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Rechtsanwältin

in Bürogemeinschaft mit Lutz Achenbach
Rechtsanwalt
Antonia von der Behrens
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Franziska Nedelmann
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für Strafrecht
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Rechtsanwältin Dr. Anna Luczak Kottbusser Damm 94 10967 Berlin

The Home Secretary
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via EMAIL: public.enquiries@homeoffice.gsi.gov.uk

Mein Zeichen
66/16

Datum
20th July 2016

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Bürozeiten
Mo-Fr 10-13 Uhr
Mo, Di, Do 15-18 Uhr

PRE-ACTION LETTER

RE: Our Client - Jason Kirkpatrick

We refer to the above named and herein wish to raise the following issues:

1. The details of the matter being challenged

The proposed Applicant is intending to challenge the decision by the Home Secretary over her failure to extend the terms of Reference of the Undercover Policing Inquiry ("UCPI") (which is also commonly known as the Pitchford Inquiry) to include the jurisdiction of Germany. The current failure by the Home Secretary ("The First Proposed Respondent") to extend the terms of reference of same are unlawful in that they are irrational, and are in breach of our client's Article 8, 9, 10 and 11 rights pursuant to the European Convention on Human Rights ("ECHR").

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2. The issue

As you know the proposed applicant previously corresponded directly with your office¹ in relation to the ongoing Pitchford Inquiry into the activities of undercover police officers.

The Inquiry, which was set up in March 2015, will investigate undercover policing units including the Special Demonstration Squad (“SDS”) and the National Public Order Intelligence Unit including the extent to which they targeted individuals and groups such as political and social justice campaigns. Mark Kennedy, an undercover officer whose identity is now in the public domain, has featured prominently in the allegations to which the inquiry will seek to investigate.

The proposed applicant was subject to such surveillance activities. Last year Mr Kirkpatrick made direct representations to the Pitchford Inquiry and was formally granted core participant status,² as a political activist who was subject to the undercover police activities. The inquiry's terms of reference include the following tasks:

1. investigate the role and the contribution made by undercover policing towards the prevention and detection of crime;
2. examine the motivation for, and the scope of, undercover police operations in practice and their effect upon individuals in particular and the public in general;
3. ascertain the state of awareness of undercover police operations of Her Majesty’s Government;
4. identify and assess the adequacy of the:
 - (a) justification,
 - (b) authorisation, operational governance and oversight of undercover policing;
 - (c) selection, training, management and care of undercover police officers;

¹ <https://twitter.com/spiedupon/status/755119779757846528>

²A copy of the ruling can be found on the Inquiry webpage at: <https://www.ucpi.org.uk/rulings/>

5. identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing.

The Pitchford Inquiry does not presently cover the jurisdiction of Germany. However, it has now come to light that the undercover officer, Mark Kennedy has operated in Germany. Such activities have never been the subject of any investigation.

Mr. Kirkpatrick was subject to Mark Kennedy's surveillance activities in Germany.

Mark Kennedy visited Berlin and the homes of Mr. Kirkpatrick multiple times³ between the years of 2005 and 2010. The exact dates of these multiple visits should be well documented in police files in Britain, judging from Kennedy's public comments.

Kennedy himself admitted that he was in Germany, and that his "cover officers" of which we don't know who they were and for which police authority they worked, "were aware of everything I was doing. Every action I took had to receive something called an "authority" which covered me to infiltrate activist groups and be involved in minor crime such as trespass and criminal damage."⁴ Answers to multiple formal questions raised in the German Parliament have shown that Kennedy had contracts with German policing agencies, and such operations involving Kennedy and our client Kirkpatrick in Germany should be open to scrutiny as a part of the Pitchford Inquiry.

Mr. Kirkpatrick states that Mark Kennedy met him repeatedly in Berlin, where according to one press account Kennedy had been authorised to visit four times.⁵ Once during these visits in Berlin Kennedy made a proposal to Kirkpatrick to violently attack neo-nazis together, which appears to be a common agent provocateur tactic.⁶

³ http://powerbase.info/index.php/Mark_Kennedy:_A_chronology_of_his_activities

⁴ <http://www.dailymail.co.uk/news/article-1347478/Mark-Kennedy-Undercover-policeman-tells-story-8-years-eco-warriors.html>

⁵ <http://www.tagesspiegel.de/berlin/fall-kennedy-britischer-polizist-hatte-offenbar-auftrag-fuer-berlin/3797068.html>

⁶ <http://www.taz.de/!5127867/>

Kirkpatrick has repeatedly commented publicly on this issue⁷: "One day...Mark asked me out of the blue if I knew any places in Germany with Nazi issues. He said he had a 'crew' in England who could come and sort them out," claims Kirkpatrick.⁸ There has been no attempt we are aware of to refute these publicly made claims.

Mark Kennedy showed a lot of interest in Mr. Kirkpatrick's political activities concerning the protests against the G8 summit in Heiligendamm 2007. Mark Kennedy asked repeatedly about these activities. Mark Kennedy joined at least two protest preparation meetings in Germany which Mr. Kirkpatrick attended. During at least one meeting Mark Kennedy was provided with translation by Mr. Kirkpatrick.

