Lawyer Wilfried Schmitz

A revision for Heinrich

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Reasons for appeal

against the 2nd judgment of the Bochum Regional Court of 21.9.2023

in the criminal proceedings against the doctor Heinrich-Karl Werner Habig before the regional court

from

Lawyer Wilfried Schmitz

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This book is dedicated with deep gratitude to all those who have fearlessly and selflessly stood up for Fatima and Heinrich Habig in recent years, especially through their regular appearances in court, despite all the harassment.

The world would be in a much better state if all people were so committed and courageous in standing up for justice.

My special thanks go to Eleonore for her prayers, my colleague Stefan Schlüter for his fearless demeanor, Claudia and all the other supporters of Fatima and Heinrich Habig for their countless contributions in front of and behind the camera ...and Werner for everything.

Selfkant, Septmber 23, 2024

Wilfried Schmitz

To the

Bochum District Court
Josef-Neuberger-Str.
44787 Bochum

beA

AZ. 20/2023

Selfkant, 14.1.2024

In the criminal case

against Habig et al.

12 KLs-35 Js 540/22-34/23

is hereby granted the appeal lodged on 22.9.2023 against the judgment delivered on 21.9.2023 and served on me by post on 5.1.2024.

Revision

the following

Reasons for appeal

submitted with the application,

set aside the contested judgment with the findings and discontinue the proceedings, alternatively refer the case back to another criminal division of the Regional Court for a new hearing and decision.

The complaint alleges a breach of formal and substantive law.

Table of contents

A) Introduction

The most important questions (also) raised by this revision
This appeal will prove that the 2nd "partial" judgment challenged here, which is 100% identical in large parts of its reasoning to the reasoning of the 1st "partial" judgment of 29.6.23 in this criminal case against the appellant in case no. 12 KLs 35 Js 540/22-6/23, is equally the result of proceedings that were extremely one-sided and unfair to the detriment of the appellant and were judged unjustifiably as a result. Essentially, the Trial Chamber merely adjusted the data and found no new arguments.

For this reason, the idea of limiting the subsequent grounds of appeal on the merits of this appeal to the complaint of a violation of substantive law and otherwise referring generally to the 1st grounds of appeal of 7.11.2023 on the 1st partial judgment of 21.9.23 came up. However, there are now new findings as to why the BVerfG and the 1st Military Service Senate assumed false premises in fundamental decisions on the Covid-19 injection detection and tolerance obligation (see below from page 124), and there are also other legal sources that clearly argue that the complainant's actions were justified.

In the proceedings preceding this second partial judgment, a plea bargain was finally reached at the suggestion of the Criminal Chamber, to which the complainant agreed in view of the excessive length of the pre-trial detention, so that the proceedings and the pre-trial detention could finally be ended.
However, there was no consensus between the parties involved in the legal assessment of the proceedings and the facts of the case. In this respect, the differences could not have been greater. After more than 16 months of arbitrary pre-trial detention, it was no longer difficult to get the complainant to confess.

According to the content of the minutes of the hearing, the orders issued and the contested verdict, the Trial Chamber once again rejected and ignored all motions for evidence and motions to recuse the defense in the proceedings preceding this 2nd partial verdict and in fact only unilaterally processed the prosecution's program of evidence. Due to self-created procedural obstacles, it should not have been allowed to continue the trial at all after the announcement of the 1st "partial" verdict on June 29, 2013.

Furthermore, the Trial Chamber downright harassed the visitors to the trial from the first day of the trial for this phase of the proceedings, i.e. from 19 June 2023, and violated the principle of publicity as thoroughly as possible.

Moreover, in this phase of the proceedings, all witnesses were consistently misinformed and all testimonies and other concrete evidence were ignored, which clearly prove that ultimately all (!) witnesses in this criminal case were systematically deceived in their respective investigative proceedings.

Finally, contrary to numerous unambiguous witness statements, the Trial Chamber flatly denied that massive and inadmissible pressure was exerted on many of these witnesses during the house searches, which regularly took place from 6 a.m. onwards. However, the requests for verbatim transcripts of witness statements reproduced in the main hearing transcripts (HVP) provide numerous concrete and highly impressive indications of the use of prohibited interrogation methods within the meaning of § 136 a StPO.

From the point of view of the complainant and the defense, the impression must therefore once again be that the Trial Chamber obviously did not want to take note of and document anything that strongly argues that the complainant's conduct was at least possibly justified

in the given context and why, in the absence of victims and damages, there could be no need to impose a penalty at all, let alone a penalty that would destroy his existence.

