

The EU Ombudsman
Prof Dr. Nikiforos Diamandouras
1, Anvenue du Président Robert Schuman

F67001 Strasbourg Cedex

L5/0118/60
26.10.2005

Subject: Violation of the Treaty of Maastricht, Title 1 Common Provisions, Art 6-3 by the Federal Republic of Germany

References: Your letter of 1291/2005/TN of 05.09.05
My Letter L5/0118/60 of 08.05.2005

Dear Prof. Diamandouras,

In order to gain statistics on the violations of human rights by the Federal Republic of Germany we have instituted an electronic survey on the website <http://www.eucars.de>. It has been running for two weeks now, however, the database is full of raw data, which has yet to be analyzed. The last four entries as at 26.10.2005 have been examined in some detail and are summarized in the Annex. For pictures the electronic version on <http://www.eucars.de/ombud/ombud2.pdf> might be more suitable.

Although we are an anti-corruption organization, it is difficult to proceed with meaningful work without tackling the problem of violations of human rights by the German Justice System. The two main human rights organizations, Amnesty International and Human Rights Watch, have not moved with the times (in Europe) and are still looking for "torn-out fingernails". The more subtle more profitable methods in use in Germany today call for much of the same counter-strategy as is employed for anti-corruption activities. Far different to the legal battles fought out by lawyers it calls for an analysis of procedures as the sole factor, which more quickly betrays abusive justice. It is not necessary to establish the rights, wrongs, guilt or innocence in individual cases.

Whilst it is true that nobody comes to the NGOs to tell them that everything is OK as far as human rights is concerned, a picture is emerging of a thoroughly corrupt and unreliable justice system - much worse that we had ever imagined. One wonders what checks and safeguards the International community imposes on the internationalization of the judicial process ?

Yours sincerely

Peter Briody
"intitut voigt"
Annexes:

'A' Four Cases extracted From the Database

Annex A to

L5/0118/60

26.10.2005

Four Cases From the Database

No. 1 Bernd Taubenheim

Herr Bernd Taubenheim from Dresden began an Email with, "I was attested unfit to plead and was in a psychiatric clinic as my case was thrown out with costs..."

Herr Taubenheim's story is about a building and a plot of land in Freital. It is a depressing tale of how law and order has broken down in many districts of Germany. It started before the fall of Communism in the East and stretches over the period of adjustment as the money which should have been flowing into reunification was flowing instead into corrupt pockets. Property subject to any form of legal process in Germany is the target of arbitrariness, land crooks, corrupt judges and bent lawyers in varying degrees and amounts of these.

The authorities branded Bernd Taubenheim a "Querulant" which is sinister Nazi-terminology for separating out persons for "special" treatment. (It should not be confused with "vexatious litigency"). This probably has to do with the stately liability for negligent maintenance of Taubeheim's property during the time of the "German Democratic Republic" when it was declared "Volkseigentum" (the people's property). To cap it all, the property was severely damaged in 2002 as a result of the floods in the Dresden area (See Pictures). The "Querulant" has been refused due compensation, but nevertheless has to pay the full taxes for the ruins. Although by now penniless the court in Dresden has consistently refused Bernd Taubenheim all applications for legal aid.



Pic 1-1 Damage inside the building



Pic 1-2 External damage to the house

A spectacular instance of the "special" treatment occurred in 1996 as a matter got so "hot" that the court in Dresden "lost" the case file (about 500 pages). When Taubenheim offered to reconstruct the file, the court's president significantly did not reply.

The mental health of those, to whom this quality of justice is applied, generally deteriorates drastically and Bernd Taubeheim is no exception. He has had several stays in the psychiatric clinic in Dresden. His last stay in August 2004 was a signal to the Adminstrative Court in Dresden, despite a doctor's certificate, to slip in a quick decision with costs against the "Querulant" during his excusable absence. Added to this they sent the court bailiffs to collect the costs of the disgraceful court process by judges Bendner, Auf der Strasse (a Name), and Düvelshaupt. This secret court case was of course a serious violation of Art 6-1 of the Convention and is now before the European Court of Human Rights (case no 12469 / 05).

No 2 Dr. Ulrich Brosa

The case of Dr. Ulrich Brosa has been reported at various stages of its development on www.beschwerdezentrum.de, www.eucars.de and many other Websites. Basically Dr. Brosa is an anti-Nazi and the local Nazis (there are plenty of those in Hessen, where Dr. Brosa lives) regularly celebrate since 1993 "Reichskristallnacht" (night of broken glass) at Dr. Brosa's house. Usually on the Weekend following the 20th of April (Hitler's birthday) each year but otherwise at random they cause criminal damage to Dr. Brosa's property and injury to his person. Ulrich Brosa has quite a gallery of Photos of the nightly visits taken from his security camera, two of them are included here for information. The District Attorneys office in Marburg and the police have done just about everything they can to encourage it.



Pic 2-1 A prowler armed with an axe. Damage was caused to the house and injury to Dr. Brosa himself.



Pic 2-2 A trouble-maker who has not been identified because the DA's office in Marburg said that the picture was too bad for that. The young thug bears a remarkable resemblance to a policeman's son.

