Summary

Constitutional Appeal

Magdeburg, 6 September, 2021

by **Dr. Matthias Rath**,

against the decision of the Oberlandesgericht (*Higher Regional Court*) of Cologne to dismiss the case in the preliminary proceedings against **Jens Spahn**, case 58 ZS 15/21 and/or II-1 WS 19/21 – 45 of 27th July 2021, the underlying notice of cessation issued by the Public Prosecutor's Office in Cologne, case reference 58 ZS 15/21 of 06.04.2021 and the entry of *nolle prosequi* of the Public Prosecutor's Office in Bonn of 14.01.2021, case reference 565 AR 4/21.

The Appellant is a German citizen. His place of work is Heerlen, Netherlands.

The company led by him, the Dr. Rath Health Programs B. V., also has its registered office there and sells vitamins and micronutrient products developed by the Dr. Rath Research Institute in San Jose, California, according to strict scientific criteria worldwide, throughout Europe and in particular in Germany.

The Appellant altruistically offered to make new scientific findings available in his home country, the Federal Republic of Germany, represented by the Minister responsible, Jens Spahn, for the purpose of combatting the coronavirus when the COVID-19 pandemic occurred in 2020, and held out the prospect of making this knowledge/these findings available in the Federal Republic of Germany free-of-charge.

The German Minister Jens Spahn, the Minister within the German Government responsible for combatting the pandemic, in respect of which the German Government declared an epidemic of national importance with effect from 28/03/2020 in § 5 para. 1 sentence 4 of the Infektionsschutzgesetz (*Prevention and Control of Infectious Diseases Act*), refused to take this knowledge/these findings into account, let alone to accept them and forward them to the relevant departments.

He was subsequently asked once again to acknowledge receipt of the letter from the Appellant, represented in this respect by the undersigned, at least in accordance with statutory requirements (§ 71 VwVfG – *Administrative Procedure Act*).

He also failed to do this.

The Appellant accordingly lodged a criminal complaint against the German Minister of Health Jens Spahn, in which he provided details to the effect that this behaviour met (at least) the criteria for failure to render assistance under § 323c StGB (*German Penal Code*) and in the event that the formulas developed by his Research Institute proved to be effective in combatting the Coronavirus epidemic, as the Appellant assumes, offences of homicide and personal injury could also be considered against the German Health Minister Jens Spahn due to failure to act, on the basis of the guarantor status conferred upon him through his position, within the meaning of the StGB.

The Public Prosecutor's Office in Bonn refused even to take on the investigations.

This was confirmed by the Public Prosecutor's Office in Cologne.

In response to the application for enforcement of investigations of 23/06/2021 prepared by the undersigned for the Complainant, the OLG (*Higher Regional* Court) of Cologne handed down its decision of 27/07/2021 and stated that the Appellant was not entitled to bring the case within the meaning of § 172 para. 2 StPO (*Code of Criminal Procedure*) as he was not the victim of a reported criminal offence.

This should be ruled out, as he alleged that he had an effective "medicine" available to treat Coronavirus according to his claims, which is why a dilution of his "interests in integrity" should *a priori* be excluded for this reason alone.

The present constitutional appeal based on the infringement of specific constitutional law, § 22 BVerfGG, is brought against this ruling.

It is expressly suggested that,

the court hears the German Minister of Health, Jens Spahn, under § 94 para. 2 BVerfGG (*German Federal Constitutional Court Act*), to give him the opportunity, if appropriate, to apologise for his behaviour which cannot be justified on the basis of the external course of events.

3. Infringement of the Freedom of Expression of Science under Art. 5 I GG (*Federal Constitutional Law)*

With this constitutional complaint, the Appellant refers to a constitutional complaint lodged by him in 2002 in other circumstances which the adjudicating court accepted for decision under case file reference 1 BvR 2041/02, and with the judgment of the Federal Supreme Court and the Appellate Court of Berlin was dismissed on grounds of infringement of Art. 5 para. 1 sentence 1 of Federal Constitutional Law, with the matter being referred back to the District Court of Berlin.
The object of that case was trenchant verbal attacks by the Appellant against attempts at that time by the worldwide Pharma Investment sector to demonstrate the "power structures" it had already *de facto* created in the health market by further efforts, known by the key phrase "Codex Alimentarius". The adjudicating court decided at that time that the very trenchant, in some cases deliberately exaggerated statements by the Appellant in public were covered by the constitutional right to freedom of scientific expression of opinion.
For the Appellant, this constitutional complaint is a further decisive step on the path to recognition of the findings of micronutrient research as an integral part of optimum health care, which includes prevention in particular.

The philosopher Arthur Schopenhauer said:

"All truth passes through three stages. First it is ridiculed. Second it is violently opposed. And finally it is accepted as being self-evident."

Dr. Rath's scientific career exemplifies this finding:

What was initially ridiculed, and was then violently opposed with all the market power available to the pharmaceutical industry, is now incorporated as a matter of course by even leading pharmaceutical companies into their business activities:

Since his collaboration with the two-times Nobel Laureate Dr. Linus Pauling in the early 1990s, the Appellant has drawn attention in Germany and internationally to the fact that micronutrients and vitamins are an effective approach, free from side-effects, to preventing disease and impeding the spread of disease, and which ultimately can also be helpful in convalescence. At that time, he issued a wake-up call to the public, making the point clearly that effect that the pharmaceutical industry as a profit-orientated economic sector was reliant on maximising return on investment in its business model. This comes mainly from the licence fees for newly developed, and therefore patentable, synthetic substances. Non-patented natural substances such as vitamins and other micronutrients are in direct competition with this business model.
To draw attention to this fact, he had to exaggerate and emphasise his points.

