

CASE STUDY

SLAPP IN GERMANY



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1. INTRODUCTION

It's not easy to find *the* classical SLAPP case from Germany. The German legal community is as of yet not sure how to determine the definition of strategic legal abuse to keep public participation down. **Disproportionate lawsuits** against journalists are considered to match the requirements in any case, yes - but what about compensation claims as a demand to protesters? If this was to be counted as a strategic and abusive proceeding against public participation, helping plaintiffs to move the evaluation of their cases from the law of assembly to questions of tort liability or property rights, then there would be a whole new focus on this matter regarding the large and diverse number of German environmental protests, some experts argue.

Apart from that, many of those “classical” SLAPP victims still prefer to **remain silent** and not be seen and don't feel secure enough yet to present their story to a broader public (or even in a case study like this one). There is still a long way to go in terms of anti-SLAPP consciousness.

One case that clearly breaks this pattern and is both clearly a SLAPP case, representing both activism and an information campaign in two EU countries, and on top of that was moved into the broad public early on is the case from the **Munich Environmental Institute** and the author **Alexander Schiebel** getting sued by a **South Tyrolean** (Italy) official and more than 1,300 apple farmers. This case even got the attention of the European Commissioner for Human Rights, who mentioned the legal action against those who criticize pesticides in South Tyrol as an example of abusive legal action against public participation and an attack on freedom of expression in a comment on the issue of SLAPPs¹.

In September 2017, **Arnold Schuler**, the then deputy governor of South Tyrol and provincial councillor for agriculture, filed criminal charges against employees of the

¹ <https://www.coe.int/en/web/commissioner/-/time-to-take-action-against-slapps>

Munich Environmental Institute, Alexander Schiebel, the author of the book "Das Wunder von Mals" (The Miracle of Malles), and its publisher Jacob Radloff, the managing director of oekom verlag, which had published the book. More than 1,300 farmers joined the charges.

The reason for the **criminal charges** was the criticism of the environmental institute of Munich and the book author at the pesticide employment on the South Tyrolean fruit plantations. More than 18,000 hectares of cultivated land in the province are used to grow apples. Around ten per cent of the total apples harvested in Europe come from there. Some apple orchards are treated with pesticides more than 20 times a year. The number of pesticides used became the subject of the investigative book "**The Miracle of Mals**" and a critical campaign by the Munich Environmental Institute.

Three years after the criminal complaint by Arnold Schuler, the **Italian public prosecutor's office** in 2020 brought charges of defamation against Karl Bär, an employee of the Munich Environmental Institute, and the book's author Alexander Schiebel at the regional court in Bolzano.

Alexander Schiebel was acquitted on May 28, 2021. One year later, on May 6, 2022, the criminal court case against Karl Bär and the Umweltinstitut München also ended.

The following **report** explains the background of this sensational case, as well as the strategies of both sides. Finally, we take a look at the consequences of the legal dispute, which on both sides of the Alps became a symbol for strategic abuse of rights as well as successful counter-strategies.

2. State Councilor of South Tyrol Arnold Schuler & 1370 farmers VS Alexander Schiebel & Umweltinstitut Muenchen: A significant cross border SLAPP case in Germany & Italy

2.1 Facts of the Case

The Book: In his **book** “The Miracle of Mals”² and in the film of the same name³, Alexander Schiebel introduces activists and organic farmers from Mals and accompanies the story of their struggle for a pesticide-free community from a documentary and personal point of view.

In the **South Tyrolean municipality** of Mals, a municipal ban on synthetic chemical pesticides was passed in a referendum in 2014. The Mals municipal council implemented the referendum in an ordinance⁴ that does not completely ban the **use of pesticides** but makes it virtually impossible through severe restrictions. The South Tyrolean provincial government then limited the ability of municipalities to regulate pesticide use with a new law in 2016.

Alexander Schiebel worked on these developments with his book and film. Since its publication in September 2017, "The Miracle of Mals" has achieved public and media attention. Through intensive press work, numerous interviews and film screenings in Germany, Austria and Italy, author and activist Alexander Schiebel helped shape the coverage of the Mals case. The book sold over 10,000 copies in German-speaking countries.