Mr. Kirkpatrick and Mark Kennedy travelled together in Mark Kennedy's vehicle to one of the meetings in the state of Mecklenburg-Vorpommern, where it has been admitted that Kennedy was authorised to operate⁹. There is photographic evidence of Kirkpatrick travelling in Kennedy's vehicle.

During the time of the G8 2007 in Germany, Kennedy had visited Kirkpatrick in the building where Kirkpatrick and others coordinated press work.

At the time according to Mr Kennedy himself he was operating in his role as an NPOIU undercover officer, a unit which ordinarily does not operate in the jurisdiction of Germany.

We understand that our client was not the only activist whose activities were monitored by an NPOIU or SDS-officer in this jurisdiction. At least three other UK undercover officers whose actions are to be looked at in the UCPI are "Marco Jacobs"¹⁰¹¹¹²,

⁷ <http://www.spiegel.de/spiegel/print/d-76397376.html>

⁸ <https://www.theguardian.com/environment/2011/jan/14/undercover-police-officer-germany-row>

⁹ <http://www.andrej-hunko.de/presse/894-the-cross-border-undercover-operation-needs-an-international-independent-investigation>

¹⁰ [http://powerbase.info/index.php/Marco_Jacobs_\(alias\)](http://powerbase.info/index.php/Marco_Jacobs_(alias))

¹¹ http://powerbase.info/index.php/Marco_Jacobs_Undercover_Timeline#2007

¹² <https://www.theguardian.com/uk/2011/jan/19/undercover-police-officer-mark-jacobs>

Peter Francis¹³ and Bob Lambert¹⁴. Most concerningly, Peter Francis a former police spy-turned-whistleblower, has said that police officers sent abroad received “absolutely zero schooling in any law whatsoever”. “I was never briefed, say for example, if I was in Germany I couldn’t do, this for example, engage in sexual relationships or something else.” According to Francis, information obtained on a covert mission abroad was frequently shared with the Met’s local equivalent.¹⁵

We understand that our client was also not the only activist whose activities were monitored by Mark Kennedy in the jurisdiction of Germany. There are other activists who were in contact with Mark Kennedy who have already been granted Core Participant status, but they have not yet been able to provide statements about their time in Germany. There are also multiple other activists who had been in contact with other officers than Kennedy that have already been granted UCPI Core Participant status, but they have not yet been able to provide statements on this topic as they may so far have believed they have no recourse to justice in the jurisdiction of Germany. It is our strong feeling that many other people who were targeted in Germany by Kennedy and other UK undercover officers have recourse to receive access to justice in the jurisdiction of Germany, as a part of the UCPI. This is especially true, as the Metropolitan Police Service has formally apologised for their actions¹⁶ to a number of women duped into intimate relations, including for the actions of at least three former undercover police officers known to have been active in Germany.

Put simply, there can be no question but that our client has raised allegations of the utmost seriousness. It is unclear what statutory powers were used to permit Mr Kennedy to operate in this jurisdiction, which official granted Mr Kennedy power to operate in this jurisdiction, and on what basis any such power

¹³ <https://www.theguardian.com/uk-news/2016/jun/11/germany-asks-uk-to-widen-undercover-policing-inquiry-mark-kennedy>

¹⁴ “Undercover” by Evans and Lewis, Guardian Books, 2013: p. 133

¹⁵ <https://www.theguardian.com/uk-news/2016/jun/11/germany-asks-uk-to-widen-undercover-policing-inquiry-mark-kennedy>

¹⁶ “Claimants in civil cases receive MPS apology”:
<http://news.met.police.uk/news/claimants-in-civil-cases-receive-mps-apology-138574>

was granted. There is a high public interest in these issues being urgently clarified. It would be a question of the utmost public concern if an undercover officer were effectively permitted to operate without justification, authorisation, or oversight in Germany. In addition, there are grave concerns that the operations of Mr Kennedy violated our client's rights, as set out in Article 8, 9, 10 and 11 of the European Convention on Human Rights ("ECHR").

From any perspective, there is a clear need for an investigation to be urgently commissioned into the activities of Mark Kennedy in this jurisdiction.

The current failure by the UCPI to investigate allegations arising out of activities in Germany has left our client without any effective investigation into the activities of Mr Kennedy, and other NPOIU or SDS Officers, in this jurisdiction. Unlike in England and Wales (where there have been separate and parallel investigations into allegations about the actions of Mark Kennedy), there has been no investigation at all in this jurisdiction into the role played by undercover police officers in monitoring political activists. It would not be rational for the UK Government to conclude that there is a need for a judge-led inquiry into these allegations in England and Wales, but for there to be no such inquiry into the same allegations, involving the same activists and the same undercover officers, in Germany.

Our client Kirkpatrick wants to know why he was targeted by Kennedy in Germany over a period of years, although Kirkpatrick has never committed violent acts or been arrested or charged at any demonstration. Kirkpatrick wants to know who gave the orders for Kennedy to enter his private home, or to suggest he commit violent crimes. Kirkpatrick also wants to know if Kennedy played a role in interference with Kirkpatrick's press work during the time of the G8 2007 in Germany, as Kennedy had visited the building where Kirkpatrick coordinated press work.