From the point of view of the appeal, this grossly unfair conduct of proceedings can only be explained against the background of a very strong bias on the part of the criminal chamber, which apparently wanted to appear particularly "politically correct" by not even beginning to question any political narratives from the period from March 2020 onwards.

Some of the infringements of the law complained of below constitute a **procedural impediment** in themselves and even more so when viewed together, which requires the proceedings to be discontinued immediately and makes a referral back obsolete.

In the context of this appeal, the Senate will also have to deal with the following fundamental questions in particular:

I.

Was the indictment allowed to be admitted at all, since the public prosecutor's office had only investigated a fraction of the entire facts of the case at the time of the indictment and had not investigated factual questions relevant to the decision - in particular regarding the significance of the Covid-19 antibody test?

II.

Is there a **procedural obstacle** to a new hearing after referral back to another chamber of the court if 207 of the individual cases charged in total have already been settled by the first partial judgment of the recognizing chamber of 29.6.23 on AZ. 12 KLs 35 Js 540/22-6/23, which was previously challenged on appeal?

Is a "partial" judgment therefore possible in first instance proceedings despite the contrary case law of the BGH (see BGH decision of July 22, 2004 - BGH 5 StR 241/04 with reference to BGH, judgment of July 6, 2004 - 4 StR 85/03), especially if this partial judgment obviously only served to maintain the defendant's pre-trial detention?

In this context, with regard to the continuation of the hearings after June 29, 2023, the implicit question is raised as to whether, with regard to the individual acts charged, an offense in the procedural sense can be assumed, since the complainant is also alleged to have committed these essentially similar individual acts within a short period of time from the perspective of the criminal chamber out of a decision to commit an offense.

If this question were answered in the affirmative, it would have to be assumed that the partial judgment under attack in this case, with regard to the individual acts that were not included in the first "partial" judgment of 29.6.23, would have resulted in the criminal action being barred and thus a procedural impediment.

If, contrary to expectations, the Senate were to deny the existence of such a procedural obstacle, it would also have to deal with the following questions in the 2nd partial judgment challenged here:

III.

Was the 2nd partial judgment challenged here also issued on the basis of a hearing in which the principle of publicity was violated by the presiding judge's order to hold a hearing (within the meaning of § 338 no. 6 of the Code of Criminal Procedure)?

Is there therefore a procedural obstacle to a new trial after referral back to another criminal chamber if the criminal chamber has in fact consistently violated the principle of publicity up to the pronouncement of judgment?

IV.

Does a procedural impediment due to no longer compensable violations of the law preclude a new trial after referral back to another criminal chamber if the complainant was denied a fair trial in particular also by the fact that his defense was repeatedly inadmissibly restricted in a way that is likely to be much more serious than a "mere" considerable delay in the proceedings - here also caused by this?

The appeal sees such inadmissible restrictions in the following points in particular:

1.

The rejection of all defense motions for the examination of expert witnesses on various evidentiary issues relevant to the decision, even though the misleading statements of the public prosecutor's office in the motions for all § 81a Code of Criminal Procedure decisions, which have been adopted in all § 81a Code of Criminal Procedure decisions, are also based on the expert statements of prosecution witnesses (!), who have in fact also been treated as experts by the public prosecutor's office.

In this context, the failure to clarify the central question of evidence that a Covid-19 antibody text cannot (!) be used to prove that someone was not "vaccinated" with a Covid-19 injection, although in fact all confessional statements by witnesses in the preliminary proceedings are based on the contrary misleading assertion.

Is there therefore a systematic and systematic deception of all (!) accused persons who were questioned as witnesses in court by the public prosecutor's office within the meaning of § 136a StPO if the deception committed by investigating police officers is based on misleading information in all (!) § 81a StPO court orders, which were issued on the basis of corresponding applications with deliberately misleading information from the investigating public prosecutor's office?

In other words: May the prohibition of utilization of § 136 a StPO be systematically circumvented by systematically deceiving judges in preliminary proceedings with untrue allegations by the public prosecutor's office, so that their decisions on certain investigative measures - here: to order a blood sample pursuant to § 81 a StPO - contain untrue statements with which the witnesses are then deceived?

Should police officers simply be allowed to assume the correctness and legality of court orders without checking their content? Would this not also deprive the police officers' duty of remonstration of its meaning?

If so, what are the legal consequences for the usability in court proceedings of witness statements obtained unlawfully in this way if, in the course of the respective investigation

proceedings, all (!) witnesses within the meaning of section 136a of the Code of Criminal Procedure have been systematically deceived, regardless of who is responsible?

Can the remote effect of a prohibition of utilization pursuant to § 136 a StPO still be denied in the case of such a systematic and systematic approach by a public prosecutor's office?

