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# Germany VIa: Lobbyism and 'Entanglement'

Compiled and ordered notes from interviews including cross-checks with publicly accessible material, prepared for future use. Language checks thanks to Amid Dar SJ.

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## 1 Introduction

Thomas Druyen in his research on wealth and the wealthy states: in the course of his research he ‘met a small group who owns the world’ and ‘naiveté is not appropriate considering the alliance of wealth and power’ (Druyen, 2007, p. 42). This seems to confirm the alliance also observed by Thomas Piketty in his book “Capital in the 21<sup>st</sup> century” (see I/IV/2.4).

Moreover, the research team of the “Tax Justice & Poverty” project also wanted to look into the connection between wealth, money, bribery, corruption, lobbying and other forms of improper influence.

For Germany, an outright corruption and bribery is of a less problem here. The larger problems also in the eyes of conversation partners among the police and prosecution services, are lobby practices of paid experts or forms of influence exercised within “informal networks” among elites. These practices influence policies, legislation and tax administration. For this very reason, this chapter is placed in between tax administration on the one side, and Illicit Financial Flows with its outspoken treatment of bribery and corruption on the other.

## 2 Conceptual clarifications

A major problem in today’s debate on the issues at hand is that there is no clear definition about what “lobbyism” is, and accordingly, within these ongoing activities it has to be judged as “legitimate” and “illicit” or worse (Transparency International, 2014a, p. 6). In this project, we adopt a wide definition of lobbying, building on one proposed by the NGO Transparency International:

Lobbying is any form of direct and indirect communication with holder of public or political office (elected or appointed) and representatives of public or political institutions with the aim to influence decisions. This communication is done in one’s own interest or due to commission by private, corporate or other organized interest groups.<sup>1</sup>

For the institutions involved in the Tax Justice & Poverty research, first a distinction needs to be drawn between “lobbyism” and “advocacy”. Lobbyism is done by pursuing the personal or business interests of somebody who is paying those doing it for doing it. Advocacy, on the other hand, is articulating and pursuing the interest of people who have no capacities to do it by themselves.

Another difference is yet seen between “lobbyism” and “entanglement” here. While lobbyism normally involves some systematic, goal-centred effort, the latter has to do with the fact that in all countries the political, administrative, economic and financial elites happen to know one another well, because they went to the same schools, are part of the same clubs and societies, meet at the same parties and perhaps share holiday homes, planes and yachts. This seems particularly true in Bavaria with the very pronounced self-confidence of its people in general and elites in particular, being expressed with the slogan “Mia san Mia” (“We are who we are” or “We know each other”). It seems, that if there are problems, it is most natural that one grabs the phone and friend X tells friend Y his concerns and sorrows and friend Y promises to look into the problem, trying to find a solution by pulling some strings, what friend X will appreciate very much with the promise to reciprocate the favour done if need arises the other way round.

## 3 Europe and Germany

There are quite a number of researches done on the issue of professional lobbyism, the phenomenon of the “Revolving Door” between governmental and business institutions, the problems of transparency regarding lobbyism towards parliaments and politicians, including

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<sup>1</sup> ‘Lobbying ist jede Form der direkten oder indirekten Kommunikation mit Amtsträgern, politischen Entscheidern oder Repräsentanten mit dem Ziel, politische Entscheidungen zu beeinflussen. Diese Kommunikation wird direkt oder im Auftrag von organisierten Gruppen ausgeführt.’ (Transparency International, 2014a, p. 6)

the question of financial donations and favours in-kind. Given the emphasis of the German country study upon Bavaria, some specific attention has been devoted to the phenomenon of Entanglement which flourishes here in a way as it does in other areas of Germany with (relatively) uninterrupted elite structures (e.g., Cologne).

Regarding this research, some aspects of “Constant Lobbyism” and its impact on tax law is addressed in GER/Va/5.2 and 6.3.1). This chapter, however, is rather about the phenomenon of “Entanglement”:

## 4 Bavaria

### 4.1 The “*Mia san Mia*” frame of mind

Bavaria is special among German states for two reasons: First of all, its territory could grow uninterrupted over centuries, and that neither Napoleon, the reorganization in the wake of the First Empire nor the creation of the post war Federal Republic touched the territorial integrity. With territorial integrity, however, a comparable integrity of the ruling social, political, economical etc., elites could grow along and establish itself over centuries (Engelmann, 1972).

Secondly, since the end of World War II, Bavaria’s politics was dominated by one political party, the CSU, whose roots extend way back into history, e.g., into the Bayerische Patrioten or Zentrumspartei. The CSU governed mostly with absolute majority and only once (2009) was forced to look for a coalition partner which was the FDP (Arnim, 2013). All this, according to critics such as Engelmann, Schlötterer and von Arnim, fostered a very specific coalescence between social, political, economical etc., elites and also “infested” other parties which increasingly became either part of the “We are who we are” system or were without noticeable influence. Among those criticized practices are prominent that Bavaria’s political class consisting of the members of parliament the government, and the apparatus of political parties took care of their own personal needs, thus moving towards the top of Germany’s best paid MPs, government ministers and party functionaries. It was even worse that since the major posts were “negotiated” between the CSU and their allies in parliament and government, also supervisory bodies such as the State Constitutional Court or the State Court of Auditors were part of this “Self Serving” behaviour, as von Arnim titles his book investigating the generous distribution of taxpayer’s money among the political elites.

Clearly, there are good arguments to pay MPs and politicians not only decently but also good enough to keep away from them the temptation of becoming corrupt by accepting presents and other forms of *Zuwendungen*. All this is, especially when comparing the quality and class of the Bavarian/German system with other more corrupt countries are publicly justifiable and which do not need to be ashamed of transparency. It is the rejection of transparency and scandals which pop up here and there nourishing suspicion and mistrust as because one suspects that there is more to it than it hits the eye.

There are two points which need to be made at the beginning: Firstly, recent developments demonstrated that von Arnims critique is at least in parts more than adequate. von Arnim criticized by using data from the early years of the new millennium, namely the employment of family members (pp. 79ff.), which blew into a manifest scandal in 2013 when it emerged that representatives of different parties employed family members under tax and social security saving conditions (see 6.5.5). Secondly, it is important to note that there is more than one critic suspecting that there are major problems in many areas emerging from the coalescence and non-transparency of Bavaria’s grown elite, determining even the state

policies rather within closed circles than enabling the public to have a real say, for example, because important information is simply suppressed, not made accessible even if it is known that it exists or does not exist because of “informal ways of communication”.

For this research, the two publications of Wilhelm Schlötterer are of prime interest for two reasons: Firstly, Wilhelm Schlötterer worked for the Ministry of Finance for many years and is extremely knowledgeable about taxation policy as developed and implemented by this Ministry. Secondly, whatever Wilhelm Schlötterer published in his comprehensive books about the entanglement between representatives and members of various elite groups in Bavaria, as devastating as it is for the reputation of Bavarian tax policy and tax administration, has not been publicly commented, contested or fought at court to be not-correct either by government, political parties or those accused (or, in the case of death, their descendants). Children of Franz Josef Strauß attempted to get parts of Schlötterers publications withdrawn or prohibited, but they did not succeed at court.<sup>2</sup> In informal talks there is critique towards Schlötterer and his revelations (see below 4.7), and the researcher asked frequently why there was and is no attempt on part of government and administration to set things right. The reply was in all cases that it would only give Schlötterer more attention and prominence, which would not be worthwhile. However, given the magnitude of revealed “entanglement” by Schlötterer this research rather takes the view that if Schlötterer could be disproven, the attempt would have most certainly been undertaken. Thus, this research for the same reason assumes that things are true until proven opposite.

Both Wilhelm Schlötterer and conversation partners to this research from tax administration, tax consultants and trade unions emphasize that the problem is not so much that *generally* members of the ruling CSU party try to bend tax administration and tax jurisdiction as such. They all agree that there are also a number of good people who know their limits and support administration to do their job. But there are those high ranking political representatives and their families who try to exploit their position of power for themselves and their friends.<sup>3</sup> And this is not merely a problem right at the top and in the capital Munich. It is also happening within Bavarian districts and among local elites. Moreover, since there are regions where parties other than the CSU are dominant for decades or longer, “sleaziness” also exists among those political party representatives and local elites. The investigations into cases of tax avoidance and evasion here too were said to be stopped without a fine (or for the payment of a ridiculously low fine) or were suppressed, when at the same stories emerged of “presents” or “donations” either for the benefit of influential representatives of ruling state or for the regional or local parties. Things on the local level might be even more disturbing, since local sleaze is not so much under scrutiny of media and NGOs because it is deemed to be normal or of no relevance for the larger course of things. Regarding the region of Franconia and the town of Nuremberg, such relevant cases are treated below (4.6) or in GER/VII/5.4.

## **4.2 Political and economic entanglement**

According to published accounts, most importantly by Wilhelm Schlötterer, and also according to conversation partners from tax administration to this study, open political interference into the administration of tax issues and related jurisdiction started when Franz Josef Strauß came to power, first as head of the Bavarian CSU, later as Prime Minister of the state of Bavaria. The fact, that the CSU was (and is) ruling Bavaria almost all the way since

<sup>2</sup> Strauß-Kinder scheitern mit Strafanzeige gegen Ex-Beamten Schlötterer. (2016, March 31). In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/bayern/prozess-strauss-kinder-scheitern-mit-strafanzeige-gegen-ex-beamten-schloetterer-1.2928967>

<sup>3</sup> (Schlötterer, 2010, p. 50f.) and (Schlötterer, 2013, p. 10ff.)

the end of World War II and most of the time with absolute majority in the state parliament – enabled to develop a number of contacts between the political personnel and the economical elite which were carefully (maintained/nurtured) nursed for the benefits of those involved. The one, on the one hand, received free rides in planes and boats, personal cash presents or “off the record donations” for the party, the latter, on the other side, received in turn special treatments and bonuses in terms of tax payments to and loan requirements from the state controlled banks. If civil servants or state prosecutors wanted to apply and enforce tax justice, they came under a lot of pressure involving threats of transferral, delay in promotion, defamation and mobbing. Some scandals blew nevertheless, for example:

- Zwick Scandal: It was known that in 1993 Eduard Zwick, a friend of Franz Josef Strauß, asked for (and received) tax rebates adding up to DM 71 million in return of a payment of a mere DM 8 million, mediated by the then-Minister of Finance, Gerold Tandler who in turn received substantial “loans” from Zwick.<sup>4</sup> Legal proceedings against Tandler were stopped after the payment of a DM 150,000 fine. He later resigned from his position as CSU Vice-Chair. Moreover, when tax fraud investigators wanted to search his home and offices, he received a warning in advance from the Ministry of Justice (Schlötterer, 2013, p. 41). It would be also interesting to investigate the arms deals mediated by Strauß with African countries (and bribes going along with them), for example South Africa, in those days under international sanctions because of its Apartheid Regime (Schlötterer, 2013, p. 65ff.).
- Max Streibl, succeeding Franz Josef Strauß as Prime Minister, was accused of violating tax-secrecy as Minister for Finance by hiding relevant information from parliament, but passing it on to Franz Josef Strauß (Schlötterer, 2010, p. 95ff.). Even though this accusation could not be proven, there were other questionable activities in his political career which surfaced in the so-called “Amigo-Scandal” and caused him to resign from his office.
- The next Prime Minister, Edward Stoiber, took a personal interest in organizing loans over 2 billion Euro for media tycoon Leo Kirch to be given by the semi-public Bavarian State Bank (Bayerische Landesbank) after other banks had refused them and the BLBs own experts warned of foreseeable insolvency of Kirch.<sup>5</sup> This and other politically influenced decisions lead to the accumulation of enormous financial losses of the bank which had to be stabilized eventually with billions of Euros from the taxpayers.
- The next case of the next Prime Minister, Günther Beckstein, who originates from Nuremberg, will be presented below (4.6.1).

