case.

The objective of Netzpolitik.org was already represented in the facts of the criminal complaint. Netzpolitik.org is a platform for freedom and openness and seeks to raise important political issues for public debate. Netzpolitik.org’s intention is not to harm the Federal Republic but to enrich it. Therefore, the implicit allegation in the criminal charges and in the initiation of an investigation of an intent to harm is groundless, slanderous and deliberately untruthful.

2. False Accusation

Under §164 StGB, anyone who goes to legal authorities, for example, and accuses another of a crime, contrary to their own better judgement, with the intent of initiating official proceedings is liable to prosecution. An untruthful criminal complaint is a classic case under §164 StGB.

The criminal complaint of the BfV avoids the word treason – but the context clearly points to treason. The BfV stresses the (alleged) secrecy of the published documents and demands an investigation from *all* legal perspectives, which means not just because of the (obvious) betrayal of official secrecy by a BfV employee but also specifically because of an allegation of treason against the journalists mentioned by name in the complaint, Beckedahl und Meister. That is why the criminal complaints were also filed with the state office of criminal investigations (LKA) and not just with the Berlin state prosecutor's office, which has jurisdiction. A telephone call was placed prior to the second complaint. The complaint specially refers to this phone call. It stands to reason that the charge of treason was discussed in that phone call.

The purpose of the criminal complaint was further clarified by the involvement of the BfV in the investigative proceedings. The BfV office delivered a report to the Attorney General that attempts to prove that the public disclosure of the state secrets in the documents amounts to treason. The BfV ups the ante: It seeks to add fuel to its initial complaint with an obliging expert opinion: The investigation of Beckedahl and Meister.

The accusation of treason resulting from the criminal complaint requires the untruthful claim that Beckedahl and Meister published state secrets with the intent to harm the Federal Republic. The president of the BfV is a lawyer. He was fully aware of the scope and meaning of his criminal charges and that the accusation was completely unsubstantiated. The purpose of the BfV's criminal complaint was not to initiate constitutional investigative proceedings but to make a false accusation that is punishable under the law. The blatant difference between the charge and the legal reality points to intent. Intent is an internalised element that can only be demonstrated by external evidence. Not every unjustified criminal complaint is a false accusation. However, when the gap between the claim and the truth is as wide as it is here, it cannot be explained by a mistake, and can only be understood as an intentional falsehood. This is proof of intent regarding the false accusation.

The motives of the BfV are obvious. The purpose was probably to have a chilling effect on investigative journalism. The purpose was probably to open up the wide-ranging possibilities for investigation under the Criminal Code (stPO) with the relevant catalogue of crimes (the "electronic arsenal"). The criminal complaint became a tool to achieve those objectives. The false accusation against innocent journalists was approved by Hans-Georg Maaßen.

Volker-Hans Rey