2.

Rejection of all requests for verbatim transcripts of witness statements relevant to the decision regularly by blanket reference to § 273 para. 3 StPO, although the exact wording of these statements was important, in particular because several interim decisions of the criminal chamber had already made it obvious to the defense that this criminal chamber had already denied comparable witness statements, which could give rise to the suspicion of prohibited interrogation methods, in the 1st "partial" judgment of 29.6.23 and thus perceived and/or documented them completely differently than the defense.

3.

Can such legal violations be compensated for in their entirety?

V.

Is Section 74 (2) IfSG even applicable if a doctor has not actually carried out a Covid-19 injection?

What is the competitive relationship between Section 74 (2) IfSG and Section 278 StGB?

VI.

Was the massive coercion of people in this country to be administered a highly experimental and proven (!) and therefore undeniably very dangerous Covid-19 injection for life and health clearly unconstitutional, especially since this view is now also increasingly held in legal literature - moreover, unrefuted?

And if this coercion was unlawful: Were all of the complainant's patients therefore exposed to a present unlawful attack at the time of the respective offence, so that the complainant, who was bound by his Hippocratic oath, was allowed to provide emergency assistance for the benefit of his patients or - with regard to his general professional medical duties, as codified, inter alia, in Section 2 (1) of the professional code of conduct of the Westphalia-Lippe Medical Association - was at least exposed to a justifiable conflict of duties?

Does this right to emergency assistance also include the documentation of any Covid-19 injections that were not actually carried out?

Taking into account the unconstitutionality of the coercion of the Covid-19 injections, the criminal liability of administering questionable drugs within the meaning of Section 5 AMG and his professional and guarantor duties, was the complainant not only entitled but even obliged to provide emergency assistance in order to protect the fundamental rights of his patients?

Is it not possible - especially from the perspective of a legal layperson - to resist regulations and laws that are clearly not evidence-based and obviously irresponsible and unconstitutional?

Were the complainant's patients - and all others affected - able to defend themselves effectively or even with the slightest chance of success before a German court against the various forms of coercion for Covid-19 injections in the period from December 2021, when even the former President of the Federal Constitutional Court, Prof. Dr. Hans-Jürgen Papier, publicly stated that elementary human rights were suspended during the Corona period and that courts such as the BVerfG also failed during this time?

Is the complainant at least excused under these conditions?

VII.

Taking into account the protective purpose of the relevant criminal provisions and Radbruch's formula, can a doctor be punished at all - moreover with the effect of destroying his livelihood - and kept in custody for more than 16 months if he has not caused any damage through his actions and has not harmed or even endangered anyone, i.e. if there are not even any (potential) victims? Especially if, in the view of the criminal court, he did not enrich himself through his actions and did not act commercially?

VIII.

In such a constellation (as described above under point IV. No.), are there qualified obligations to instruct the witnesses before they are questioned about the case in the main public hearing?

In particular, are witnesses whose investigation proceedings have not yet been concluded when they are questioned in court to be informed in court in a qualified manner about the at least possible inadmissibility of their earlier confessional statement if, on the basis of concrete connecting factors, it cannot at least be ruled out that (also) their statements made in the investigation proceedings are based on deception or (also) other prohibited interrogation methods within the meaning of § 136 a StPO?

XI.

Were all (!) witnesses heard in court here wrongly instructed because they were instructed by the presiding judge that they "possibly" had to swear to their testimony despite their involvement in the complainant's crime - as can already be seen from the indictment - contrary to Section 60 No. 2 of the Code of Criminal Procedure?

B) Procedural objections

B1) Absolute grounds for appeal

1. § 338 No. 3 StPO

Pursuant to **Section 338 No. 3 of the Code of Criminal Procedure**, a judgment must always be considered to be based on a violation of the law if a judge or lay judge has participated in the judgment after having been recused due to concerns of bias and the recusal request was either declared justified or wrongly rejected.

It is hereby criticized that judges participated in the proceedings after they were rightly rejected due to concerns of bias. The motions for recusal filed in this regard were all wrongly rejected.

In the course of the main hearing, motions to recuse both the presiding judge Breywisch-Lepping alone and all three professional judges of the criminal chamber together were wrongly rejected.