### **4.3 Political, administrative and juridical entanglement**

As it has been pointed out in GER/II/8.3 that people within and outside tax administration are of the opinion that even today one important qualification for obtaining a leading position in tax administration is to have a membership in the correct party rather than having experiences in practical administration. This is one of the reasons as to why there are allegedly continuing overlappings between the political and administrative elite in Bavaria, including tax administration. One needs to be careful, however, not to confuse political allegiances with carrierism. One tax practitioner agreed that all superiors too often guess in advance what is politically opportune, but that they do this rather for career reasons. Above a

<sup>4</sup> More information: Zwick Affäre: Anklage gegen Strauß-Intimus Tandler. (1999, December 16). In: *Der Spiegel*. Retrieved from: <http://www.spiegel.de/politik/deutschland/zwick-ffaere-anklage-gegen-strauss-intimus-tandler-a-56766.html>

<sup>5</sup> More information: Edmund Stoibers Schwäche (2002, February 7) In: *Die Zeit*. Retrieved from [http://www.zeit.de/2002/07/Edmund\\_Stoibers\\_Schwaeche](http://www.zeit.de/2002/07/Edmund_Stoibers_Schwaeche)

certain paygrade, he argued, you encounter rather “Cyclists”<sup>6</sup> and “Yes-Sayer” interested in their own fate rather than the cause of the job.

As Wilhelm Schlötterer illustrates, a probate means among political-economical “friends” for obstructing fair taxation or the execution of justice was the utilization of influence via State Ministries on police, tax officials and state prosecutors. In none of these fields of profession, civil servants can act independently/are protected from political or politically influenced interference. In Germany, Schlötterer argues, a prosecution of Silvio Berlusconi would not have been possible. It was possible in Italy because the state prosecution is an independent institution and could therefore not be intimidated and prevented by Berlusconi from investigating his many tax offenses (Schlötterer, 2010, p. 375f.). In Bavaria (and Germany as such), a chain of command exists from the Prime Minister to the Minister of Justice via the Attorney General via Leading Senior Prosecutors to Senior Prosecutors and individual Prosecutors. Even easier is the chain of command from the Ministry of Finance down to tax inspectors or Ministry of Interior down to policemen in the field. Also conversation partner from police and prosecution admitted that superiors at times interfered in their works, but sometimes interferences could be accepted to be justified, in other cases they were not. As in the words of one decade long prosecutor who admitted that the Ministry interfered twice in his work, “one time the interference was justified.” This formulation, however, implies that even he thinks that one interference was not justified.

As Schlötterer demonstrates that there are many ways in which pressure can be exerted either by offering “incentives” or brutal pressure, hospitalization, dismissal, allegations and even arranged accidents and attempted murders (Schlötterer, 2013, p. 230ff.) Especially the report of cases involving mobbing and attempts to declare civil servants to be “querulous” and unfit to exert their office so that they could be sent into forced retirement are numerous and quite credible, since there were similar cases reported in other German states.<sup>7</sup>

#### **4.4 Economic and juridical entanglement**

Another and additional angle was brought into the debate on the occasion of a group meeting involving a member each from the tax fraud investigation, assessment and tax auditing. They all agreed that a major force behind legal issues in the area of wealth taxation is jurisdiction. If, for example, taxed private persons or businesses do not agree in the tax administrations a distinction between private and corporate ownership of assets (which impacts on tax base and tax rate), they bring the case to the courts. Here, judges have an important position and too many of those have been working a considerable time in large lawyer associations’ who specialize on business and economic issues and, naturally, have a business leaning departure point of view. In addition, people working in those circles who originate in family contexts are upper deciles anyhow, and who bring a “natural empathy and understanding” due to the same social background. As the case of Gust Mollath indicates, there are suspicions that some strange forms of rulings and behavior might have their roots in the fact that leading employees of the accused bank and senior judges were members in the same Rotary club (see below). Is it surprising, they asked, that most of those cases end with a much lower taxation or, in case of fines, much lower fines or other forms of settlement short of sentencing and punishment?

Furthermore, the policemen too, are angry about court proceedings in economic cases. Judges may be good jurists, they argue, but they have no idea of complexities and practices in

<sup>6</sup> The image of cyclists is used in Germany to signal carrierism because people bow to the superiors and kick those beneath them.

<sup>7</sup> E.g. (Berg, 2004) for Lower Saxony or (Wehrheim & Gösele, 2011) for Hesse.

the field which makes them far too lenient either out of ignorance or out of sympathy. A sequence of business friendly verdicts is one of the major reasons why privately held and used assets nowadays can be declared business assets and why the threshold of Nachweispflichten is lower nowadays than it used to be in earlier times, thus leading to the enjoyment of taxation privileges.

## 4.5 The situation since 2008

### 4.5.1 A new beginning?

As the specific cases quoted so far indicate that they are mostly from governments preceding the present ones. And the sum of those cases finally led in 2008 to a landslide loss of votes for the CSU which resulted into the loss of absolute parliamentary majority. In the wake of this disaster and in need for a new beginning, the party chose a new Chairman and a new Prime Minister, the then Federal Minister for Health, Horst Seehofer. He declared when leaving Berlin for Munich:

The CSU has incredible substance and power and I am not afraid that we will turn the new beginning into total success. It is part of a ritual to call out the declining importance of the CSU. I hear it since 20 years, since the death of Franz-Josef Strauß, since German Unification, since the Great Coalition in 2005. Everybody, who talked or wrote like that was wrong and I guarantee you that whoever talks or writes like that (now) is wrong once more.<sup>8</sup>

In his first Government Declaration after that election, he apologized on behalf of the Bavarian Government for the policies and misdeeds of the preceding CSU governments and promised a new beginning.<sup>9</sup> The problem seems to be, however, that the consequences of decade-long entanglements between parts of the political and economical elite and its cronyism and patronage system, e.g., by putting loyal people in crucial administrative and juridical positions, will not be resolved with just one public apology. Ever since Seehofer took office, the impression continued that the interests of private and corporate wealth holders are very dear to the government, as has already been mentioned elsewhere:

- The behaviour regarding the acquisition of Tax CDs: If the Bavarian State/CSU were serious about their fight against crime energetically, Bavaria should be at the forefront of purchasing CDs and prosecuting tax evaders. This is not what they do, strengthening the suspicion that they are tough on the small, but lenient on the larger criminal offender (GER/VI/4.3.1.3.1).
- The refusal of the Bavarian government to staff tax administration in accordance with the recommendations of the government's spending watch-dog, the Court of Auditors (see GER/VI/4.1.3.13)

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<sup>8</sup> ,Die CSU hat eine unglaubliche Substanz und Kraft und es ist mir nicht bange, dass wir den Neuanfang zu einem Erfolg machen werden. Es gehört ja schon fast zum Ritual, dass vom Bedeutungsverlust der CSU geredet wird. Ich höre es seit 20 Jahren, seit dem Tod von Franz-Josef Strauß, seit der deutschen Einheit, seit der großen Koalition 2005. Jeder, der so geredet und geschrieben hat, hat sich getäuscht und ich garantiere Ihnen, wer so redet oder schreibt täuscht sich wiederum gewaltig!' Statement done at a meeting with the Berlin Press Corps on 31 October 2008. Retrieved from [http://www.csu.de/common/csu/content/csu/hauptnavigation/aktuell/meldungen/Rede\\_des\\_CSU-Parteivorsitzenden.pdf](http://www.csu.de/common/csu/content/csu/hauptnavigation/aktuell/meldungen/Rede_des_CSU-Parteivorsitzenden.pdf)

<sup>9</sup> Regierungserklärung: Seehofer entschuldigt sich für Milliardenkrise der Bayern LB. (2008, 3 December 3) In: *Spiegel Online*. Retrieved from <http://www.spiegel.de/politik/deutschland/regierungserklaerung-seehofer-entschuldigt-sich-fuer-milliardenkrise-der-bayernlb-a-594224.html>

- The “engagement” of the Bavarian CSU for obtaining tax presents for Hoteliers by decreasing VAT for overnight stays from 19% to 7%. It makes sense if one considers that tourism is an important industry in Bavaria and that hoteliers are most likely the major donors for the CSU party.