Two decades later, the situation now looks completely different:
The vitamin and micronutrients approach has in the meantime established itself. There are now thousands of papers published worldwide in the area of vitamins and micronutrients that prove how helpful and effective micronutrients and vitamins are (not only: could be).

The Appellant has decided to take legal action because the Federal Ministry of Health, at the instigation of the Minister Jens Spahn, has now launched a website – without parliamentary approval! – under the name "gesund.bund.de" (*health.Germany.*de) which contradicts this worldwide trend and makes negative health statements about micronutrients and vitamins, which are totally inaccurate.
We have attached the complaint as

Annex 8.

After referral to the Administrative Court of Cologne, and several applications for extension of time limits, the Federal Republic of Germany has presented the statement of defence attached here as

Annex 9.

The Senate sees that the Federal Republic of Germany has **not made any statements** herein on the merits of the applicant's complaint and that of the Dr. Rath Health Programs B.V. The submissions of the applicant referring to thousands of studies that prove the effectiveness of micronutrients and vitamins **remain undisputed**.
There can be no further serious doubt that international science and medicine regard the approach based on micronutrients and vitamins as an effective and promising approach to preventing and combatting disease.
To clarify this, reference is made to a global initiative on the part of the BAYER Group aimed at combatting micronutrient deficiencies worldwide, launched on 02/02/2021:
According to an announcement by the Group, 50 million people worldwide are to be provided annually with vitamins and minerals. The BAYER Group is the largest pharmaceutical group of companies in Germany, represented in over 80 countries worldwide. 50,000 employees work in the area of health research and health care in the "Pharmaceuticals" and "Consumer Health" divisions.
This worldwide BAYER initiative goes hand in hand with a global recognition of the vital importance of micronutrients for the health of millions of people. Leading pharmaceutical companies have obviously recognised the comprehensive importance of vitamins and minerals for health, and are now sponsoring them worldwide to an extent never previously known. The BAYER Group states as its reasons that almost half of children under five worldwide suffer from a vitamin and mineral deficiency ("at least half of children worldwide under age of 5 suffer from this deficiency").
The BAYER company

"will initially focus on pregnant women and babies, as they are particularly at risk and need special support, particularly due to the effects of the COVID-19 pandemic." (NB.: German translation by the undersigned)

This campaign is to be launched initially in Indonesia, Mexico and the USA.
The BAYER Group leaves no room for doubt about the urgency of implementing this vital initiative. At the end they state:

"The Nutrient Gap Initiative begins immediately and will be focussed on communities that need access to life-changing vitamins and minerals most, in keeping with our vision "Health for all, Hunger for none"

This complete paradigm shift by leading pharmaceutical companies is even more noteworthy as the pharmaceutical industry as an investment sector derives its "Return on Investment" for the most part from the licence fees for patented, i.e. newly developed synthetic molecules. Conversely, vitamins and other micronutrients are natural substances that on this basis cannot be patented, or only rarely.

The reason for this complete paradigm shift can therefore only lie in the fact that the pharmaceutical industry has also recognised that it can no longer shut itself off from scientific findings in the area of micronutrients, but must also try to develop this market for itself.
Against this background, the attitude of denial of the current Federal Minister for Health, as representative of the German state, is particularly serious and in fact downright irresponsible:

Last year, without parliamentary approval (!), he launched the aforementioned web-portal "gesund.bund.de" with content that is scientifically untenable, apparently with the intention of waging "one last battle" against micronutrients and vitamins.

The Appellant is pursuing, solely for altruistic reasons, the information interests of the public in order that the Health Minister responsible becomes aware that according to the study initiated and financed by himself, the micronutrient approach he has developed over decades can also help with regard to all known forms of coronaviruses.

4. Infringement of scientific freedom under Art. 5 III GG

Scientific freedom does not exist in a vacuum; it requires either state support for research and teaching to an extent that permits research and teaching at schools and universities actually to happen.
If research and teaching happens, as in this case, in the "free market", the state must make it possible for such research findings also to be taken note of on an equal footing, and then discussed and promoted as appropriate. If it closes itself to these findings, the Appellant as a scientist may indeed purely theoretically retain his scientific freedom, but cannot act on it, as he cannot implement the findings and therefore earn the profit that make further research possible. This – theoretical – research and scientific freedom therefore means nothing if the basis for it is removed or, as here, not opened up in the first place.
If the state takes a monopoly position, as it does here, it has a particular responsibility to create equality of scientific freedom, i.e. to give scientific discoveries, and therefore the scientists themselves, free access to the markets.

5. Encroachment on the general right of personality under Art. 1 para. 1 in conjunction with 2 para. 1 GG

From the details above it is evident that an encroachment on the general right of personality of the Appellant has occurred.
The encroachment of the state in the form of an omission which is unjustifiable in every respect is not justified either by the three legal bars set up in Art. 2 GG, nor in any other way.
There is simply no legal justification for not accepting the knowledge communicated – possibly helpful knowledge.

In view of the foregoing, the constitutional complaint should be accepted for adjudication after the court has heard the Federal Health Minister, if appropriate, on the subject of the "conscious omission" that he initiated.