In detail:

1.1 Motion to recuse dated 28.7.2023

Unlawful rejection of my application for recusal against the presiding judge Breywisch-Lepping, the judge at the Regional Court Lebro, and the judge Dr. Yilmaz of 28.7.2023 (Note: Judge Eck was not rejected with this application, even if this is stated in the order of 14.8.23 mentioned below)

a)

Facts of the proceedings

In a letter dated July 28, 2023, I objected to the presiding judge Breywisch-Lepping, the judge at the Regional Court Lebro and the judge Dr. Yilmaz on the following grounds due to concerns of bias (**citation**):
"I.
The judges rejected here simply do not stop harassing the public.
As has just been confirmed to me by telephone by the co-defendant, the spectators also had to have their identity documents copied today so that the copy could be made available to the presiding judge. If they refused, they would also have been prevented from entering the courtroom today.
The principle of publicity has been consistently violated in the defendant's criminal cases since the first day of the trial, in particular by the ordering and maintenance of an additional security gate in the entrance area to the courtroom, but also by the downright harassing treatment of the spectators by the presiding judge.
Once again:
At no time was such a security lock prompted by any concrete, comprehensible circumstances and at no time was it justifiable.
Quite the opposite. The audience has always behaved very peacefully, even outside the courtroom. For example, many members of the audience repeatedly met members of this 12th Criminal Chamber and also the representatives of the public prosecutor's office in

Bochum in person during the breaks in the canteen, without any negative incidents occurring.
The "security situation", which allegedly gave rise to an additional security gate, looked like this and nothing else.
What finally broke the camel's back was the fact that the presiding judge Breywisch-Lepping prevented all (!) spectators from leaving the courtroom for several minutes after the end of the hearing (around 6 p.m.) in the "parallel" proceedings in case no. 12 KLs-35 Js 540/22-6/23 on June 27.
I had not even heard of a comparable procedure by a presiding judge - in any hearing - until then.
Such an approach is therefore writing legal history, as it were, but in a very negative sense.
The reason for this grotesque order, which in my opinion even justifies the suspicion of coercion in office and deprivation of liberty, was the fact that some visitors spontaneously applauded my client on 27.6.2023 immediately after the end of his very emotional closing speech, which deeply touched all the visitors. Several members of the audience were - as they reported to me later - moved to tears by my client's words and could not help but pay him great respect with a little applause.
How can one react so coldly and heartlessly in the face of such circumstances and then want to detain the audience for such a deeply human reaction so that some of them can be fined for this applause?
All those present, i.e. all parties to the proceedings and also the spectators, also assumed at this time that the hearing would be interrupted immediately after this closing statement by my client anyway and would be continued on June 29, 2023 with the pronouncement of a "partial" judgment.
Against this background alone, it was not possible that the orderly conduct of this meeting on 27.6.2023 could have been impaired in any way by this spontaneous applause.
I have experienced several times - including in proceedings before a federal court - that participants in proceedings have been spontaneously applauded by the audience for their contributions. The presiding judges have always reacted very moderately to such events.
The presiding judge Breywisch-Lepping, however, was quite different: in the criminal case of both Mr. and Mrs. Habig, she even sharply reprimanded two visitors to the hearing for having
were talking in the inaudible range (!!). No party to the proceedings had heard any disturbing conversation. When asked by the defense counsel, presiding judge Breywisch-Lepping confirmed that the whispering of these two visitors was only visually perceptible to her.
Against the background of this history, I would like to return to today's reason for this request for recusal:
On June 28, 2023, the Presiding Judge Breywisch-Lepping, in her capacity as Presiding Judge of the 12th Grand Criminal Chamber, on the occasion of the above-described applause in the session of June 27, 2023, even issued a session police order in both of the defendant's criminal cases, which contains the following regulations in each case under item I (quote):
"All spectators must present official identification of themselves when entering the hall. No admission to the hall will be granted without presentation of identification.
Copies/photographs must be made of the ID cards. The photocopies shall be handed over to the chairperson immediately after the meeting and shall be destroyed no later than the working day following the day of the meeting, unless they are required for the prosecution of criminal offenses, administrative offenses or the enforcement of regulatory measures."
As today's treatment of viewers shows, this session regulation has still not been repealed, **even though it is clearly incompatible with Articles 13, 15 and 35 of the GDPR.**
This once again puts the crown on the whole misconduct.