But there are more indications:

#### 4.5.2 Participation of the Landesbank in the Offshore business

As the Panama Papers revealed, the state-owned Bayerische Landesbank participated in the Offshore Business by opening 129 Offshore Companies via their branch in Luxemburg. While most of those constructions originate before the time Horst Seehofer took over, there are still cases on record reaching as far as 2010. One could argue, of course, that it took time to terminate this practice, but this excuse was never published. It can therefore, be assumed that there were other reasons for the bank to finally cut down on their practice than having supervision by publicly elected representatives via the Aufsichtsrat.<sup>10</sup>

#### 4.5.3 The “Model-Car” Affair surrounding Minister Christine Haderthauer

As to the latter, the meagre facts are those: Christine Haderthauer and her husband Hubert were engaged in a company, SAPOR, which traded with luxury car models which were manufactured by inmates of psychiatric institutions to which Hubert Haderthauer had professional access since he is a doctor. Christine Haderthauer withdrew from the company register in 2003 and eventually her husband in 2008, just at the time when Christine Haderthauer became Minister of Social Affairs, the institution also supervising psychiatric institutions, i.e. those where her husband is working. Important elements of the public discussion are: How much profit did this company generate? Is it true that the company only generated about EUR 7,000 per year, as the tax office or Hubert Haderthauer reveals, or is it rather likely that by a price of up to EUR 20,000 per piece and a production of 130 cars, (a figures which is disputed by Hubert Haderthauer, but confirmed by the person manufacturing those cars) the profit was much higher, perhaps even a six digit figures, according to the accusation of yet another partner of SAPOR? This, certainly, would have also had implication for taxation. Early in 2014, the former partner, Roger Ponton, went to the court. His lawyer argues that income of the company was 80% higher than what Haderthauer told him, which justifies proceedings regarding fraud.<sup>11</sup> And it was made public on July 29, 2014 that the state prosecutor wanted to start investigation into this affair against both Haderthauers, the charges including the question whether they paid adequate tax for the gains arising from this business.<sup>12</sup> This made the opposition parties to call once again for her resignation from the head of the Prime Minister Seehofers State Chancery in order to make a clean slate while investigations are on. Those are questions, whose answer would be in the public interest. So

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<sup>10</sup> „Am 30. Mai 2005 lieferte Mossfon der Banque LB Lux die Briefkastenfirma Lofar Enterprises. Am 3. Juni 2005 folgte die Valentino International, am 1. Juli 2005 die Bigo Associates Corp. Die meisten dieser Deals liefen zwischen 2005 und 2007. Weitere Geschäfte dieser Art folgten in den Jahren 2008 und 2009. Als letzte Briefkastenfirma für die Banque LB Lux ist bei Mossfon die Cat Alliance notiert, mit dem Datum 17. März 2010. Diese Deals fallen in die Amtszeiten der Finanzminister Kurt Falthauer, Erwin Huber und Georg Fahrenschon, allesamt CSU.“ Ott, Wormer, Wittl (2016, April 7). Panama Deals bringen Söder in Bedrängnis. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/bayern/briefkastenfirmen-warum-soeder-nach-den-panama-papers-in-der-kritik-steht-1.2938767>

<sup>11</sup> „Über den Tisch gezogen“. In: Der Spiegel 19/2014, p. 15

<sup>12</sup> Deuschländer Chr./ Lechner C. (2014 July 30) Haderthauer: Ministerin hängt am seidenen Faden. In: Münchner Merkur. Retrieved from <http://www.merkur-online.de/aktuelles/politik/ministerin-seidenen-faden-3740633.html>

far, however, parliamentary initiatives to shed light into this affair were turned down by successive governments and the majority party, the CSU.<sup>13</sup>

On 1<sup>st</sup> September 2014, Haderthauer handed over her resignation from office. On 3<sup>rd</sup> December 2014, it leaked to the media that investigations into the case of tax evasion were underway because evidence suggested that indeed, attempts were undertaken to lower the value of the company and, consequently, the tax burden. In November 2015, the public prosecutor indicted Hubert Haderthauer at the Munich Courts for fraud and tax evasion charges. His wife, the former minister and Head of the State Chancery, was stripped of her immunity as MP in order to investigate more carefully her part in the scheme. Prosecution wants to prove that the couple was acting in a coordinated manner, and even if there will be only a financial punishment for her fellow MPs indicate that her wrongdoing originates from the time she served as a minister, which should disqualify her from future public office. Situation for her became tense when prosecutors accused her formally of tax evasion in February 2016. She accepted a penalty order of 30 „Tagessätze“ and, by doing so, comes out without the entry of a criminal record. Her husband was found guilty and sentenced to the payment of EUR18,900.<sup>14</sup>

#### 4.5.4 The “Höchstädt case”

A very illustrative example for the strange and counterproductive entanglement of political, economical and administrative interests is the plan to transfer a Munich based tax department to a northern Bavarian town called Höchstädt. The department’s task is primarily to evaluate real estate in Munich so that adequate taxation can be secured. Given the present (and rising) value of real estate in Munich this is a very lucrative department for Bavarian tax revenue and it does not really convince the outsider why this department has to move away from Munich so that civil servants would have to commute to Munich whenever they have work to do there. Moreover, the building offered in Höchstädt for this purpose is not suited to accommodate the department. The plans of informing about the location and size of real estate are mostly on papers, the storage is very heavy and requires special static reinforcements which are expensive. Scanning those plans is even more expensive and has been discarded. The solution would be to build a new house which would cost a double-digit million amount of Euros. Since a lot of work concerns Munich, files would need to be transported frequently between the two locations. But still the discussion is looking for a solution in Höchstädt rather than leaving the department where it is already, namely in Munich. But why is all this

<sup>13</sup> Küpper, St./Würmseher, B. (2013, June 22) Modellbau Affäre: Von Wahrheiten und Fakten. In: *Augsburger Allgemeine*. Retrieved from <http://www.augsburger-allgemeine.de/bayern/Modellbau-Affaere-Von-Wahrheiten-und-Fakten-id25740626.html>; Reister, H. (2013, July 31) “Modellauto-Affäre”: Wo ist das viele Geld? In: *Abendzeitung München*. Retrieved from <http://www.abendzeitung-muenchen.de/inhalt.haderthauer-im-visier-modellauto-ffaere-wo-ist-das-viele-geld.7554ab6e-205e-4903-a551-ba46a3063955.html> Modellbau-Affäre: Strafbefehl gegen Christine Haderthauer. In: *Süddeutsche Zeitung*. Retrieved from <http://www.sueddeutsche.de/bayern/steuerhinterziehung-modellbau-ffaere-strafbefehl-gegen-christine-haderthauer-1.2871144>

<sup>14</sup> Ermittlungen gegen Haderthauer ausgeweitet (2014, December 3). In: *Süddeutsche Zeitung*. Retrieved from <http://www.zeit.de/politik/deutschland/2014-12/haderthauer-ermittlungen-modellauto-ffaere>. Hubert Haderthauer wegen Betrugs und Steuerhinterziehung angeklagt (2015, November 3). In: *Augsburger Allgemeine Zeitung*. Retrieved from <http://www.augsburger-allgemeine.de/bayern/Hubert-Haderthauer-wegen-Betrugs-und-Steuerhinterziehung-angeklagt-id35987357.html>. Mittler, D. (2015, November 26). Christine Haderthauer „soll planmäßig und bewusst betrogen“ haben. In: *Süddeutsche Zeitung*. Retrieved from <http://www.sueddeutsche.de/bayern/modellbau-ffaere-christine-haderthauer-soll-planmaessig-und-bewusst-betrogen-haben-1.2755727> Modellbau Affäre: Haderthauer akzeptiert Strafbefehl (2016, February 19). Retrieved from <http://www.nordbayern.de/region/modellbau-ffaere-haderthauer-akzeptiert-strafbefehl-1.5005098> Modellbau Affäre: Geldstrafe für Hubert Haderthauer. (2016, February 26). Retrieved from <http://www.nordbayern.de/region/wegen-modellbau-ffaere-geldstrafe-fur-hubert-haderthauer-1.5020066>

discussion going on? According to conversation partner from tax administration and trade unions, a major force behind this idea is the local CSU MP for Höchstädt, Georg Winter, who at the same time was, conveniently, Head of the State Parliaments Finance Committee. It is precisely so because he stands in the word to move some profitable institution to his own constituency whether it makes overall sense or not.<sup>15</sup> In May 2013, however, Georg Winter had to step down from his prominent post due to entanglement in the “Family Affair” (see below). Georg Winter employed his wife and two underage sons (13 and 14), the latter as IT experts, who received around EUR 45,000 each for their services. Legally, however, in Winter’s case everything was transparent and in accordance with the law, as the state prosecutor confirmed. There remains a bad taste which eventually, leads to his resignation and the pay back of EUR 90,000. It did not prevent him from a new candidacy for the CSU in the 2013 elections which would keep the “Höchstädt” project its prominent supporter.<sup>16</sup> The latest on Höchstädt is that some compromise could be found in keeping some departments in Munich. But on the whole, the project moves ahead in stages and shall be concluded in 2018.<sup>17</sup>

#### 4.5.5 The „Family Affair“ in the State Parliament

In 2013 it was made public that a number of CSU MPs of the Bavarian State Parliament employed members of their own family under irregular conditions with the consequences that they avoided to pay adequate taxes and mandatory social security contributions. The affair involved prominent parliamentarians, e.g., the former head of the parliamentary Budget Committee, and also members of the state government (who are at the same time MPs), e.g., the former Minister of Justice, Merk, or the Secretary of State in the Finance Ministry, Pschierer. From the former cabinet members alone EUR 1.3 million was used to employ family members and relatives in their parliamentary offices. The affair had even legal consequences when the public prosecutor went to court in the case of Georg Schmid the former secretary of state and head of the parliamentary CSU fraction in the state parliament. The prosecutor accuses Schmid of tax evasion and the non-payment of social security contributions amounting to at least EUR 340,000. The court sentenced Georg Schmid to 16 months on probation and the payment of EUR 120,000.<sup>18</sup> **However, one should not forget to note that MPs from opposition parties were acting the same way.**

#### 4.5.6 Interference into the Court of Auditors’ job

One alarming example coming to the attention of the research is the following: Conversation partner from tax administration alleged that even the Bavarian Supreme Court of Auditors, one of the most outspoken critics of Bavarian tax administration related policies, is not permitted to write what they would like to write. During an informal group session of several employees from a large tax authority one reported the following: When there was an

<sup>15</sup> Dullinger, A./ Heitzer, M. Bewertung der Münchner Liegenschaften. Ja, aber wo und mit wem? In: *Der Wecker* 2012/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>. Similar bfg-Information 2014/8-9, p.7 and *Der Wecker* 2013/13 pp.5f.

<sup>16</sup> Müller, F. (2013, June 6) Justiz nimmt Landtag in die Pflicht. In: *Süddeutsche Zeitung*. Retrieved from <http://sz.de/1.1690568>

<sup>17</sup> „Selbst beim „Politikum“ der Verlagerung der Münchner Bewertungsstelle nach Höchstädt zeichnet sich ein Kompromiss ab, indem die Bedarfsbewertung in München verbleiben wird und die Einheitsbewertung nicht auf einmal nach Nordschwaben verlagert wird, sondern in zwei Schritten über mehrere Jahre.“ In: bfg-Informationen 3/2016 p. 17. See also bfg Informationen 5/2016, p. 30

<sup>18</sup> Zacher, J. (2015, February 2) Amtsgericht lässt Klage gegen Georg Schmid zu. In: Bayerischer Rundfunk. Retrieved from <http://www.br.de/nachrichten/georg-schmid-anklage-100.html> and Mayr, Stefan (2015, March 18) Schmid behält ‘fürstliche’ Pensionsansprüche In: *Süddeutsche Zeitung*. Retrieved from <http://www.sueddeutsche.de/bayern/bewaehrungsstrafe-fuer-csu-politiker-schmid-behaelt-fuerstliche-pensionsansprueche-1.2398682>

inspection by the Court of Auditors in their department, one urgent and pressing problem had been stated and the auditor promised to note it in the annual report. When the report was published both the problem and the agreed solution were missing. When called and asked as to why this is the case and why he let them down the auditor admitted that he drafted it but it was seen to be inopportune and inappropriate by the superiors. Three years later it appeared nevertheless, perhaps because it could not be oppressed or denied any longer. But three years were lost where important adjustment could not be implemented. The others attending this meeting confirmed that they could well imagine that this had happened exactly this way.