² Alexander Schiebel: „Das Wunder von Mals. Wie ein Dorf der Agrarindustrie die Stirn bietet“, 256 pages, Softcover, ISBN 978-3-96006-014-7, 19,00 Euros (D). More information regarding the book, incl. reading sample & cover download (in german): <https://www.oekom.de/buch/das-wunder-von-mals-9783960060147>

³ Documentary “Das Wunder von Mals”, available as video-on-demand (in german): <https://vimeo.com/ondemand/wundervonmals>

⁴ Text of the ordinance in italian and german:

https://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/Verordnung_ueber_den_Einsatz_von_Pflanzenschutzmitte_In_im_Gemeindegebiet_zweisprachig.pdf

More than 13,000 viewers saw Schiebel's documentary of the same name in around 250 cinema screenings, most of which were organized by Schiebel himself and at which he was often present in person.

The NGO: As a Europe-wide environmental protection organization that has been fighting against the use of synthetic chemical pesticides for many years, the **Munich Environmental Institute** recognized early on what pioneering work the activists in Mals were doing and has been supporting them for many years.

The Environmental Institute considered Mals' significance as the first pesticide-free municipality in Europe to go far beyond the borders of Italy. The Mals referendum is regarded internationally as proof that local, direct democracy can bring about decisive change. A book about Mals has even been published in the USA. Citizens' initiatives, for example in the Venetian town of Conegliano or in the Franconian town of Miltenberg, also fought locally against pesticides and refer to the Mals example.

In December 2015, the Environmental Institute started a support **campaign** for the crowdfunding efforts of Alexander Schiebel for the production of the movie "The Miracle of Mals". It aimed at ensuring, above all through its own reporting and campaigns, that the Mals fight against pesticides was also heard outside South Tyrol.

In March 2017, the Institute started an online-campaign called "support the pesticide rebels of Mals". It called on the South Tyrolean governor to support the Mals pesticide ban and make it a model for all of South Tyrol. In April of the same year, members of the Institute travelled to Mals, together with supporters from all over Germany, to publicly reaffirm its solidarity with the opponents of pesticides.

In August 2017, the Environmental Institute launched the campaign "**Pesticide Tyrol**" (as a variation of 'South Tyrol'), combining a poster campaign and the website pestizidtirol.info, both aimed at drawing attention to the contradiction between the idyllic South Tyrolean tourism advertising and the intensive fruit farming. Designed in the style of the tourism marketing campaign for South Tyrol, a poster was placed for a few days in

Munich's central Karlsplatz/Stachus subway station. Instead of "South Tyrol is looking for you," it read "South Tyrol is looking for clean air. South Tyrol is looking for itself." The South Tyrol logo was ironically altered to "Pestizidtirol". The action was accompanied by the homepage [pestizidtirol.info](http://www.pestizidtirol.info).⁵

On the same day, the regional government of South Tyrol announced its intention to take **legal action** against the Munich Environmental Institute. After only one day, the poster was taken down. On request, the poster company informed the Environmental Institute that this was due to a legal threat.

Also in August 2017, members of the Munich Environment Institute were again in South Tyrol to support a protest action by local pesticide opponents. Around 30 people in protective suits and wearing breathing masks cycled along the Etschtal Trail, which runs for more than 100 kilometres through orchards. The activists wanted to draw attention to the problem of pesticide drift from the plantations to organic farms, private gardens, playgrounds, and the bike path, which is popular with tourists.

In September 2017, State Councilor of South Tyrol Arnold Schuler **filed charges** against the Munich Environmental Institute and the author and filmmaker Alexander Schiebel.

⁵ This website is no longer online. A screenshot of the original and a typed text of the homepage is still available (in german) at:
http://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/20170908_Screenshot_und_Text_der_Webseite_www.pestizidtirol.info.pdf

2.2 Applicable Laws

State Councilor Arnold Schuler was joined by more than 1370 farmers in filing criminal charges against the Munich Environmental Institute and the author and filmmaker Alexander Schiebel at the Bolzano public prosecutor's office.