In my experience as a lawyer, the aforementioned regulations are without precedent and clearly violate the principle of publicity, which, as is well known, is an absolute ground for appeal.
Even if no further justification is actually required, the order that "all" spectators must present official identification of their person upon entering the courtroom, as otherwise they will not be admitted to the courtroom, was and is suitable to deter interested parties from attending this criminal case.
This is evidenced by the fact that there were already heated debates outside the courtroom on June 29, 2023 between some people who wanted to attend the trial and some of the constables present.
The visitors' displeasure was justified. No visitor created or even could have created a reason for such an order to be issued.
The clapping after the end of the defendant's closing statement on June 27, 2023 (around 6 p.m.) does not justify such an order under any circumstances, regardless of the fact that the singular clapping after (!) a closing statement and shortly before the end of the hearing could no longer disturb any of the participants in the proceedings and that it was also clear to the spectators at this point that the hearing would be closed after the defendant's closing statement anyway.
This order - which was not substantiated at all in the order of 28.6.2023 - was and is not justified from any point of view and is unlawful in every respect, as the aim it pursues can only be to deter interested parties from attending these criminal cases and to punish visitors even for completely irrelevant incidents such as clapping after a closing speech.
The presiding judge would like to be able to establish their personal details for precisely this purpose. A visitor "could" be so brazen as to applaud again, which would then be punishable by a fine.
However, the abstract risk that a visitor could commit an offense cannot justify such a measure against all spectators.
And once again: In the circumstances here, the clapping of some visitors shortly before the end of the public meeting cannot be considered a "disruption" of the meeting, let alone a significant disruption worthy of sanctions.
It seems reasonable to assume that the presiding judge's only intention with this measure is to further isolate the defendant. He should not even realize that countless people stand behind him and consider the entire actions of the judges of this chamber to be seriously wrong.
The support for the defendant is therefore apparently perceived by the presiding judge as personal criticism of her conduct of the trial.
But she will have to live with that. A judge who blatantly fails in her function as a judge in this criminal case in the perception of a very large part of the public will have to live with the fact that many people show solidarity with the defendant.
The presiding judge Breywisch-Lepping should actually know that visitors to a meeting cannot be fined immediately for such trivialities.
Persons who would actually disrupt a public meeting can regularly be called to order simply by giving them a moderate warning.
The threat or even immediate imposition of a fine for applauding after a closing speech at the very end of a meeting is clearly not proportionate.
Neither does the preventive collection of copies of ID cards to enable the simplified determination of the identity of an "applauder".
The desire to suppress any visible emotions in the audience rigiros thus probably has more to do with the personal state of mind of the presiding judge than with the behavior of the audience.
Serious individual violations - applauding after a presentation is certainly not such a violation - could, if necessary, be clarified in the meeting room regardless of such an order.

It is particularly disconcerting that copies/photographs of these ID cards have to be made so that they can be handed over to the chairperson after the meeting.
This order is particularly suitable for deterring potential spectators from attending the criminal case, especially as many spectators already have a deep mistrust of the presiding judge.
Incidentally, these orders under item I correspond exactly to what the spectators were already expected to do on the first day of the hearing.
Visitors, who at this point in time were not yet able to disturb the proceedings in any way, were also asked to hand in their ID cards so that they could be copied for Presiding Judge Breywisch- Lepping. When asked by the persons concerned - who also named the defense attorneys of choice as witnesses to the court - an official expressly confirmed that this regulation was based on a corresponding order by Presiding Judge Breywisch- Lepping.
What else? Who believes that this officer acted on her own authority here?
The presiding judge Breywisch-Lepping later denied having issued such an order on the first day of the trial when the defense attorneys reproached her for this. This would allegedly have been an unauthorized action by a constable.
But since 29.6.2023, the presiding judge herself has revealed, precisely through these session police orders of 28.6.2023, that she is actually capable of issuing such an order and maintaining it until 28.7.2023 (and beyond).
This subsequently confirms the suspicion that the presiding judge was already responsible for a similar order to the spectators on the first day of the trial and not some constable acting on his own authority.
This would mean that the defendants, the defense attorneys of choice and the public were lied to by Presiding Judge Breywisch-Lepping on this issue. This must - still - be clarified ex officio in accordance with service law and also in these proceedings.
I was told that in some of the sessions the audience was literally held captive by a constable who held a notepad in his hand and kept jotting things down.
As part of the official statement, the presiding judge should explain whether this "observation method", which is definitely suitable for intimidating bystanders, can also be traced back to your order.
As I said, there have never been any serious breaches of the rules of procedure in these proceedings.
For this reason alone, it is not clear why cannons have repeatedly been fired at sparrows, unless one is prepared to recognize the realities: the viewers who want to follow these criminal cases are to be harassed and thus deterred from attending the criminal cases.
Such orders cannot be issued simply because the great public interest in the progress of this criminal case is increasingly perceived by the presiding judge as a burden.
The realization of the principle of publicity does not depend on the spectators remaining so quiet that they become "invisible" to the presiding judge.
Once again, there was no justification whatsoever for preventing all (!) members of the audience from leaving the meeting room for several minutes after the end of the meeting at around 6 p.m. on June 27, 2023.
It is surprising that the presiding judge creates one absolute ground for appeal after the next with such an approach, just as if all this would no longer play a role anyway, because the BGH will overturn the partial judgment on the basis of the already given grounds for appeal anyway in the context of the appeal.
I would like to take this opportunity to point out once again that during the entire trial, which lasted several months, it could be clearly observed time and again that Presiding Judge Breywisch-Lepping was downright hostile towards the public, which has such a great interest in the course of these criminal cases.
The great public interest in the fate of Mr. and Mrs. Habig obviously caused them a great deal of embarrassment, as their nervous behavior during many meetings shows.