#### 4.5.7 The Schottdorf-Scandal

Not directly tax related is the Schottdorf-Affair, where fraudulent billing towards insurances for services not delivered caused a huge damage for the common good and is an example in case for the links between business and CSU representatives. It is of interest for the study because it reveals a huge “Kickback” system which is the most widespread form of bribery and commercial corruption (see GER/VII/5.4). The case is also of interest, however, because it seems to illustrate once more how relationships between business people and politicians of the ruling Bavarian party may influence the course of justice: Bernd Schottdorf, the one whose cooperation enabled ca. 10,000 doctors (2,500 from Bavaria) to send overcharged bills to insurances, is a friend of CSU politicians. He is a party member. There is a track of donations to the party, for instance, in one case of donating EUR 20,000. There is evidence that the CSU wrote to Schottdorf asking for donations. Peter Gauweiler, his defence lawyer is a most prominent member of the CSU leadership and (former) MP. Schottdorf himself is quoted from police sources to have said "Es ist kaum etwas so spottbillig wie ein korrupter Politiker." The EUR 20,000 donation cheque was sent with a letter, containing the phrase "Als langjähriges Mitglied der CSU erwarte ich, dass jetzt endlich eine Änderung in Deutschland erreicht werden kann."<sup>19</sup>

From the beginning there were attempts to obstruct investigations “from above”. Regarding the policemen, their investigations were obstructed by superiors; the allotment of personnel was gradually reduced even before they could finish their investigations, and cases already with the public prosecutor suddenly were transferred from the Munich department to the Augsburg department. There the explosive material was dealt with by a part-time prosecutor who took only 4 weeks before deciding that the materials of 3 years of investigations do not justify further prosecution. She did not keep those cases open in order to wait for the outcome of the piloting process which the Munich prosecutors had started and which wound its way up through the court hierarchy – ignoring an explicit earlier assurance from their superiors towards the investigators. Rather, in 2009, she closed 150 files, did not bother to deal with the remaining cases and even returned materials to those accused earlier even before investigators had finished with them. The protesting police officers were either removed from the case or were subjected to a disciplinary punishment. When finally, in last instance the Federal Court of Justice (BGH) confirmed that this scheme consisted of fraud and that the Schottdorf group was not just in this case, but in the case of “thousand others” a key

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<sup>19</sup>, Stoibers Sprecher erklärt dazu, dass "die genannte Parteispende gemäß dem Parteiengesetz ordnungsgemäß verbucht und im Rechenschaftsbericht 2005 veröffentlicht wurde". Im Übrigen sei eine "politische Einflussnahme durch Parteispenden auf Verfahren der Justiz oder andere staatliche Stellen für Dr. Stoiber von vornherein völlig ausgeschlossen". Iwersen, S./ Keuchel, J. (2014, May 5) Das Ende der SOKO Labor. In: Handelsblatt. Retrieved 25 June 2015 from <http://www.anstageslicht.de/geschichtenansicht/berichtansicht/kat/justiz-polizei/story/soko-labor/kapitel/die-berichte-des-handelsblatt-zur-labor-affeere/report/1958.html> . See also See Frontal 21 from 24.3.2015, retrieved 26 June 2015 from <http://www.zdf.de/ZDF/zdfportal/blob/37731448/1/data.pdf> and CSU warb aktiv Spenden bei Schottdorf ein (2015, April 7). In: Die Welt. Retrieved 25. June 2015 from <http://www.welt.de/regionales/bayern/article139218780/CSU-warb-aktiv-Spenden-bei-Schottdorf-ein.html>

for this fraudulent scheme, and 98.5% of all cases were already time barred and could no longer be prosecuted. The piloting case, caused EUR 750,000 of damage and resulted in a prison sentence of over 3 years. One can easily imagine the outcome if those thousands of parallel cases could have been investigated with similar care.<sup>20</sup>

Meanwhile and once more a parliamentary investigative committee focuses on the question: (Why) did superiors intervene into the investigation and/or influenced and obstructed them on the level of the police and public prosecution?

- The exposition of the scandal and its “obstruction of justice” is the merit of courageous policemen who did not bend to pressure. Other policemen admitted that they had the same knowledge, but did not report them because of fear for their career.<sup>21</sup>
- Measuring with different standards 1: While the SOKO Labor was stripped of manpower and finally terminated, a huge investigative proceeding was investigated in order to find out who among police or prosecution leaked to journalists the fact that Schottdorf donated large amounts of money to the CSU<sup>22</sup>
- Measuring with different standards 2: Police originally investigated against a public prosecutor who received a “loan” from Schottdorf and eventually dealt with investigations against Schottdorf in a mysterious way. Investigations here opened more questions than they answered but at the same time, did not rouse unusual suspicion. When in the wake of the entire Schottdorf scandals also this case should be reviewed that the files suddenly no longer existed because they were destroyed.<sup>23</sup>

#### 4.5.8 Uli Hoeneß

Internationally probably the most well-known case of tax evasion in Bavaria is the one of Uli Hoeneß, who is a great friend of the influential and the powerful ones in Bavaria, and in a case like his it would be a close guess that everything would be done to keep it out of both the headlines and the prosecution. And indeed, it is easy to guess that probably no prosecution would have ever occurred if there had not been the research initiated by the news magazine “Der Stern”. Reporter approached Hoeneß, confronting him with information from his tax files which sparked off the attempt to contain damage by a hastily fabricated voluntary self-declaration. The submitted declaration did, however, not satisfy required legal standards regarding completeness, which brought the case into the open and initiated legal prosecution which finally led to a 3-year imprisonment which was put on probation once he served a half of his time.

<sup>20</sup> Iwersen, S./ Keuchel, J. (2014, May 5) Die Bayerische Justizaffaire. In: Handelsblatt. Retrieved 25 June 2015 from <http://www.anstageslicht.de/geschichtenansicht/berichtansicht/kat/justiz-polizei/story/soko-labor/kapitel/die-berichte-des-handelsblatt-zur-labor-ffaere/report/1957.html>, Iwersen, S./ Keuchel, J. (2014, May 5) Das Ende der SOKO Labor. In: Handelsblatt. Retrieved 25 June 2015 from <http://www.anstageslicht.de/geschichtenansicht/berichtansicht/kat/justiz-polizei/story/soko-labor/kapitel/die-berichte-des-handelsblatt-zur-labor-ffaere/report/1958.html>, Mayr, St. (2015, May 16) Abweichende Aussagen von LKA-Beamten. In: Süddeutsche Zeitung. Retrieved 25 June 2015 from <http://www.sueddeutsche.de/bayern/fall-schottdorf-abweichende-aussagen-1.2523646>

<sup>21</sup> Mayr, St. (2015 April 21). Dritter LKA-Beamte belastet Behörden schwer. In: Süddeutsche Zeitung. Retrieved 25 June 2015 from <http://www.sueddeutsche.de/bayern/ffaere-schottdorf-dritter-lka-beamter-belastet-behoerden-schwer-1.2445091>

<sup>22</sup> Hub, R. (2013, November 12) Ermittlungsverfahren gegen Passauer Journalisten. In: Abendzeitung. Retrieved 25 June 2015 from <http://www.abendzeitung-muenchen.de/inhalt.justizskandal-ermittlungsverfahren-gegen-passauer-journalist.3db752ae-d833-487c-84ce-e7f4453564ec.html>

<sup>23</sup> Iwersen, S./ Keuchel, J. (2014 May 5) Zweierlei Maß in Bayerns Justiz. In: Handelsblatt. Retrieved on 25 June 2015 from <http://www.anstageslicht.de/geschichtenansicht/berichtansicht/kat/justiz-polizei/story/soko-labor/kapitel/die-berichte-des-handelsblatt-zur-labor-ffaere/report/1962.html>

Still, the case left open questions, both on the background of asserted entanglement between Bavarian elites and jurisdiction:

First of all, at a later stage, prosecution officers also searched both the tax office in charge of Hoeneß' tax file in Miesbach and the IT service centre of the Bavarian tax administration in Nuremberg in order to investigate a breach of tax secrecy. When this occurred, quite a number of people saw here a belated attempt to intimidate tax officials because it seems to be obvious that the leaked documents to the Stern magazine could only originate from tax administration, thus, violating tax secrecy provisions.<sup>24</sup>

The second aspect is the question whether the extent of tax evasion in his case was examined adequately and exhaustively or not. It was important to the judge to emphasize that he wanted to prove that Uli Hoeneß is being treated by the law as any other tax evader of high income. But he sentenced Hoeneß for 2 years less than the prosecutor asked for. And in spite of this slash in sentence the prosecutor did not lodge an appeal. This is even more surprising since many questions regarding the origin of the money could not be clarified (further) ahead and during the short trial, not the least because Swiss institutions refused to cooperate with German authorities in this case of "mere tax evasion". All this establishes another important criterion justifying an appeal, namely an existing "public interest" that those questions be answered. The astonishment on part of public and media towards the prosecutions' decision was such that again rumour emerged; namely that "influential people" might have called the prosecution and "urged" them to renounce their right to appeal redress which is very much in tune with the other incidences known in Bavaria. The prosecution denies outside interference, but questions and suspicion remain.<sup>25</sup> Meanwhile, however, the sentence is published and from that one should finally conclude that in this case no deal was done.<sup>26</sup>

Given the situation in Bavaria as it is the question remains if cases like Uli Hoeneß would be brought to justice at all or to the same extent if there are no courageous civil servants and others daring to bring the issue into the open. One conversation partner from the police was saying quite cynically: "It was simply bad luck for Hoeneß that his case blew during election times. If this had not been the case, certainly some arrangement would have also found for him." If the latter is the case, the Hoeneß case, as does the Mollath case, supports the important question of whistleblower-protection, in this case in tax administration.

The Hoeneß case has proven that a lot of money was at stake which had been evaded from the community – certainly much more than had ever been donated by Hoeneß to charities, which brought him the reputation of being a philanthropist.