The NGO: Six former and current members of the board of the Environmental Institute as well as Karl Bär, the institute's Agricultural and Trade Policy Officer, were accused of **defamation**. The plaintiffs claimed that the campaign "Pestizidtirol" (Pesticide Tyrol) of the Munich Environmental Institute was a case of defamation to the detriment of South Tyrolean agriculture and the province.

Defamation, Art. 595 of the Italian Penal Code⁶:

Whoever, outside the cases indicated in the preceding article, by communicating with several persons, offends the reputation of others, shall be punished by imprisonment of up to one year or a fine of up to 1,032 euros.

If the offense consists of the attribution of a specific fact, the punishment shall be imprisonment of up to two years or a fine of up to 2,065 euros.

If the offense is given by means of the press or any other means of publicity, or in a public act, the penalty is imprisonment from six months to three years or a fine of not less than 516 euros.

If the offense is given to a political, administrative or judicial body, or to a representation thereof, or to an authority constituted as a college, the penalties are increased.

In addition, the Environmental Institute was accused of counterfeiting the **umbrella brand "Südtirol" (South Tyrol)**. The accusation of trademark counterfeiting referred to

⁶ Translation of the authors, source: <https://www.altalex.com/documents/news/2014/10/28/dei-delitti-contro-la-persona>

the "Pestizidtirol" logo, which was created by the Environmental Institute based on the logo of the South Tyrolean tourism campaign.

Counterfeiting, alteration or use of distinctive signs of intellectual works or industrial products, Art. 473 of the Italian Penal Court⁷:

Any person who, having knowledge of the existence of the industrial property title, counterfeits or alters trademarks or distinctive signs, domestic or foreign of industrial products, or any person who, without being an accomplice to the counterfeiting or alteration, makes use of such counterfeited or altered trademarks or signs, shall be punished by imprisonment from six months to three years and a fine from 2,500 euros to 25,000 euros.

Penalties of imprisonment from one to four years and a fine from 3,500 euros to 35,000 euros shall be imposed on any person who counterfeits or alters domestic or foreign industrial patents, designs or models, or, without being a party to the counterfeiting or alteration, makes use of such counterfeited or altered patents, designs or models.

The crimes provided for in the first and second paragraphs are punishable provided that the rules of domestic laws, EU regulations and international conventions on the protection of intellectual or industrial property have been observed.

After Arnold Schuler filed the charges, the public prosecutor's office in Bolzano investigated for more than two years. During the **investigations**, it also requested legal assistance from the public prosecutor's office in Munich, Germany. Without success: The Munich I Chief Public Prosecutor's Office refused to cooperate⁸ - with reference to the German legal situation and the right to freedom of expression enshrined in Article 11 of the

⁷ Translation of the authors, source: <https://www.altalex.com/documents/news/2014/04/23/dei-delitti-contro-la-fede-pubblica>

⁸ The letter from the Munich I Chief Public Prosecutor's Office (in german) can be found here: https://www.umweltinstitut.org/wp-content/uploads/2022/11/20190411_UIM_Schreiben_Oberstaatsanwaltschaft-Muenchen-I.pdf

Charter of Fundamental Rights of the European Union - *Freedom of expression and information*⁹.

Nevertheless, the public prosecutor's office in Bolzano brought charges of defamation against Karl Bär. On September 15, 2020, the trial against him took place in Bolzano. More than one and a half years after the opening of the trial, the criminal proceedings against Karl Bär ended on 6.5.2022 with an **acquittal**. In addition to Karl Baer, six current and former board members of the Umweltinstitut München were also under investigation at the time. The public prosecutor's office in Bolzano had requested that these investigations be discontinued. Regional Councilor Schuler and a large number of farmers objected to this. However, on October 22, 2020, the Provincial Court of Bolzano confirmed the prosecutor's request to discontinue the investigations. The proceedings had been discontinued.

The Author: Equally in September 2017, Arnold Schuler filed charges against **Alexander Schiebel**, filmmaker and author of the book "Das Wunder von Mals" (The Miracle of Mals) and against Jacob Radloff, managing director of the publishing company "oekom verlag", which published the book. Here, too, more than 1370 farmers joined the complaint. The accusation here was also defamation and referred to a text passage¹⁰ in the book "The Miracle of Malles", in which Alexander Schiebel also criticizes the use of pesticides in South Tyrol and the behavior of the farmers' lobby and the regional government.