Is there something to cover up or conceal here?
Does this criminal trial reveal facts, such as unfair investigation methods, that are somehow unpleasant or even embarrassing for the presiding judge Breywisch-Lepping or especially the representative of the public prosecutor's office, Dr. Linnenbank?
There are numerous concrete indications of this.
And there are numerous concrete indications that such facts, which prove, for example, a systematic deception of all former patients and witnesses involved here and the exertion of massive pressure on many of these witnesses during the house searches, are to be denied across the board right into the grounds of the judgment and thus downright covered up.
All this will be discussed in more detail in the grounds of appeal, but I also have the impression that the presiding judge Breywisch-Lepping has a special interest in sweeping the misconduct of the prosecutor Dr. Linnenbank under the carpet.
This suspicion that the two are good friends is justified in particular by the fact that during the entire criminal trial, all trial observers - and also the defense lawyers - increasingly gained the impression that the presiding judge Breywisch-Lepping and the public prosecutor Dr. Linnenbank are obviously good friends.
The presiding judge Breywisch-Lepping repeatedly sought eye contact with the public prosecutor Dr. Linnenbank with an - at times embarrassed - smile, as if she were always asking for confirmation, especially when the defense attorneys of choice were speaking.
Statements by the defense counsel of choice were repeatedly interrupted, objected to or interrupted with endless questions, while the conduct and statements of the public prosecutor Dr. Linnenbank were in fact never objected to by the presiding judge, not even when Dr. Linnenbank wanted to deceive some witnesses, for example, even at a time when she should have known better, by stating in open court that she could not have been vaccinated because her Covid-19 antibody test had turned out negative.
Through my defense presentation, which refers to the expert testimony of Prof. Cullen, I proved early on that the antibody test cannot prove that someone has not been "vaccinated" or has received a Covid-19 injection.
There is no need to go into further detail here, as this has already been done in several pleadings on this criminal case, and it would also distract from the actual reason for this motion for recusal: the deeply harassing and unworthy treatment of the public by Presiding Judge Breywisch-Lepping in the criminal cases of Mr. and Mrs. Habig.
Incidentally: **After the hearing on 27.6.2023**, visitors to the trial - as I was later informed - were able to observe that Presiding Judge Breywisch-Lepping and Public Prosecutor Dr. Linnenbank walked to the parking lot together. When Presiding Judge Breywisch-Lepping noticed that she was being watched, she is said to have reacted with little pleasure.
This confirms the suspicion that the two also have private relationships outside of the office.
The neutrality and independence of Presiding Judge Breywisch-Lepping is thus emphatically called into question.
She should have publicly acknowledged her own bias due to her obvious friendly relationship with Dr. Linnenbank and drawn the consequences of her bias.
In any case, the presiding judge Breywisch-Lepping has repeatedly behaved in a deeply unworthy manner through her arbitrary and harassing treatment of the public, which wishes to observe the proceedings in these criminal cases in accordance with the principle of publicity, and has caused serious damage to the reputation of the Bochum judiciary.
II Credibility:
Insofar as the facts described above are already known to the courts, they do not need to be substantiated.
Insofar as the facts described above correspond to my own perception, in particular my conversations with visitors to the proceedings or parties to the proceedings, I hereby affirm that I have perceived these facts as a lawyer myself.