#### 4.5.9 Minister Merk and Mister Inhofer

The next case surrounds Beate Merk during her service as Minister of Justice, and a prominent member of her constituency, Mr. Inhofer. When Mr. Inhofer, owner of a major business dealing with furnitures, came into investigative custody because of evasion of taxes

<sup>24</sup> Ott, Kl. (2014, January 23) Staatsanwalt durchsucht Fiskus. In: *Süddeutsche Zeitung*. Retrieved from <http://sz.de/1.1869804>

<sup>25</sup> See Ramelsberger, A. (2014, March 21) „Die Herkunft ist restlos aufgeklärt“. In: *Süddeutsche Zeitung*, S. 27

<sup>26</sup> „Das Urteil beruhe "nicht auf einer Verständigung" im Sinne des Paragraphen 257c der Strafprozessordnung. Es hätten auch keine "Gespräche zur Anbahnung einer solchen Verständigung" stattgefunden.“ Hengst, B. (2014, October 30) Anonymisiertes Gerichtsdokument: Pssst, hier ist das Hoeneß Urteil. In: *Der Spiegel*. Retrieved from <http://www.spiegel.de/wirtschaft/uli-hoeness-schriftliches-urteil-liegt-vor-details-zu-konten-a-1000236.html>

and social security contributions for employing “fake-self employed” salespersons, Mrs. Merk allegedly called the prosecutor in-charge of economic felonies of Augsburg, pleading for a release of Mr. Inhofer from custody against bail. According to an investigative report of an Augsburg newspaper, Mrs. Merk could convince the head of department. But when defence counsel and prosecution went to the investigative judge, the latter first refused to accept the deal, which eventually was materialized some days later. Other news agencies report it the other way round: That the deal was done with the judge and opposed by the prosecution. Mrs. Merk denies of having made any calls at all, which does not prevent the opposition in parliament calls for an investigation. Meanwhile, the accused members of the Inhofer family admitted (offences) offending against tax and social contribution rules as charged.

Despite admitting the offence, the case crumbled when it appeared that both tax fraud investigators and prosecution lacked thoroughness in their investigations, and the amount of alleged damage decreased from EUR 3.3 million to less than EUR 1 million which the prosecution denied. In the final pleading they upheld damage in taxes amounting to EUR 900,000 and in non-paid social security contributions of EUR 1.5 million. But linked to this rumours emerged that a lack of care was due to the scarcity of staff resources in tax administration. There is yet a final noteworthy detail that Alfred Sauter, a prominent CSU member and former Minister of Justice, was part of the Inhofer-Defence team.... The outcome of the entire proceeding are as follows:

‘Der Schaden liegt nach Angaben des Landgerichts Augsburg bei rund einer Million Euro. Firmengründer August Inhofer wurde von der Strafkammer zu einer Bewährungsstrafe von elf Monaten und zu einer Geldstrafe von eineinhalb Millionen Euro verurteilt. Der heutige Geschäftsführer des Sendener Möbelhaus, Edgar Inhofer, erhielt ein Jahr und zehn Monate zur Bewährung und muss eine halbe Million Euro zahlen.’<sup>27</sup>

#### 4.5.10 Ex-Minister Bernhards expensive lunches

Otmar Bernhard was the Minister for the Environment (2007/2008) in the government and the Secretary of State in the same ministry (2005-2007). As it appears, between 2009-2013 he had about 50 luncheons with the Executive Director of a church-leaning corporation operating a number of residencies for the elderly. It further appears that he not only had his lunches free, which were, after all, hosted in expensive places. Beyond that, he also received EUR 214,200 payment for advice given to the hosting Executive Director on those and other occasions for which he received EUR 10,710 (turnover tax included)<sup>28</sup> every three months in

<sup>27</sup> Stelzer, M. (2015, September 17) Fällt der Vorwurf der Steuerhinterziehung? In: Südwestpresse. Retrieved from [http://www.swp.de/ulm/lokales/kreis\\_neu\\_ulm/Inhofer-Prozess-Faellt-der-Vorwurf-der-Steuerhinterziehung:art4333.3433133](http://www.swp.de/ulm/lokales/kreis_neu_ulm/Inhofer-Prozess-Faellt-der-Vorwurf-der-Steuerhinterziehung:art4333.3433133) Sabinsky-Wolf, H., Richter, P. (2015, July 25) Merk griff wohl in Strafverfahren ein. Opposition fordert Aufklärung. In: Augsburger Allgemeine. Retrieved from <http://www.sueddeutsche.de/bayern/vorwuerfe-gegen-ministerin-merk-bestreitet-jede-einflussnahme-1.2583746> Mayr, St./Wittl, W. (2015, July 28) Merk bestreitet jede Einflussnahme. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/bayern/vorwuerfe-gegen-ministerin-merk-bestreitet-jede-einflussnahme-1.2583746> “Inhofer Clan legt Geständnis ab“. (2015, August 13). In: Südwest-Rundfunk. Retrieved from <http://www.swr.de/landesschau-aktuell/bw/ulm/moegliche-steuerhinterziehung-beim-sendener-moebelhaus-inhofer-clan-legt-gestaendnis-ab/-/id=1612/did=15993394/nid=1612/4ayv0/> Mayr, St. (2015, October 12) Kuriose Wende im Prozess gegen Inhofer-Chefs. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/bayern/augsburg-kuriose-wende-im-prozess-gegen-inhofer-chefs-1.2688155> Bewährungsstrafen für Möbelhaus-Chefs wegen Sozialbetrug. (2015, October 14) In: Die Welt. Retrieved from <http://www.welt.de/regionales/bayern/article147573883/Bewaehrungsstrafen-fuer-Moebelhaus-Chefs-wegen-Sozialbetrugs.html>

<sup>28</sup> ,Die Rechnung, die der Münchner Rechtsanwalt [Otmar Bernhard](#) am 18. März 2009 der Augustinum Service GmbH (ASG) stellte, war kurz und teuer. "Wegen allgemeiner Beratung" erlaube sich seine Kanzlei, schrieb der Jurist, ein Pauschalhonorar von 9000 Euro für die Monate Januar und März 2009 geltend zu machen. Plus Umsatzsteuer, also insgesamt 10 710 Euro.“ Quotation from Ott, Kl. (2015, December 13)

compensation for services rendered. When the latter was dismissed after a number of shady deals and when files and records were looked through, the absence of documentation regarding those luncheons was very striking. Does this mean that faked bills were written without any real consultation having taken place? In this case the scheme would serve tax evading purposes. Or did some consultation take place and the outcome of which was not fit for documentation? In both cases the former employing corporation wants to have clarity about the nature of these luncheons, and not only the former employing corporation, but also the public prosecutor, who applied for lifting the immunity which Bernhard has as Member of Parliament. By the way, Legal Counsel to Bernhard is the by-now well known Alfred Sauter, former State Minister, legal representative also to other CSU friends in distress and in need.

#### 4.5.11 The Engelhorn sisters

Everybody is surprised by the stunningly lenient treatment of the Engelhorn daughters, whose case came to the attention of the authorities via a leaked CD. They committed tax evasion of about EUR 140 million on top of the tax dodging of their father who evaded taxes on his DM 19 billion deal by channeling the money via trusts on the Bermudas (see GER/VI/4.3.8.2 and GW/II#foundation). Given the Hoeneß case who was sentenced to 3.5 years prison for evasion of EUR 28.5 million, MPs feel that here an enormous justice deficit exists since the amount evaded is five times that of Hoeneß, with no prison sentence at all, but merely an agreed payment of fines of EUR 2.8 million each. And: Why have the daughters released from investigatory custody in 2013, enabling them to disappear to Switzerland and assuming Swiss Citizenship, so that they are no longer available for German authorities? Is the Bavarian tax administration adequately equipped to examine such scandals at all?<sup>29</sup> On February 25, a tempestuous discussion took place in the state parliament. Naturally, the opposition was attacking government by, for example, referring that the deal was struck because tax administration and prosecution services were understaffed; not able to handle complex cases. The government defended itself with reference to justice proceedings which took place outside government knowledge and control. State Minister of Finance Söder stated ‘Tax evasion is committing fraud, damaging society’,<sup>30</sup> and emphasized that the employment situation in tax fraud investigation has improved drastically. In spite of that it was apparent that even the ruling CSU felt increasingly uneasy about apparent differences in treatment of the ordinary citizen and even Uli Hoeneß on one side, and those of billionaires daughters on the other, which is why further discussions in parliamentary committees can be expected.<sup>31</sup>

#### 4.6 Nuremberg

As indicated already, examples of entanglement in Bavaria do not merely exist in Bavaria on the highest state level, but also on the region and local level. Since Nuremberg was one of the focal points of this research, it follows a list of incidences from Franconia and Nuremberg, its largest town, many of which were handled by the local tax authorities and jurisdiction. Noteworthy are:

- The case of Gunther Sachs and the Sachs family

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Staatsanwaltschaft ermittelt gegen CSU Landtagsabgeordneten Bernhard. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/bayern/honorar-staatsanwaltschaft-ermittelt-gegen-csu-landtagsabgeordneten-bernhard-1.2780434>

<sup>29</sup> SPD fordert Aufklärung im Landtag (2016, February 3). In: BR. Retrieved from <http://www.br.de/nachrichten/schwaben/inhalt/steuerfall-engelhorn-gueller-spd-landtag-100.html>

<sup>30</sup> “Steuerhinterziehung ist Betrug zulasten der gesamten Gesellschaft“

<sup>31</sup> Landtag zofft sich wegen zwei Milliardärstöchter (2016, February 26). In: Augsburg Allgemeine. Retrieved from <http://www.augsburger-allgemeine.de/bayern/Landtag-zofft-sich-wegen-zwei-Milliardaerstoechtern-id37062417.html>

- Investigation against Saif al-Arab Gaddafi
- Accusation against the late Prime Minister Günther Beckstein
- The tax case of Karl Diehl and the Diehl corporation
- The case of the Hypo-Vereinsbank and Gustl Mollath

#### 4.6.1 Sachs, Gaddafi, Beckstein

Since the cases of the Sachs brothers, Saif al-Arab and Günther Beckstein happened partly way back in the past and/or are already well researched and/or are not directly related to the research project, they shall only be mentioned here in brief:

Gunther Sachs of Schweinfurt in Lower Franconia received prominent attention during the 2013 Offshore Leaks scandal. The *Süddeutsche Zeitung*, one of the leading papers participating in the global investigation, used Gunther Sachs to illustrate how famous people make use of Tax Haven structures to evade tax obligations.<sup>32</sup> Also Schlötterer reports occurrences which partly go back to the time when Gunther and his brother were selling their shares in the Fichtel & Sachs factory and the question arose whether they have tax obligations in Germany. When tax officials searched houses and offices both of the Sachs Brothers and the factory, the CEO of Fichtel & Sachs indicated that donations of the Corporation could also go to political parties other than the Bavarian CSU. Shortly afterwards then Prime Minister Strauß intervened and calm was restored (Schlötterer, 2010, p. 46f.+49).

