

# German top banker and Mannesmann executives buy themselves free

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The long-running trial of former executives at German telecommunications giant Mannesmann, who faced serious corruption charges, has been halted after the defendants agreed to pay several million euros in exchange for no criminal charges being placed on their records. The decision to cut short the trial has met with widespread public indignation in Germany. Many journalists and some politicians have also expressed criticism.

The politicians are concerned that many ordinary people will draw the obvious conclusion that super-rich executives can literally buy their way out of prison and that this will damage “democracy” and “the public perception of justice.” They correctly fear that such provocative actions could seriously disrupt social relations in Germany. How can Germany’s coalition government continue to justify its daily attacks on social and democratic rights, while the ruling business elite and the judiciary demonstrate their palpable contempt for the rule of law?

For one of the accused, Deutsche Bank CEO Josef Ackermann, the payment of €3.2 million (US\$4.2 million) amounts to just two months’ salary; he was then able to leave court a free man. His co-defendant, former Mannesmann chief Klaus Esser stumped up €1.5 million (US\$1.97 million), ex-chairman of the board Joachim Funk paid one million (US\$1.3 million) and the former IG-Metall union leader Klaus Zwickel, who was also involved in the scandal, coughed up €60,000 (US\$79,000).

The Düsseldorf regional court negotiated a deal with defence attorneys that enabled the six accused to walk free in return for payments totalling €5.8 million (US\$7.6 million).

In comparison with the bonuses and remuneration worth at least €60 million (US\$79 million), sanctioned by the Mannesmann board of directors to which all the accused belonged at the beginning of 2000, the recent court payment reveals the bargain basement price at which members of the business and finance elite are able to purchase their freedom in court.

The payments were made following the take-over of Mannesmann by the British mobile phone company Vodafone. Esser alone, company chairman at that time, took home a good €30 million (US\$39 million), chairman of the board Funk

received €4.6 million (US\$6 million) and 18 further members of the board benefited. The then-chairman of the IG-Metall union, Zwickel, as well as works council chairman Jürgen Ladberg, both belonged to the board and had voted for the payments.

The Düsseldorf regional court had had to recommence the Mannesmann trial at the end of October, after acquitting all the accused in 2004. In 2005, the Federal High Court had reversed these scandalous acquittals and had ordered a new trial. The judgement of the High Court was unequivocal: the acquittals were wrong and the lower court’s evaluation of the evidence was full of holes.

In contrast to the regional court, the High Court judges found evidence that the Ackermann, Esser and Zwickel had committed a criminal breach of trust. Boards of directors are not “Lords of the Manor, but managers of an estate,” their verdict read—hence the second trial.

At the conclusion of the recent proceeding, presiding judge Stefan Drees, confronted by accusations that the defendants had bought their way out of jail, referred to the criminal code and made some very revealing remarks.

“The longer the trial continues, the more the public interest in a criminal prosecution and the possible guilt of the defendants diminish,” Drees asserted.

Each year, the German courts halt thousands of trials in return for payment, Drees said, and added, “It does not require close examination to see that in most cases the accused do not enjoy particularly large incomes or fortunes.” The conclusion drawn could not be more cynical: the constitutionally guaranteed notion of equality means that such opportunities should also be made available to the “wealthy accused.”

Furthermore, Drees justified the settlement in favour of the accused by reference to the “exceptional public interest” generated by the trial over a long period of time, which meant they faced “an above average burden.” The conclusion of the trial had left the question open as to whether the accused had committed a criminal breach of trust or any illegal acts. On the scale of the payments made by the defendants, Drees said, “These may be incomprehensible in view of the remuneration of top earners today, however, such is the current law.”

Ackermann’s attorney, Eberhard Kempf, one of Germany’s

most expensive lawyers (and in his youth, a Maoist), justified his motion to halt the proceedings with the brazen statement, “Public interest in clearing this case up is now largely satisfied.”

In reality, wide layers of the public did not support abbreviating the Mannesmann proceeding. A recent opinion poll conducted for *Stern* magazine found that 88 percent of those surveyed opposed the ending of the trial.

The daily newspapers and on-line forums were full of indignant readers’ letters. Many quoted a well-known saying, “The little man gets hanged, but the big guys go free.” Often the comments were even sharper and referred directly to deep social divisions in Germany.

A letter to the *Berliner Zeitung* gave the following, quite plausible advice: “It is very pleasing to read that Herr Ackermann and the other accused are able to walk free in exchange for a cash payment. This means that in future, those with a normal income or on welfare payments should also purchase their freedom for the sum of one cent. I would recommend that all those who appear in court should make an appropriate request with reference to the decision made in Düsseldorf. The same rights and the same financial burdens for all! In fact, what would have been fair and appropriate in the case of Ackermann would have been a payment from his own pocket of €140 million [US\$184 million].”

Behind the abrupt ending of the trial lie circumstances that have so far received little attention in the media.

On the one hand, the case concerned the reputation of Deutsche Bank, the largest bank in Germany and one of the largest in the world, as well as its CEO. For both, a great deal was at stake. A guilty verdict against Ackermann would have had serious consequences for Deutsche Bank. He had vowed to resign if convicted.

Ulrich Hocker, managing director of the German Shareholders Protection Association (DSW), welcomed the decision with the words: “An end had to be found that avoided damaging Deutsche Bank—and this has now happened.” As a result, Ackermann’s position as CEO remains unquestioned.

Many insiders take the view that Ackermann’s position in the bank has even been strengthened by his surviving the trial. As was to be expected, the “acquittal second class” was unanimously welcomed by the financial elite.

It is now clear that extensive horse trading was carefully carried on behind closed doors. State attorneys and the accused had bargained for weeks in secret over the scale of the payments. All those involved wanted to prevent further investigations and any new charges emerging. This was obviously the case for Ackermann, Esser, Zwickel and the others, because they could easily have faced prison sentences. The public prosecutor’s office and the court also had an interest in ending a trial, with explosive political implications, that could have gone on for years.

The second Mannesmann trial took just under six days, to the

surprise of all, since the chairman of the judges had originally planned for 26 days of hearings.

What is the significance of this trial?

It could be simply written off as a farce. But it was more than that; it demonstrated to a wider public the extent of the social and legal inequalities in Germany today. The supposedly neutral judicial system revealed its true nature—as the purveyor of class justice. In the matter of the 2005 elections, when the Schröder government threw in the towel, succumbing to the pressure of big business to install an even more right-wing government, the Constitutional Court and the Federal President supported this undemocratic solution.

After more than three years a trial, which has been called the most spectacular trial of big business figures in post-war German history, has suddenly ended.

After the trial was stopped, the *Süddeutsche Zeitung* asked with some astonishment: “What is and what is not permitted in the highest echelons of the economy? What should be made of the statement of the Karlsruhe criminal division that it is now ‘virtually inconceivable’ that the accused, who were active in leading positions in the German economy, could have considered themselves entitled ‘to take arbitrary decisions about the millions in corporate assets entrusted to them’?”

The Düsseldorf court clearly decided this question in favour of the accused.

In light of recent corruption cases at major German companies such as Siemens, Volkswagen, and others, even business-friendly politicians are calling for the “reform of corporate law.” What they mean by this—and this conclusion has also been drawn from the Mannesmann trial by the business elite—is that legal mechanisms have to be established to ensure that million-euro payments made to German executives, commonplace in the US and Britain, in future remain unchallengeable and removed from the public domain.



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