With regard to the events described above before and during the hearing of 29.6.2023 in the parallel criminal proceedings of the accused, I also refer in full to the content of the complaint of Cornelia and Udo Stephan against the presiding judge dated 24.7.2023, which I submit here as an **attachment**.
For the rest, reference is made to the order of the presiding judge of Order of the presiding judge of 28.6.2023 and the official statements of the judges rejected here." (**end of quote**)
This motion for recusal of 28.7.2023 was rejected as unfounded by order of the 12th Grand Criminal Chamber (Presiding Judge at the Regional Court Möllers, Judge at the Regional Court Eck and Judge Humpohl) of 14.8.23 on the following grounds (**citation)**:
"I.
With the motion for recusal brought forward by his defense counsel on his behalf, the defendant Habig is concerned about bias on the part of the recused judges.
He essentially argues that the rejected judges did not stop harassing the audience. In this regard, the defendant refers to the fact that on July 28, 2023, the audience had to present their identification document before entering the courtroom by order of the chairperson and that this was then copied. Furthermore, in some sessions, the audience had been "literally fixed by a constable", who had held a notepad in his hand in which he had repeatedly written something down.
In addition, the defendant argued in support of his refusal that the impression had been created that the presiding judge at the Regional Court, Ms. Breywisch-Lepping, and the public prosecutor's representative, public prosecutor Dr. Linnenbank, were good friends and also had private dealings outside the office.
II.
The defendant Habig's request for recusal based on concerns of bias dated 28.07.2023 is unfounded.
Pursuant to Section 24 (1), (2) of the Code of Criminal Procedure, recusal on the grounds of partiality takes place if there is a reason to justify mistrust of the impartiality of a judge. Such mistrust is justified if the challenging party has reason to believe, on a reasonable assessment of the facts known to him, that the challenged judge has an inner attitude towards him that may interfere with his impartiality and impartiality. This depends on the point of view of a reasonable defendant and the ideas that a mentally healthy, fully rational party to the proceedings can form when calmly examining the facts of the case (BGH judgment v. 15.05.2018 - 1 StR 159/17, BeckRS 2018, 24407, para. 60; BGH judgment of 06.09.1968 - 4 StR 339/68, BeckRS 9998, 110794; Meyer-Goßner/Schmitt, StPO, 65th ed. 2022, § 24, para. 8).
Applying this standard, there are no facts here that justify concerns of bias with regard to the dismissed presiding judge at the Regional Court Breywisch-Lepping, the judge at the Regional Court Lebro, the judge at the Regional Court Eck or the judge Dr. Yilmaz within the meaning of Section 24 (1) and (2) of the Code of Criminal Procedure.
a)
Insofar as the application for recusal dated 28.07.2023 alleges that the recused judges harassed the public and in this context refers to the order of 28.06.2023, there is no concern of bias justifying recusal.
Participation in interim decisions in the pending proceedings and the legal opinions expressed in such decisions do not generally justify the rejection. This applies in principle even if the interim decision is based on a procedural error, on a factual error or on an incorrect or even untenable legal opinion, provided that this is not completely absurd or even gives the appearance of arbitrariness (BeckOK StPO/Cirener, 46th ed. 01.01.2023, StPO, § 24 para. 24; Meyer-Goßner/Schmitt, § 24, para. 14; BGH NStZ 2016, 115; BeckRS 2022, 9565, para. 20 with further references; BGH decision of 25.04.2014 - 1 StR 13/13, BeckRS 2014, 11005, para. 38; Federal Court of Justice, decision of 03.08.1994 - 3 StR 262/94,

NStZ 1995, 218; Federal Court of Justice, judgment of 14.02.1985 - 4 StR 731/84, NStZ 1985, 492).
The defendant Habig's request for recusal dated 28.07.2023 does not even begin to show that the court order of 28.06.2023 is based on an absurd interpretation of the law or even on arbitrariness.
Whether there is sufficient cause for a police measure at a hearing is decided by the presiding judge at his or her discretion (Meyer-Gossner/Schmitt, § 176 GVG, para. 6).
According to the note to no. 1 of the order accompanying the police order of June 28, 2023, the official statement of the presiding judge of June 30, 2023, the presiding judge's order of July 28, 2023, the chamber's order of July 28, 2023, as well as the defendant's own statement, there was no further discussion in the main hearing on June 27, 2023.2023 as well as the defendant's own statement - despite prior admonition by the presiding judge - there was loud applause from large parts of the audience in the main hearing on 27.06.2023 in the separate part of the proceedings (II-12 KLs 6/23) after the defendant's last word. As a result, the identification of some members of the audience was ordered. With one exception, however, the spectators in question refused to show their identity cards to the constables.
In view of a possible repetition of such events, the order to hold the meeting was then amended and item I. now reads as follows:
"All spectators must present official identification of themselves when entering the hall. No admission to the hall will be granted without presentation of identification.
Copies/photographs must be made of the ID cards. The photocopies shall be handed over to the chairperson immediately after the meeting and shall be destroyed no later than the working day following the day of the meeting, unless they are required for the prosecution of criminal offenses, administrative offenses or the enforcement of regulatory measures."
In view of the disruptions caused by repeated applause and the subsequent refusal to establish identity, neither the order itself nor the confirming chamber decision of 28.07.2023 appears to be absurd or arbitrary. In view of the need to take appropriate measures to ensure a safe and undisturbed course of proceedings, as demonstrated by the aforementioned disruptions, the order issued by the session police does not appear to be completely absurd or even arbitrary, even in view of the principle of publicity.
The obligation to present an identity document before entering the courtroom and the production of corresponding copies of identity documents does affect the principle of publicity. According to this principle, every person has the opportunity to participate in the main hearing as a listener (BeckOK GVG/Allgayer, 19th ed. 15.8.2022, GVG Section 169 marginal number 3). However, the principle of publicity should not be given a higher priority from the outset than the interest in the undisturbed conduct of the hearing. Rather, interests of equal rank collide in this respect (see BGH, judgment of October 6, 1976 - 3 StR 291/76, NJW 1977, 157, beck- online).
The order in question here is also a measure that only makes access to the court hearing insignificantly more difficult and avoids a selection of the audience according to personal characteristics. An overriding interest of the audience in not having to pass through a security gate in front of the courtroom and being able to participate in the main hearing without presenting an ID and a photocopy of it is not obvious in view of the understandable reason for the police order. The mere fact that the rejected judges assess the factual and legal situation differently from his defense in this respect therefore does not justify mistrust of the impartiality of the rejected judges from the perspective of a reasonable defendant.
The repeated assertion, again unsupported by any evidence, that the chairwoman had already ordered the production of copies of ID cards in the run-up to the first hearing, but subsequently denied this order, was already the subject of the defendant's motion for recusal of March 14, 2023, which was rejected by order of March 27, 2023. Insofar as this argument