Also the scandal surrounding the son of Libyan dictator Muammar al Gaddafi, Saif al-Arab Gaddafi, is reported by Schlötterer. In 2011, a Munich state prosecutor warned Saif of an imminent search of his living quarters in Munich and it is suspected that this advance warning was result of yet another “order from above”. The Bavarian Initiative of Defence Lawyers filed charges against this prosecutor and the department of prosecution of Nuremberg was commissioned to conduct an investigation into the case. Not surprisingly, this investigation soon came to a standstill, possibly again by “order from above”. Perhaps it was feared that a search of Saifs quarters could shed light in arms deals which were mediated by the previous Prime Minister Strauß. And, as Schlötterer suspects, arms deals mediated by Strauß were always very lucrative and led to substantial cash payments, probably hidden in Tax Havens.<sup>33</sup>

When the later Bavarian Prime Minister, Günther Beckstein, was a young member of the State Parliament for Nuremberg constituency and a member of the parliamentary committee for inner security, he was at the same time practicing as a professional lawyer. One of his clients as lawyer was a prominent figure of the Nuremberg Red Light District, Mr. Stiegler. Allegedly, Beckstein learned about a planned police search at Stieglers place and he gave an advance warning so that when the search party came, everything potentially incriminating was removed.<sup>34</sup> Later, Stiegler was said to have shown his gratitude with monetary presents which led to irregularities in Beckstein’s tax declaration which attracted the attention of tax inspectors which were eventually ordered “from above” not to advance on this case. After this intervention, according to sources, it came to an uproar inside the tax

<sup>32</sup> Obermayer, B., Obermaier F., Plattner T. Das System Sachs. (2013, April 4). In: (Süddeutsche Zeitung, 2013a) and (Schlötterer, 2013, p. 41f.). As to arms deals mediated by Prime Minister Strauß and the suspicion of secret accounts in tax havens e.g. (Schlötterer, 2010, pp. 159-189).

<sup>33</sup> As to the story involving Saif al-Arab Gaddafi (Schlötterer, 2013)

<sup>34</sup> This version is also confirmed by a statement under oath given by an prison inmate who spent time with Stiegler at Stadelheim prison. Reitzner, H.P (1992, January 16) Brief wirbelt Staub von Stiegler-Akten auf: Die Moritat vom Bordellkönig, vom Ex-Polizeichef, vom Staatssekretär und viel Papier. In: *Nürnberger Stadtanzeiger*, Seite 3.

fraud unit: The respective inspector in charge even resigned in protest into early retirement (Schlötterer, 2013, p. 271f.). However, here the conversation partners from authorities are less clear in their view: They agree that something went wrong but that it has not been definitively established where the leak has been.<sup>35</sup> And they are even more cautious when it comes to blaming Beckstein himself.

#### 4.6.2 The case of the Diehl Corporation and Karl Diehl

A very substantial and delicate tax scandal is the one involving the Nuremberg arms manufacturer Diehl. In 1997, tax inspector Ingrid Meier discovered large proceeds due to the sale of shares in the arms manufacturer Rheinmetall and Kraus-Maffei. She had the opinion that these proceeds are subject to taxation and DM 60 million were due. Members of the company declared those proceeds to be tax free. Firstly, those shares (and accordingly the proceeds) were private property and secondly, its acquisition could be done only after a large loan has been taken which then needed to be repaid. Ingrid Meier disagreed and argued that the loan story is flimsy and has holes in it; she was supported by her superiors and the Federal Agency for Finances. In 1999 the Regional Superior Finance Directorate (*Oberfinanzdirektion*) ordered without arguments that the sold shares should be treated as private property. The Federal Agency for Finance disagreed and Ingrid Meier remonstrated because she disagreed as well and asked for explicit confirmation of this order. She did not receive this order, but was taken off the case and received bad grades at the next periodical evaluation of her work which was a setback for any hope of promotion. She filed a complaint which was struck down negatively and she was reported to have said that in her view this decision of the Regional Superior Finance Directorate was “politically motivated”. She filed legal proceedings against Karl Diehl (and also) but also against her superiors for obstructing justice.

In fact, this was not the only case where the Diehl Corporation received favourable treatment. Earlier Diehl also received similar treatment when selling shares in another company due to a decision directly coming from the Bavarian Ministry of Finance. Why this is so, makes more sense when one considers the person of the company owner, Karl Diehl. He was a close friend of the Bavarian Prime Minister Franz Josef Strauß. The deal was that he enjoyed personal favours, e.g., the use of the plane of Karl Diehl or donations for himself and CSU party, and in turn the Diehl corporations enjoyed favourable business deals all of which was apparently known to some inside the administration.

The favourable treatment continued after the death of Franz Josef Strauß under subsequent Bavarian governments. Example 1: When Ingrid Meier pressed charges against Karl Diehl and those in charge at the Regional Superior Finance Directorate, an internal investigation by the prosecutor’s office confirmed that the case of tax evasion was given and justice was obstructed by Meier’s superiors. When a judge subsequently ordered to investigate the Dresdner Bank in Luxemburg, this search was unsuccessful due to an advance notice to the bank. Again the Ministry of Finance intervened; eventually the case was closed without any consequences for Diehl.<sup>36</sup> Example 2: When it became no longer impossible to ignore that Karl Diehl is not really living in Switzerland, but de facto in Germany, he would have been

<sup>35</sup> Eventually a tax fraud investigator was sentenced for leaking fact and date of the search to Stiegler. In: Reitzner, H.P., see previous footnote.

<sup>36</sup> (Schlötterer, 2010, pp. 351-356), Reitzner, H.-P., Stoll, S. (2009, May 1). Geheimgutachten: Deal mit Diehl? Steuerexperte erhob massive Vorwürfe – Neue Anzeige. In: *Nürnberger Nachrichten*. Retrieved from <http://www.nn-online.de/artikel.asp?art=1010757&kat=120>. Reitzner, H.-P., Stoll, S. (2009, May 1). Diehl-Steueraffäre: Polizei meldet sich an. Wie in Luxemburg die Durchsuchung einer Bank abläuft. In: *Nürnberger Nachrichten*. Retrieved from <http://www.nn-online.de/artikel.asp?art=1010755&kat=10>.

subjected to taxation in Germany which would have been in accordance with the tax treaty between Germany and Switzerland. However, as far as it is known, nothing was done to make him pay his dues; all attempts of tax authorities came to nothing. Instead, he was awarded the Bavarian Order of Merit by Prime Minister Günther Beckstein, who is reported to have said that Diehl is (still?) a major financial supporter of the ruling party, the CSU (Schlötterer, 2013, pp. 214-216).

Equally to the Beckstein case, also the presentation of the Diehl case, as it is presented in Schlötterer, is criticized by Nuremberg conversation partners from the tax fraud investigation department, the tax auditing department and local senior administration, in particular the way how the Nuremberg tax inspector is portrayed. When asked why the Nuremberg tax authority did not issue a correction the reply here is that this would have generated even more interest in Schlötterers book which they do not think it would deserve. And, of course, there is the problem of the tax secret and professional confidentiality.

### 4.6.3 The Hypo-Vereinsbank and Gustl Mollath

The most recent tax related scandal which made headlines all over Germany is of particular importance and asks questions about the genuineness of the present Prime Minister of Bavaria, Horst Seehofer, to really clean Bavarian state and CSU party of the shadows of the past. The case started, when Gustl Mollath accused his (then) wife who was employed by the Nuremberg Hypo-Vereinsbank, of money laundering and other illegal money transfers to Switzerland. However, instead of investigating the very detailed accusations made by Mollath, the emphasis of the ensuing investigation focused on Mollath's alleged mistreating of his wife and his mental sanity. Suddenly, the accuser became the accused, which eventually resulted in his psychiatric hospitalization. The scandal is well documented, some highlights are:

- September 2003: The first trial of Gustl Mollath because of alleged assault of his wife. He refuses to be examined by psychiatrists. In December Mollath himself accuses his wife of money laundering and assistance of tax evasion, arguing that her activities underlie her efforts to silence him at all costs.
- 2005: The court orders hospitalization and a medical expertise.
- 2006: The first expertise concludes that Mollath is a danger for the public, his hospitalization is extended. The accusation related to money laundering and illegal transfers were said to be part of his paranoia.
- 2011: Results of an internal investigation of the Hypo-Vereinsbank conducted in 2003 (!) are leaked, confirming that the charges detailed by Gustl Mollath are largely true.<sup>37</sup>

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<sup>37</sup>Quote from the summary of internal revision:

- „Die Anschuldigungen des Herrn Mollath klingen in Teilbereichen zwar etwas diffus, unzweifelhaft besitzt er jedoch „Insiderwissen“. Alle nachprüfbaren Behauptungen haben sich als zutreffend herausgestellt. Die geleisteten Provisionszahlungen hat das Bankhaus Leu mehr oder weniger direkt bestätigt.
- Es ist nicht auszuschließen, dass Herr Mollath die Vorwürfe bezüglich des Transfers von Geldern von Deutschland in die Schweiz in die Öffentlichkeit bringt. Er selbst spricht in diesem Zusammenhang auch vom „größten und wahnsinnigsten Steuerhinterziehungsskandal“ in dem auch die HypoVereinsbank verstrickt ist.
- Herr Mollath, der einen Handel mit Autoersatzteilen betreibt war bisher auf die finanzielle Unterstützung durch seine Frau angewiesen (u.a. HVB-Darlehen über ca. 82 TEUR). Dies birgt die Gefahr, dass er eventuell versucht sein Wissen, zu „verkaufen“. Hinzu kommt dass Herr Mollath möglicherweise noch über vertrauliche Belege/Unterlagen aus dem Besitz seiner Frau verfügt.

- 2013: Due to public, political and legal pressure Gustl Mollath is released from the psychiatry.

