

# Criminal charges dropped against former German bank chief

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German writer Bertolt Brecht once posed the question: which is the bigger crime, robbing a bank or founding one?

On July 1, the public prosecutor's office in Düsseldorf reported that it had dropped its investigation of the former head of IKB bank, Stefan Ortseifen, on charges of stock market manipulation and embezzlement.

Despite the fact that Ortseifen drove IKB to the brink of bankruptcy by investing huge sums of bank customers' money in US junk bonds, he will not be prosecuted. Although the rescue of the bank has cost the German taxpayers billions of euros, criminal proceedings against Ortseifen are to be dropped.

In fact compared to the scale of the losses incurred by the bank as a result of the investment practices encouraged by Ortseifen, the accusations remaining against him are petty. Ortseifen is accused of making an overly positive assessment of the state of the bank's situation in a press release issued by the executive committee on July 20, 2007. This then encouraged investors to increase their portfolio of IKB shares.

Just one week after the press release, IKB confronted insolvency due to its involvement in the US mortgage market. Beginning July 30, 2007, the bank suffered a series of catastrophic losses in its share price. The German federal government and the federal and state banking agency, KfW, then moved to rescue IKB at a cost of around 10 billion euros of taxpayers' money. In September 2008 IKB was sold to US financial firm Lone Star for approximately 140 million euros.

In addition, Ortseifen is alleged to have deprived IKB of around 120,000 euros by ordering extensive building alterations to the "executive committee house" of the bank. Although he was the exclusive permanent

resident of the house, its rent had not been suitably adjusted. He had also installed high-quality loudspeaker boxes without the bank's permission.

There will no charges of embezzlement in connection with the huge investments of funds made by IKB over many years in American junk bonds. The most the IKB executive committee has to fear is the claim it acted negligently—a charge that does not involve criminal prosecution, as the public prosecutor's office explained. To put it another way: there is no evidence, goes the argument, that Ortseifen and his cohorts intended to damage anyone with their investment banking practices.

Legally speaking, this is an astounding conclusion. Intent is not usually assessed according to whether the perpetrator intentionally seeks to do damage, but rather on the basis that he or she was prepared for the eventuality that damage would be done. The hope that "everything will turn out all right in the end" was rejected long ago as a legal argument—even by the Reichsgericht, the predecessor of the modern German Supreme Court of Justice. And anyone who deliberately endangers funds entrusted to their keeping is guilty of felony, according to traditional criminal law.

According to the *Süddeutsche Zeitung* in March, the alarm bells began to ring some time ago inside IKB. This was clear from a report issued by the auditors PwC, the newspaper notes. PwC learned that a draft report drawn up for the bank in January 2004 and distributed to IKB's executive committee warned of "the possibility of not insignificant risks." The draft was then withdrawn, because it did not measure up to "the desire for extensive changes to the contents of the report." In the event, Lone Star ensured that the report was not published by PwC—against the express wishes

of small shareholders.

Two years later, the subsidiary IKB Credit Asset Management GmbH (CAM) was founded as a company dealing specifically in highly speculative transactions. Ortseifen and three other members of IKB sat on the CAM board. According to the PwC report, from this vantage point IKB's executives were informed of the bank's junk bond speculations from the outset. The minutes of the first meeting of CAM's executives on October 26, 2006, stated, "The house market in the US is cooling down faster than generally expected" and the "probability of a worst case scenario has increased."

The *Süddeutsche Zeitung* reported last year the comments of "an IKB insider" who declared that the bank had already in 2005 sought to cover up its speculative transactions with balance sheet tricks, and then sought to recuperate its losses by entering the US housing market. In addition, IKB also introduced a so-called "limit system," aimed at assessing the risks involved in its investment strategy.

The newspaper quotes an expert on risk management who declares that, "Nevertheless there was in practice no assessment made of the risks involved, otherwise IKB would not have ended up in such a precarious position. IKB either ignored the limit system, or had installed it merely pro forma to satisfy calls for financial control."

Despite these various actions, which suggest that IKB's executive did not naively undertake its high-risk speculative transactions, the bank's officials will not be hauled into court to answer for their alleged crimes. When the boundary between criminality and the naked greed for profits becomes a gray area, the court is only too willing to accept the presumption of innocence on the part of the bankers.

In the handful of articles dealing with the case, the media presents it as a precedent for other banks. The *Financial Times Deutschland* wrote, "In comparable cases investigators also confront the problem of proving that former bank managers undertook punishable actions. A manager can be only be prosecuted on charges of embezzlement when it is proven he acted with intent. Preliminary investigations have also been undertaken by the authorities against ex-managers and former supervisory board members of the HSH Nordbank, the Saxonia LB and the Hypo Real Estate, which has now been virtually nationalized."

Backing for the decision taken by the Düsseldorf public prosecutor's office was given one day later by a similar court in Frankfurt-Main. Investigations into the billions of euros in aid to IKB by the KfW are to be terminated, because, as the *Handelsblatt* writes, the job of the KfW is to prevent "the collapse of banks which are judged to be important."

Rounding out the picture, the regional court in Frankfurt last week delivered a verdict awarding sacked KfW board member Peter Fleischer the sum of one million euros in wages and bonuses. Fleischer was dismissed without notice from the board at the end of September 2008. He failed to stop the transfer of 320 million euros to the American investment bank Lehman Brothers, although the latter was already bankrupt at this time.

While any serious prosecution of those responsible for lucrative and ultimately disastrous financial transactions becomes increasingly unlikely, one thing is certain: the working population, which bears no responsibility for the crisis, will be punished in the form of higher taxes and declining social benefits, as the state continues to prop up the banks with taxpayer money.



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