

Session B.4: Social Dimension of Security

**6th Future Security
Security Research Conference, Berlin
September 5th – 7th, 2011**



**The Case of the „Liechtenstein Tax CD“ in the
German Federal Constitutional Court
(„Bundesverfassungsgericht“)
(File No. 2 BvR 2101/09 of November 9th, 2010)**

**Leaking in the Name of Justice?
„Inside Jobs“ („Innentäterattacken“)
as a Strategy for (Tax) Law Enforcement?**

Outline

I. Case of the “Liechtenstein Tax CD”

1. Facts

2. Legal Arguments

Leading Questions

- **Leaking in the Name of Justice?**
- **Inside Jobs („Innentäterattacken“) as a Strategy for (Tax) Law Enforcement?**

I. Case of the “Liechtenstein Tax CD”

1. Facts
2. Legal Arguments

II. “Leaking”

1. Leaking for Money?
2. Leaking for the (perhaps ostensibly) Common Good?
3. Leaking in the Past and Leaking in the Present

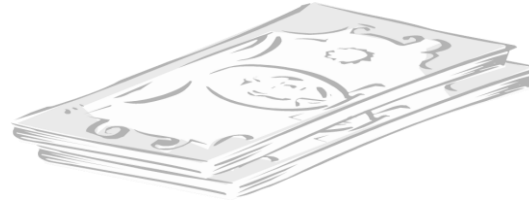
III. “in the Name of Justice?”

1. Using Leaked Data for Tax Law Enforcement?
2. “Law and Justice” and “Law versus Justice”
3. “Effective Law Ratio”

IV. “Inside Jobs” (“Innentäterattacken”)

V. “Strategy for (Tax) Law Enforcement”?

I. Case of the „Liechtenstein Tax CD“



1. Facts

- Return on investment (ROI) in the amount of 300 million Euros

2. Legal Arguments in a Nutshell

- Violation of Public International Law?
- „Ultra Vires“ ? No Competence of the Federal Intelligence Service?
- Violation of Data Protection Law and Unfair Competition Law?
- Exclusionary Rule?



Competence Portfolio

➤ **Professor of Law**

➤ **Legal Realist**

➤ **Case Law**

**Order of the Chamber of the Second Panel
of the Federal Constitutional Court**

(File No. 2 BvR 2101/09 of November 9th, 2010)



Paragraph 27:

„... the questions raised with the constitutional complaint are sufficiently resolved; they can be decided on readily using the standards developed in the jurisprudence of the Federal Constitutional Court.“

II. Leaking

1. Leaking for Money?



2. Leaking for the (perhaps ostensibly) Common Good?

Here also defined as „Leaking without Immediate Monetary Compensation“

3. Leaking in the Past and Leaking in the Present

a) More Data

b) More People with Access to More Data



III. „in the Name of Justice?“

1. Using Leaked Data for Tax Law Enforcement?

One voice: *„... would oblige the German government to choose this „appropriate“ and „necessary“ enforcement strategy“ **

2. „Law and Justice“ and „Law versus Justice“

Maybe there are unjust laws and there is unlawful justice

3. „Effective Law Ratio“

Information technology instead of law oriented strategies

* J. Lang. Kapitalvermögen im Spannungsverhältnis der Steuerflucht zur Steuergerchtigkeit, in: U. Burgard / W. Hadding / P.O. Mülbart / M. Nietsch / R. Welter, Festschrift für Uwe H. Schneider zum 70. Geburtstag, Köln, 2011, p. 737 (742)

IV. „Inside Jobs“ (Innentäterattacken)

Do the persons, having access to certain data, become door openers for law enforcement strategies?

„Paying money to receive information belongs to the usual practices of government activity. Therefore, an effective clarification of the facts, in particular by intelligence services, is simply unthinkable without providing services in return. Compensation for information to clarify offenses by offering a reward or payment to informants is also part of the day-to-day business of criminal investigation work. Using evidence that was obtained unlawfully by private persons is regularly admissible.“

(Kaiser, Zulässigkeit des Ankaufs deliktisch erlangter Steuerdaten, NStZ 2011, 383)

V. „Strategy for (Tax) Law Enforcement?”



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- **Battle against child pornography, organized crime and hate speech?**



- **Case: fictitious marriage (Scheinehe) with an alien? ***

* See order of the Hamburg High Administrative Court, file no. 3 Bs 396/05 of 2007-03-21



**Your patience was gracious
and your critique would be
input for me**