In August 2014, the re-trial of Gustl Mollath took place at the court in Regensburg. The proceedings focused, however, upon the complaint of his wife, namely Mollath's assault on his wife. Here, Mollath was found guilty but because he might not have been in the full possession of his own psychological faculties, deemed not responsible for his deeds and therefore, not guilty in the strict legal sense and he was set free. The original complaint of Mollath against his wife and staff of the Hypo-Vereinsbank, namely the accusation of money laundering and tax evasion were only a marginal issue and did not influence both the re-trial and its sentence.<sup>38</sup>

This is why a number of questions remain when considering the problem whether the original accusation (i.e. assault) was mistreated in the way it was because of the attempt to silence Mollath regarding his allegations of money laundering and tax evasion:

- Why did the Attorney General, the Ministers of the Interior or Justice or Prime Minister Stoiber not respond towards the accusations of Gustl Mollath when he complained of miscarriage of justice, harassment and other grave issues in his case towards those in charge of the political and juridical system in Bavaria? Perhaps because the Bavarian State owned shares in the Hypo-Vereinsbank? Perhaps because the Hypo-Vereinsbank was a large financial supporter of the ruling CSU?<sup>39</sup> Perhaps because names implicated by Gustl Mollath required "support" by the ruling elite?
- Is Mollath's allegation true that there is a collusion of interest since senior prosecutors and judges in Nuremberg are members of a Rotary Club, together with leading directors and managers of the Hypo-Vereinsbank?
- Why is the openly aggressive behaviour of Judge Brixner at Mollath's trial, whenever Mollath tried to draw his attention towards the issue of money laundering and other offenses? Because he knew the then friend of Mollath's former wife, the director of the Hypo-Vereinsbank (which he admitted only in 2013)?<sup>40</sup> Why did Judge Brixner get the case of Gustl Mollath assigned in the first place?<sup>41</sup>
- Why did Judge Brixner call the two tax inspectors charged with investigating the allegations raised by Mollath, telling them that they could stop since Mollath is

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- Allen Mitarbeitern waren viele und gravierende Verfehlungen bzw. Verstöße gegen interne Richtlinien und externe Vorschriften (u.a. Abgabenordnung, Geldwäschegesetz, Wertpapierhandelsgesetz) anzulasten.
  - Die Mitarbeiter, insbesondere Frau M, haben wenig dazu beigetragen, die gegen sie und die Bank erhobenen Vorwürfe zu entkräften. Sie haben durch unkooperatives Verhalten und das teilweise Zurückhalten von Informationen die Recherchen erschwert und in die Länge gezogen. Sachverhalte wurden meist erst nach Vorlegen von Belegen etc. zugegeben.“  
Retrieved from <http://www.br.de/nachrichten/mittelfranken/hvb-revisionsbericht-mollath-100.html>

<sup>38</sup> Press release of the court regarding the sentence of Gustl Mollath on August 14<sup>th</sup> online [http://www.justiz.bayern.de/imperia/md/content/stmj\\_internet/gerichte/landgerichte/regensburg/pressemitteilung\\_2014-5/pressemitteilung\\_2014\\_5\\_urteil.pdf](http://www.justiz.bayern.de/imperia/md/content/stmj_internet/gerichte/landgerichte/regensburg/pressemitteilung_2014-5/pressemitteilung_2014_5_urteil.pdf)

<sup>39</sup> The Bavarian State owned 10% of the Hypo-Vereinsbank shares and according to a Hypo-Vereinsbank manager the bank supported the CSU with EUR 500,000 – but divided up into small amounts so as to not raise curiosity by outsider (Schlötterer, 2013, p. 353f.)

<sup>40</sup> Wie befangen ist Mollath-Richter Brixner? (2013, July 4) In: *Focus*. Retrieved from [http://www.focus.de/politik/deutschland/umstrittener-psychriefall-wie-befangen-ist-mollath-richter-brixner\\_aid\\_1034629.html](http://www.focus.de/politik/deutschland/umstrittener-psychriefall-wie-befangen-ist-mollath-richter-brixner_aid_1034629.html)

<sup>41</sup> Mühlbauer, P. (2013, March 27) Schanzte Richter Eberl den Fall Mollath rechtswidrig dem „harten Hund“ Brixner zu? In: *Heise*. Retrieved from <http://www.heise.de/tp/blogs/8/154010>

obviously crazy? Why did the tax administration receive a 106-page compilation of detailed accusation by Gustl Mollath from the prosecutor's office only 9 years after Mollath handed it in?<sup>42</sup> Is the lack of personnel in the Bavarian tax administration, as claimed by the tax inspectors in charge of investigating Mollath's accusation, really of decisive importance? Why were they not able to follow those accusations?<sup>43</sup>

- Why did the Head of the State Tax Office first deny in front of a parliament inquiry that this intervention by the judge happened, but admitted later that there is indeed a note in the file made by the tax inspectors on that occasion? He excused himself with obligations arising from tax secrecy. But according to other experts, these obligations cease to apply whenever there is legitimate or even imperative public interest in clarifying something which at this stage certainly was given.<sup>44</sup>
- Why did Prime Minister Seehofer back his Minister of Justice in spite of her scandalous arguing and acting in this case until the very last moment?

Sadly, another scandalous aspect of this "Causa Mollath" will most likely not be investigated and prosecuted. In fact, the 2003 internal investigation by the Hypo-Vereinsbank has not been published to support and clear Gustl Mollath when he was sentenced to hospitalization in 2006. Those findings were not even published when the persons implicated in the internal investigation were out of the danger of legal proceedings since their misdeeds expired due to a statute of limitation of 5 years in 2007. All this offers to more arguments for the protection of whistleblower: First, the fact that miscarriage of justice was only reverted after an insider leaked this document. Second, one might wonder whether the report would have been leaked earlier if whistleblower protection had existed. In this case the crimes which Mollath originally brought to the attention of authorities could have been prosecuted ahead of the expiration deadline.

The case of Gustl Mollath seems to be singular in its extremity but it illustrates a widespread strategy of mobbing of people who attempt to bring tax issues to the forefront. The case of Eberhard Hermann is similar, also a number of strategies against tax officials, policemen and prosecutors in and outside of Bavaria who have been declared to be "querulous", unable or incompetent to conduct their office or sick and who were pushed outside their job either by transferral, dismissal or early retirement.<sup>45</sup>

## 4.7 Discussion

The majority of conversation partners to this research emphasized that they are able to do their job. But given the overall small sample of conversation partners in this research it was (and is) worrying as to what extent tax inspectors admitted that there are cases of interference in their work. To begin with, it was a tax auditor who recommended the books of Schlötterer in the very first talk by saying: 'What Schlötterer writes is true, that's the way it is until today! Read this and you will understand the circumstances under which we have to work'. This conversation partner resigned out of disgust and is now working as tax consultant. Similarly, a recently retired head of the department puts it as follows:

<sup>42</sup> Przybilla, O./ Ritzer, U. „M.=Spinner“ (2013, March 3). In: *Süddeutsche Zeitung*. Retrieved from <http://sz.de/1.1614370>

<sup>43</sup> Überlastete Beamte sagen aus. (2013, June 7) In: *Bayerischer Rundfunk*. Retrieved from <http://www.br.de/nachrichten/mittelfranken/mollath-untersuchungsausschuss-ermittler-100.html>

<sup>44</sup> Fall Mollath: Amtschef unter Druck. (2013, May 16) In: *Merkur Online*. Retrieved from <http://www.merkur-online.de/aktuelles/bayern/landesamts-chef-jueptner-fall-mollath-unter-feuer-2908875.html>

<sup>45</sup> As to Eberhard Hermann (Schlötterer, 2013, pp. 307-317), as to comparable strategies against tax officials, policemen and prosecutors (Schlötterer, 2013, p. 269ff.) and, referring to Hessen (Wehrheim & Gösele, 2011).

What Schlötterer says regarding the entanglement of political and economical elite on a local level with tentacles into the ministries and parliament is what I told you about active lobbying against improvement in the tax administrations. Nobody in business or among the wealthy and unemployed want the state to have a close look at their income and earnings and they want to keep more for themselves. Against that, centralization would be a good thing to remove procedures from the local level. But this was attempted with banks but recently the checks of banks came back to our office. On the whole, he also would agree to the thesis that Bavaria does its economic policy with tax policy.

On the other hand, Schlötterer's detailed presentations are not without contradiction from conversation partners at the tax administration. Especially his proceeding and use of material regarding the Diehl case is criticized and the way the Nuremberg tax inspector Ingrid Meier is portrayed. When asked why the tax authority did not issue a correction, the semi official reply is that this would have generated even more interest in Schlötterer's book which they do not think it would deserve. And, of course, there is the problem of the tax secret and professional confidentiality.

Another contradiction addresses Schlötterer's allegations that the CSU party is interfering into administrative affairs even today. Here, conversation partners both from senior administrative levels and trade unionists argue that the last scandal where the party really held its hand on top was the Parteispendenaffäre 1991<sup>46</sup>. Ever since, the power and influence of party and network decreased. If something similar were to happen today and if it became uncovered, the minister had to resign. Apart from this the self esteem and courage of investigators increased so they have other means to fight with. Here Schlötterer disagrees heavily. Many of the cases presented in his book are from a later point in time and he still argues that these economical-political networks are at works and that the incentives of personal favours or public donations to the ruling parties are one of the main reasons, yes THE main reason for the Bavarian taxation laws and their enforcement. He upholds his criticism and points in particular to that which he wrote in the chapter "soziale Gerechtigkeit" in his book (2010).<sup>47</sup> He is particularly annoyed by the fact that the CSU still upholds Christian values, but practices a policy which is inherently biased towards the wealthy and business interest groups. This is confirmed by a tax practitioner who said ,Schade, dass sich die CSU bei der öffentlichen Veranstaltung nicht stellt. Aber das passt irgendwie ins Bild, da haben Sie schon recht. Das "C" im Parteinamen muss reichen (ich weiß, ich bin jetzt böse, aber so empfinde ich das leider in vielen Fragen der aktuellen Politik)‘.

When the trade-union Ver.di, representing parts of Bavarias tax administration employees, presented a book review in their periodicalmagazine, they were asking what they could learn from Schlötterer's revelations. The answer was cryptic: 'There is always the chance, no, obligation, even as individual civil servant to say "No" to scandals and illegal directives by superiors. Of course, one then has to be willing to accept disadvantages and harassments in turn.' The article concluded with the question whether Schlötterer's book is more than a mere retrospective in history and the answer was: 'This question has to be resolved by each employee on his/her own.'<sup>48</sup>

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<sup>46</sup> Money from arms dealer Karl Heinz Schreiber amounting to DM 1.4 Million /EUR 716,000 was passed on to the CSU in 1991 <http://www.hintergrund.de/20100120680/kurzmeldungen/aktuell/csu-parteispendenaffaere-schreiber-packt-aus.html>

<sup>47</sup> See also chapter "Die betrogene katholische Kirche" in Schlötterer 2010

<sup>48</sup> Macht und Missbrauch. In: Der Wecker 2013/13, p. 7f.

Also the conversation partners from the public prosecution question that Schlötterer's allegations would still hold today. He admits that most prosecutors and judges know one other for a long time, but besides there is a sound competition among them for verdicts and sentencing. There might be an entanglement in Bavaria, but is this not normal and is it the same in other areas also? There are always black sheep, but exceptions do not create a rule. Most conversation partners actively working in the prosecution department (both those mediated by the ministry and those contacted informally) agreed that there are hardly interventions on part of the government in the way they conduct their work. In one case a prosecutor admitted to interferences, one of which was justified. To make prosecution independent from government supervision would be a "nice to have", but not a "must have." On the whole, all conversation partners thought that Bavaria is a good place to work, both in comparison with other German states and regarding their own staffing and available resources and regarding workshops or material.

However: As listed above, there are a number of cases even since 2008 which have a bad smell to it. In each case, of course, one could argue that these are isolated cases and not up for generalization. Here, conversation partners from the police argue:

'The mechanism of the Bavarian system of entanglement is the same since Josef Strauß. If one looks carefully, one discovers a pattern and the CSU/the Bavarian government is still part of it. Perhaps fewer cases can be kept secret, but the system is still alive: The small are punished hard, the others are ignored or touched not too hard. Or investigation is suppressed. Or the investigators are mobbed. Or the investigators are "promoted" to a harmless position.'