One of the threads in the scandal, the "Wolfsangel" affair, exposes the incompetence and the cover-up mentality of the Hessen Justice Authorities. In the author's essay "Human Rights Violations in Germany - Dr Brosa and Modersohn's Alternatives" on www.eucars.de there is a summary of the quality of the police work in the matter . A formal evaluation of the investigation (under contract) was conducted by the author (in German) and this is callable under:

"<http://www.eucars.de/blindeye/gutachte/Gutachten.pdf>" or [.../index.htm](http://www.eucars.de/index.htm)

There cannot be very many excuses for the standard of workmanship produced here but District Attorney Elizabeth Opitz in Marburg apparently managed a few, at the same time putting her own competence on the line. She and her henchmen decided to charge Dr. Brosa with "False Accusation" for daring to submit in a more than justified disciplinary complaint about the scandal. The local court and the district court in Marburg apparently felt, that they were sufficiently immersed under the LLAMS-Transition (vis.) layer to get away with a conviction under gross violations of the rules of evidence. Times are changing, however.

In common with many incompetent people, Opitz's behavior is tinged with apparent malice, which stretched to a further list of trumped-up charges against Dr Bosa. These are:

2 Js 10831/05	Offence against the data-protection laws
51 Ls - 2 Js 10001/05	Offence against copyright.
51 Ls - 2 Js 17479/04	Perjury
11 Ds - 2 Js 5643/64	False accusation
8 Ns 2 Js 7725/02	Insult
2 Js 4414/01	False accusation.
5 Js 9193.0/99	False accusation
3/10 Js 1585.6/99	False accusation

There is ample evidence that Opitz was looking for technical obscurities in the law for use against Dr. Brosa. In any case in Germany it is not necessary to actually have any evidence for a conviction at low level – it is only "nice to have". The arbitrariness in Opitz's procedures would constitute a violation of Art.6-2 of the European Convention for Human Rights.

No 3 Curt X

The case of Curt X reflects the most blatant and deliberate violation of human rights being perpetrated openly by Germany today. The decision of the European Court of Human Rights of 8 July 1986 contains the statement:

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual “.

As the above case came up in 1986 there had been a post-verdict discussion on para 185a of the Book of Criminal Justice. This paragraph which prescribed stiffer penalties for insult and defamation of persons in public life, would be difficult to reconcile with the verdict of the EUCHR, it was said. Well they managed it by replacing it with paragraph 188, which has a somewhat different but equally discriminatory content.

The conviction of Curt X under the illegal paragraph 188 by the Landgericht (District Court) Baden-Baden (case no 5 Ns 301 Js 6720/01) on 21/22.07.2004 demonstrates not only the retarded growth of democracy, but also indicates the infantile mentality behind political life in Germany today.

For such offences against European Law like the existence of paragraph 188 and for cases where it is formally too late to apply to the European Court of Human Rights, a remedy is being studied called “Non-Government Rehabilitation”. This would in effect be a justice system in direct competition with the largely discredited official version – but in areas where this would be within the incontrovertible competence of the NGOs.

The existence of legislation against insult per se is not in itself an offence against European Law. However the Council of Europe has condemned the practice in no uncertain terms. The Memorandum of the Organization for Security and Cooperation in Europe volume 35 No 12 of May 24, 2002 contains the following statement:

Criminal defamation and "insult" laws are often defended as necessary to prevent alleged abuses of freedom of expression. They are not, however, consistent with OSCE norms and their use constitutes an infringement on the fundamental right to free speech.

We shall accordingly be lobbying the council of Europe for sanctions against Germany in addition to those to be imposed by the EU.

No 4 Selim Sürmeli

Exceedance of the provisions of Art. 6-1 in respect to the length of time it takes to decide a case is quite usual in Germany, if the Justice Authorities want to spin it out. In the case of Selim Sürmeli who is claiming compensation for injuries he received in 1982 has been litigating since 1989 against the Justice Authorities in Hannover. He has submitted a complaint to the European Court of Human Rights about the delays (case no. 75529/01).

The case is of course being challenged by the German Government in two 10 and 35-page documents. Whilst the author regards this as a remarkable piece of pseudo-judicial verisimilitude, it would not be prudent to comment on a matter sub judice. In any case Mr. Sürmeli's Attorney has skillfully demolished the government's arguments in his depositions.

The constitutional court features highly in the argumentation of the government. This is a highly unpredictable and inconsistent institution: Any application to it is a very slippery business indeed. For example, in the Hans Martin Schleyer case the family complained about an authority another litigant was told that a complaint about an authority was principally not allowed.

The case highlights particular problems with German Justice. A German language translation is about 30% longer than the original English or French versions which is OK. However, their submissions are about five times as long as they need be. The president of the European Court for Human Rights, himself a German speaker, said in an interview with "Spiegel" that submissions from Germany were difficult to understand. One suspects that he was referring to the PISA-effect in the work of German Courts. Maybe, but no amount of literature could justify a 16 year wait for a claim for accident compensation