is now raised again in the context of the order of 28.06.2023 to prove that the rejected chairwoman had told an untruth, this does not give rise to any concerns of bias.
The defendant has still not credibly substantiated the factual assertion he made, which the presiding judge again contradicted in her official statement. Contrary to the defendant's view, the fact that an order has now been issued - in response to expressions of approval during an ongoing main hearing - for the future production of copies of identity documents does not allow the conclusion to be drawn that the presiding judge has already issued a corresponding order in the past.
With regard to the now for the first time alleged "observation" of the public by a constable equipped with a notepad, the defendant also fails both to make the factual allegation credible and to assert it in good time.
It is incumbent on the accused to demonstrate the probability of his factual assertions to the extent that reasonably appears necessary as a basis for a decision (Meyer-Goßner/Schmitt, § 26, para. 8). In this respect, however, the request for recusal dated 28.07.2023 is limited to the defense counsel's assurance that he had been told that a constable had "fixed" the audience and taken notes. Other written statements - based on a direct perception of the alleged incident - are completely missing. It therefore remains unclear when the situation described is supposed to have occurred, how long it is supposed to have lasted and what reactions of the parties to the trial or the audience were associated with it. There is therefore no sufficient basis for a decision, especially as the defendant does not cite any evidence for an "observation order" by the presiding judge, which was nevertheless put forward.
b)
Insofar as it is argued in support of the rejection that the impression was created that the presiding judge at the Regional Court Breywisch-Lepping and the representative of the public prosecutor's office, public prosecutor Dr. Linnenbank, were good friends, there is no concern of bias that would entitle the defendant to reject the case according to the standards set out above.
From the perspective of a reasonable defendant, a close private relationship between the judge and a party to the proceedings may give rise to the fear that the judge's neutrality may be disturbed by this (MüKoStPO/Conen/Tsambikakis, 2nd ed. 2023, StPO § 24 para. 30).
However, such a personal relationship between the rejected presiding judge and the public prosecutor Dr. Linnenbank is not even remotely credible here. The presiding judge expressly refutes the allegation of a "private relationship" with the public prosecutor Dr. Linnenbank. Moreover, there are no viable indications that the alleged private relationship actually exists from the motion to recuse dated 28.07.2023.
Insofar as the defendant cites repeated eye contact between the presiding judge and the public prosecutor or an accompanying smile from the presiding judge during the main hearing, it cannot be concluded from this alone that there was a close private connection. The same applies with regard to the defendant's failure to object to the conduct of the public prosecutor's representative at the hearing. Furthermore, neither the timeliness of the assertion of these grounds for refusal has been demonstrated, nor have sufficient facts been credibly presented from which the necessity of objections can be inferred.
In this context, the defendant further alleges that the recused judge and the representative of the public prosecutor's office went to the parking lot together after the hearing on 27.06.2023 and that the presiding judge reacted with little pleasure when she noticed that visitors to the trial were observing this. There is also a lack of sufficient credibility for this allegation.
Credibility means that the alleged facts are proven to such an extent that the court considers them probable and is able to make a decision without delaying further investigations. It is not up to the court to hear witnesses or have them heard, nor to work towards further prima facie evidence. In principle, only written declarations can be used to establish credibility; the