The case of Gustl Mollath (perhaps in comparison with the Engelhorn sisters) is an example in case: Probably there was something wrong with him and most certainly the accusation of bodily assault was in need of investigation. But why have the (justified) accusation of tax evasion and money laundering not been investigated with equal vigour? Here, the conversation partners from the justice department deny for this is the case: It has been investigated with the instruments available and at hand. The accusation did not justify further inquiry that in this case a miscarriage of justice occurred belongs to the disadvantages of a Rechtsstaat who has to balance the investigative means with the protection of justified principles of citizens' liberty. But even when excusing this, one admits at the same time that in this case many things went wrong and it is not a case for Justice to be proud of.

Something surprising is, finally, the silence of the media about these issues of entanglement in Bavaria. The *Süddeutsche Zeitung*, for example, the largest and most important newspaper of Bavaria is leading in all sorts of investigative areas from Offshore-Leaks to Panama Papers. They do, of course, engage in individual stories, for example the Mollath or Schotttdorf case but they do not enter into the background which the publications of Schlötterer suggest. Regarding the systemic problem raised by Schlötterer they are silent and, as are as the researcher knows, they did not even publish a book-review on one or both of Schlötterer books. When asking conversation partners about this strange fact, they replied that print papers in Bavaria can be put under pressure from two sides: First of all, its survival depends from advertisements which wealthy people, corporations or other entities and institutions pay for (or not, if they are "pissed" with the papers publications). Second, the papers and its owner also have to pay taxes and are most certainly as happy as everybody else for receiving benign treatment on part of tax authorities. One conversation partner in particular gave a detailed account of talks on the same topic between a high civil servant and representatives from one newspaper. A newspaper could not expect any favourable treatment if it reports/continues to report critically about the state, its institutions and the holder of public and political office. A journalist from outside Bavaria wrote in an article on the

“deafening silence” of Bavarian media regarding the books of Schlötterer: ‘Questions to the press: Why is there no debate about Schlötterer’s revelations? Is it awe towards a corrupt politician, 27 years dead? Really? If there are other motives, what could that be? This would perhaps be the really thrilling story.’<sup>49</sup>

With this background it is understandable when critics such as Wilhelm Schlötterer conclude that there were, let alone are, no credibly serious efforts towards more transparency and accountability during the governments headed by the present Prime Minister, Horst Seehofer. This is why certain informants on issues of tax injustice prefer to cooperate with investigators and prosecutors in *Länder* outside Bavaria (Schlötterer, 2013, p. 43ff.) and this is why many persons approached for cooperation in this research project either refused it for fear of repression and/or disadvantage for their careers (as in the case of one of the Schottdorf police officers)<sup>50</sup> or insist on absolute and guaranteed anonymity due to which some allegation and information cannot be followed up.

#### **4.8 Conclusion**

What is new in Bavaria, since Horst Seehofer delivered his promise in 2008? The long list above suggests: Not too much, sadly.

One might concede that cleaning up takes time, and a number of cases originate in times still preceding the present government and simply “extended” into present times due to lengthy procedures.

One might also concede the fact that so many cases and scandals are brought forward is indeed an indication that in Bavaria procedures of transparency and efficiency as well as attempts to combat bad governance is working. Rather alarming, one might say, would be if everybody would keep silent and nothing would find its way into the public.

One might even concede that many conversation partners from tax administration, police and prosecution services argue that they prefer to work in Bavaria because overall working conditions, equipments and support by superiors are better here than elsewhere in Germany.

And yet it is the feeling of this research that the situation is far from satisfaction.

Clearly, Bavaria cannot be compared with states as Kenya and Zambia and one certainly can be happy and grateful that cases presented above are widely discussed in the public and scrutinized by parliament. Nevertheless, one might feel justified to state that there is a lot of room for improvement in Bavaria. Even if entanglement and collusion is no longer as obvious and blatant as it has been in times from Strauß to Stoiber, the list above is too long and cannot be downplayed. Even more, since conversation partner from police and tax fraud investigators continue to notice attempts by business elites to influence legislation and administration on the highest level. According to them, here legal provisions, e.g. § 108e StGB are not adequate regarding their options to investigate and prosecute that which goes beyond “good taste” and they would like to have better laws and instruments to investigate and prosecute.

<sup>49</sup> Morsbach, P. (2015, August 22). Schlötterers Enthüllungen. In: taz, p. 13

<sup>50</sup> Mayr, St. (2015, April 21) Dritter LKA Beamte belastet Behörden schwer. In: Süddeutsche Zeitung, retrieved from <http://www.sueddeutsche.de/bayern/affaere-schottdorf-dritter-lka-beamter-belastet-behoerden-schwer-1.2445091>

Conversation partners in all investigative and prosecuting departments agree that Bavaria's reputation to be tough on criminals is not consistently handled but is biased. The tendency is being tough on small guys and lenient towards those in high places.

Of the cases listed above, it is most certainly true for Mollath and the Engelhorn sisters, others are less obvious. But: If it is true, for example, that things went not according to the investigators and prosecutors' plans in the case of Inhofer and again the Engelhorn sisters, because there were no adequate resources in the tax investigators and prosecution department, there would be a very simple solution. Even if the Court of Auditors calls for more personnel in tax administration, one should employ them. The situation of Bavaria is superior financially to all other German states and money should not be the problem. Even though there are some improvements under Minister Söder, the feeling remains that what is spent is focused on some prestige projects only and more could be done in order to safeguard fair treatment to small and those higher up.

As GER/VII of the research further illustrates that this kind of biased treatment in Bavaria exists also in other areas of investigating and combating crime, e.g., street level corruption via white collar corruption or "tangible" crime vs. invisible crime. At that stage, two issues shall be recommended:

- First: The cases above back up calls to assign prosecution completely to the area of jurisdiction.
- Second: Given the importance of leaks in the case of Uli Hoeneß, the Engelhorn sisters and the treatment of Gustl Mollath, even Bavaria should think about protective measures of Whistleblowers. In the first case it is unlikely that the outcome had been the same without leaked documents about to be published, and in the second case, justified accusations have not been followed up and the Whistleblower had been victimized.

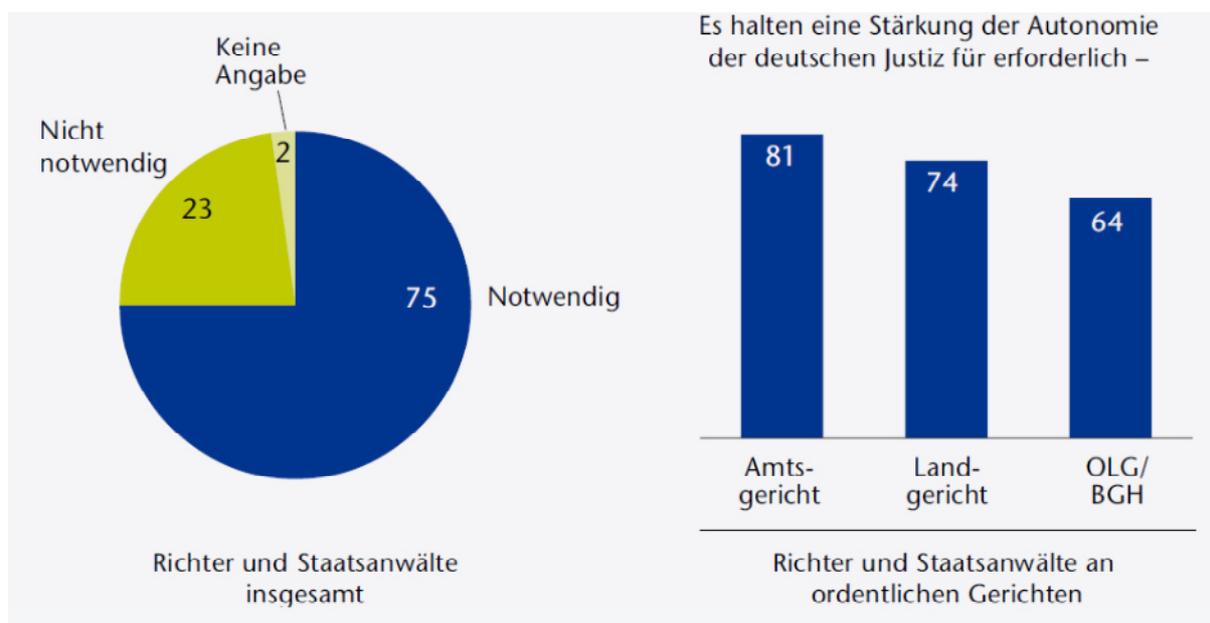
## 5 Conclusion

This chapter on lobbyism and entanglement prompts this research to the following conclusions:

Lobbyism as such and how it is operating illustrates how the interests of private and corporate wealth holders gain direct and indirect influence on the government and legislation which does not benefit the common good but the interests of those who already have more. Here a more balanced approach to government and legislation is needed by both curbing the influence of those with a lot to spend and those who, via democratic theory, are in principle the supreme sovereign of today's nations and states. This involves a number of measures regarding empowerment through education in order to enable participation, which in turn needs a lot of money to be spent on educational programs and institutions, which in turn require more funding than there is right now in times of decreasing social mobility and the withdrawal of many people from democratic participation and involvement.

Germany needs an independent jurisdiction and one should notice that this call is broadly backed by the public and by the experts. In 2014, the "Roland Rechtsreport" looked into issues of the (Non-) Independence of the German juridical system with the eyes of judges and prosecutors.

Graphic 1 The need to strengthen the independence of German jurisdiction, seen by judges and prosecutors



Source 1 (Institut für Demoskopie; Deutscher Richterbund; Roland Versicherung, 2014)

On pp. 57ff, it is explained that 83% of judges and 84% prosecutors oppose the right of Ministers of Justice to instruct judges and prosecutors in specific cases and 50% think it is important to abolish this right. All in all, the report suggests an overwhelming vote for a self-governed jurisdiction in Germany. The report also calls for more personal, more time to work on cases, and addresses the problem that lawyers engaged for the „other side“ are more specialized and qualified than those acting on behalf of the state.

As far as there is little transparency in important areas governing and determining the common good, we need a better protection of Whistleblowers and other “informants” and sources that are following their sense of justice in the attempt to bring illegal deals out in the public. In Bavaria, the cases of Uli Hoeneß, the Engelhorn sisters and Gustl Mollath support this request.

Most of all, however, this chapter calls for more transparency: Transparency of registers of lobbyists, transparency regarding the legal footprint of legislation, transparency regarding tax rulings and other proceedings in which interests of private and corporate wealth holders might obtain privileged treatment by governments and administrations etc. If government agencies and the media are becoming more and more dependent upon funding by private and corporate wealth holder, it is high time that the public either directly or via NGOs is given access to what is going on behind the scenes.

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