After Kirkpatrick formally complained to them, the German government has also taken a formal position of requesting that the UCPI be extended to include Germany.¹⁷¹⁸

It is known that former UK undercover officers, including Kennedy, have been responsible for over 50 overturned unjust convictions.¹⁹²⁰ It must be examined as a part of the UCPI if any unsafe convictions in Germany must be re-examined as a result of the actions of UK undercover officers.

On 27th January 2016 the proposed applicant wrote directly to the German Bundesministerium des Inneren (Interior Ministry) raising his concerns, and in turn requesting that urgent representations were made to the Home Secretary to extend the terms of the Undercover Policing Inquiry. In the alternative, the proposed applicant asked that Germany would commission an Inquiry of similar structure and reference (to that of the Pitchford Inquiry) in Germany. Letters with the very similar content were sent to the German Interior Ministry by two Members of the German Parliament.

Given the fact the Inquiry was underway, and hoping for a quick decision, the applicant corresponded directly with the Home Office by way of a phone call, in which the applicant expressed concern that the Home Secretary should extend the terms of reference as a matter of urgency, given the fact the proceedings in question were underway. He was told by a Home Office Press Officer that the UCPI remit would stay limited to England and Wales, and that the Home Secretary was not minded to expand the terms of reference. Mr Kirkpatrick requested a written email confirming this which was received from a Home Office Press Officer on 29 January 2016 at 15:38.

¹⁷ <https://www.theguardian.com/uk-news/2016/jun/11/germany-asks-uk-to-widen-undercover-policing-inquiry-mark-kennedy>

¹⁸ <http://www.spiegel.de/politik/deutschland/mark-kennedy-bundesregierung-verlangt-aufklaerung-ueber-britische-spitzel-a-1096477.html>

¹⁹ <https://www.theguardian.com/law/2014/sep/24/prosecutors-covert-operation-miscarriage-justice-john-jordan>

²⁰ <https://www.theguardian.com/uk-news/2014/jan/21/drax-protesters-convictions-quashed-police-spy-mark-kennedy>

On 31th May 2016 the German Minister of the Interior wrote to a Member of the German Parliament, that the German Interior Ministry had asked the Metropolitan Police for intelligence on the activities of their undercover police officers in Germany. The Metropolitan police refused to answer that, but said that it sent the intelligence that the German Ministry asked for to the UCPI and thinks that it will be made public by the UCPI. The German Ministry of the Interior also wrote that it asked you to extend the Terms of Reference of the UCPI to include the activities of the British police officers in Germany.

It is the Applicant's respectful contention that the Home Secretary's decision so far to exclude Germany from the UCPI suffers from unreasonableness in the *Wednesbury* sense, as well as failing to give due consideration to our client's rights under the European Convention on Human Rights. In *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 K.B. 223 at 229, Lord Greene MR stated in the judgment of the Court of Appeal, "...there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority".

In the present case, our client had been the subject of undercover work conducted by Mr Kennedy in Germany. Currently, these matters cannot be examined under the Terms of Reference by which Sir Christopher Pitchford chairs the UCPI. Notwithstanding the Terms of Reference, however, Mr Kirkpatrick has been accorded Core Participant status in relation to matters which occurred in England, and there have been separate and parallel investigations into the activities of Mr Kennedy in England. In the circumstances, it would appear illogical to completely exclude a part of the circumstances involving Mr Kennedy and Mr Kirkpatrick on the sole basis that this excluded part occurred in another jurisdiction. As a result of such illogicality, it cannot be within the Home Secretary's power to refuse to empower Sir Christopher to enquire into undercover policing activities in Germany, in relation to NPOIU or SDS officers, solely because of a difference in jurisdiction, and such refusal must therefore, we respectfully contend, be *prima facie* *Wednesbury* unreasonable.

3. The details of the action that the respondent is expected to take

The Applicant expects that in accordance with her public law obligations the Home Secretary now urgently takes a decision in respect of the Applicant's previous request. It is further requested that the Respondent takes the decision to extend the terms of reference of the Pitchford Inquiry to include Germany.

4. The details of the legal advisers, if any, dealing with this claim

Ms. Dr. Anna Luczak
Kottbusser Damm 94
10967 Berlin
Germany

5. The details of any interested parties

Ministry of Interior of Germany

6. The details of information sought

The Applicant requests a full copy of all representations made by the Minister of Interior to the Home Secretary in respect of the application to extend the terms of reference of the Pitchford Inquiry.

7. Costs

The Applicant reserves all of his rights to draw this correspondence to the attention of the Court when determining any issue of costs.

8. The address for reply and service of court documents

As at number 4, above.

9. Proposed reply date

We would request that you reply within two weeks of the date of this letter.

We consider that this letter complies with the pre-action protocol.

A handwritten signature in black ink, appearing to be 'A. Luczak', written in a cursive style.

Yours faithfully
Dr. Anna Luczak, Lawyer