The trial against Alexander Schiebel was opened on 28.5.2021 and immediately ended with an **acquittal**. The judge based his verdict on the fact that the facts of defamation were not present.

⁹ See <https://fra.europa.eu/en/eu-charter/article/11-freedom-expression-and-information>

¹⁰ You can read the excerpt from the book to which special reference is made in the complaint, here (in German): https://www.umweltinstitut.org/fileadmin/Me-diapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/Ausschnitt_aus_Das_Wunder_von_Mals_.pdf

As in the case of the board members of the Munich Environmental Institute, the public prosecutor's office requested that the investigations against Jacob Radloff be discontinued. The proceedings against the managing director of oekom Verlag were also discontinued after the hearing on October 22, 2020.

2.3 Plaintiff's Strategy

In support of the accusation of defamation, the state counsellor defended the intensive fruit cultivation in detail: The **pesticides** had all passed the strict European approval procedure, the means were also used as sparingly as possible and there was no reason to worry about the biodiversity in the plantations and the health of residents and consumers.

After a press conference held by the Environmental Institute in Bolzano a week before the start of the trial and a wave of **public outrage** over the South Tyrolean attack on critics of pesticides, the regional government had announced in a press release on September 14, one day before the start of the trial, the decision to withdraw the charges against the Environmental Institute and the other defendants.

Despite the announcement of the South Tyrolean government of the previous day to withdraw the charges of defamation against pesticide critics, the criminal proceedings against Karl Bär were opened. Because up to the beginning of the process, no **confirmation** was presented to the attorneys of the defense on the part of the Bolzano regional court over the withdrawal of the announcements. On the contrary, on this day the Provincial State Councilor Schuler, together with two representatives of the South Tyrolean fruit industry, admitted themselves as joint plaintiffs.

They still offered to **withdraw** the charges, but now attached conditions to this: They demanded that the Environmental Institute refrains from publishing the data on the use of pesticides in South Tyrol that had been seized in the proceedings.

2.4 Defense Strategy & Course of proceedings

By evaluating the pesticide use records of hundreds of South Tyrolean fruit farms, the Munich Environmental Institute insisted on being able to **prove** that there is a factual background for the statement that South Tyrol has a pesticide problem, even after charges have been filed.

The preparation for the defense in court as well as in public had taken countless hours of work as well as a lot of money. The press conference held by the Environmental Institute one week before the start of the trial in Bolzano prompted the provincial government to announce that it would withdraw the charges - but this did not happen. Thus, Karl Bär took his seat in the dock for the first time in Bolzano on September 15, 2020.

On the occasion of the opening of the criminal court proceedings, a **protest rally** in defense of the right to freedom of expression and freedom of information took place in the square in front of the court. More than 100 organizations from around the world declared their solidarity with the defendants in a public statement printed in the Italian newspapers *La Repubblica* and *La Stampa*. On the two online platforms *WeMove* and *Campact*, over two hundred thousand European citizens demanded that the charges be withdrawn.

In addition to this supporting program, the Environmental Institute agreed to present and discuss the results of the **analysis** of the South Tyrolean pesticide data at a joint event with the South Tyrolean fruit industry.

On October 28, the Regional Court of Bolzano announced the decision to **discontinue the proceedings** against six other members of the Environmental Institute and against the publisher of Alexander Schiebel's book "The Miracle of Mals".

Two months after the start of the trial, Karl Bär traveled to Bolzano again. Because on November 27, the plaintiffs were supposed to announce in court whether they wanted to withdraw the ads against pesticide critics in South Tyrol. But in the weeks before, the lawyers had only been able to collect 1320 of the required 1376 proxies for the withdrawal

of the ads, partly because of the tense Corona situation at that time. So the defendant and the judge Ivan Perathoner agreed to extend the deadline until January 14, 2021.

Two days before the third day of the trial, Provincial Councilor Arnold Schuler and two representatives of South Tyrolean fruit cooperatives **withdrew** their joint plaintiffs in the trial for defamation against Karl Bär. Since 1376 criminal charges against the pesticide critic still remained, the trial nevertheless had to be continued.

The third day of the trial against Karl Bär, which was actually scheduled for January 14, had been postponed in the meantime to May 28 2021. On this day, The Austrian book author and pesticide critic Alexander Schiebel was acquitted of the charge of defamation.

On July 12, 2021, Arnold Schuler and 1373 South Tyrolean fruit growers had finally withdrawn their charges against Karl Baer - more than ten months after the regional government had first announced this. However, a pair of brothers persisted with the charges, so that the trial had to continue. They were summoned as witnesses by the public prosecutor's office for the fourth day of the trial to present the reasons for their adherence to the criminal charges. However, one brother withdrew his complaint in time for the fourth day of the trial on October 29, while the other stood by it. The criminal court proceedings also continued with a single remaining plaintiff.

More than a year after Karl Bär had to take his place in the dock for the first time in Bolzano, the fourth day of the trial still did not deal with the real issue - the high use of pesticides in the South Tyrolean apple orchards and the criticism of the Environmental Institute. The only remaining plaintiff did not appear at the trial, although he had been summoned as a witness by the public prosecutor's office. The **hearing** had to be adjourned again. In order to guarantee the presence of the plaintiff on January 28, 2022, Judge Ivan Perathoner ordered that he be picked up by the police on that day.

On the fifth day of the South Tyrolean pesticide trial, the last plaintiff surprisingly withdrew from the proceedings. Dr Tobias Gritsch, who had been called as a **witness** by the public prosecutor's office, agreed to withdraw his criminal plea and thus agreed not to

take the dispute about pesticide use in South Tyrol to court again. Thus, 16 months after the start of the trial in September 2020, one of the two accusations against the Environmental Institute, namely the accusation of defamation, was finally off the table.

After that, the only question left was whether the satirical alteration of the South Tyrolean umbrella brand to the "Pestizidtirol" logo on a poster in the style of South Tyrolean tourism advertising was trademark counterfeiting.

On the last day of the trial, the prosecutor moved to **amend** the indictment for the alleged offense of trademark counterfeiting to defamation. The judge accepted the amendment, resulting in an immediate acquittal. The judge's reasoning: inadmissibility of the proceedings according to the principle "where there's no plaintiff, there's no judge." Thus, after twenty months, the South Tyrolean pesticide trial ended with a great victory for freedom of information and expression.

3. Impact of the case and conclusion

Due to the decision to fight the case out in the open, the Environmental Institute continued its **engagement** in South Tyrol.

Between March - October **2018**, Air samples were taken every three weeks at four locations in the Vinschgau Valley and analyzed for pesticide residues. From mid-March to the end of August, the air was found to be continuously polluted with several agents.

In March **2019**, the publication of the results of the measurement project triggered a great media response in Italy, Germany, Austria and Switzerland. Karl Bär, officer for agricultural and trade policy at the Munich Environmental Institute, discussed live with State Councilor Arnold Schuler on South Tyrolean television.

In February **2020**, the Environmental Institute criticizes in an open letter to the Südtiroler Beratungsring für Obst- und Weinbau (South Tyrolean Advisory Council for Fruit Growing and Viticulture) the recommendation to buy and use the insecticide

chlorpyrifos-methyl, which was only recently banned by the EU Commission, once again during the use-by period.

All these steps were taken even *before* the process came to an end in May **2022**. The Environmental Institute arguably found a way to deal with the threat through the charges which not only helped the trial to come to a positive end, but even enabled the NGO to continue their work, with even more public impact.

This confident and public approach to its case made the Environmental Institute Munich - alongside a petition signed by over **200,000** people which the Institute also helped to realize - one of the key drivers of the efforts that led to the dynamic around the anti-SLAPP draft directive by the EU Commission. The more Organizations and individuals threatened by SLAPPs are able to respond in such a firm and fearless way, the shorter and less successful the inglorious chapter of SLAPPs in Europe may end up being.