

**Federal Criminal Court**

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Reference number BB 2015.36+37

**Decision of June 19, 2015  
Objections Chamber**

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Composition

Federal Criminal Judge Andreas J. Keller, Chair,  
Cornelia Cova and Nathalie Zufferey Francioli,  
Court clerk Chantal Blättler Grivet Fojaja

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Parties

1. **Kale Kepekaio GUMAPAC**, 15-1939, 20th Avenue, HI 96749, US-Kea'au,
2. [REDACTED], 3061 Kaohe Road, HI 96754, US-Kilauea,  
Both represented by David Keanu Sai, HI 96805-2194, US-Honolulu,  
delivery address: c/o Michico Testini, avenue Eugène Lance 44, 1212  
Grand-Lancy

Petitioners/Appellants

**vs.**

**OFFICE OF THE FEDERAL ATTORNEY GENERAL**, Taubenstrasse 16, 3003  
Berne,

Defendant of the Application/Appeal

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Subject

New time limit (Art. 94 para. 2, StPO)

**The Objections Chamber states:**

- that by way of a letter dated January 21, 2015, [REDACTED] (henceforth [REDACTED] “objector” or “petitioner”) and his representative David Keanu Sai made a criminal complaint with the Office of the Federal Attorney General, stating that [REDACTED] was a victim of a war crime according to Art. 115 StPO, because during the years 2006-2007 and 2011-2013, he had paid taxes to US-American authorities in Hawaii without justification; that [REDACTED], in addition, was the victim of fraud, committed by the State of Hawaii, because together with his wife he wanted to acquire a real estate property, which however on the basis of the lacking legitimacy of the official authorities of Hawaii to transfer the property title, was not possible; that in consequence, the governor of the State of Hawaii Neil Abercrombie (henceforth “Abercrombie”), Lieutenant Shan Tsutsui (henceforth “Tsutsui”), the director of the Department of Taxation Frederik Pablo (henceforth “Pablo”) and his deputy Joshua Wisch (henceforth “Wisch”) are to be held criminally accountable for the pillaging of [REDACTED]’s private property and for fraud;
- that, in addition, by way of a letter dated January 22, 2015, Sai, in the name of Kale Kepekaio Gumapac (henceforth “Gumapac,” “objector” or “petitioner”) contacted the office of the Federal Attorney General and requested that criminal proceedings against Josef Ackermann (henceforth “Ackermann”), the former CEO of Deutsche Bank National Trust Company (henceforth “Deutsche Bank”) be opened and in this connection invoked rights deriving from Art. 1 of the friendship treaty between the Swiss Confederation and the then Hawaiian King of July 20, 1864, which has not been cancelled; that this complaint arose from a civil dispute between Gumapac and Deutsche Bank; that Gumapac was the owner of a property on Hawaii and a mortgagee of Deutsche Bank; that however the title of property, due to the illegal annexation of the Kingdom of Hawaii, was null and void, since the local US-American notaries were not empowered to transfer title; that Deutsche Bank did not recognize this fact and that it had foreclosed on Gumapac’s house to cover the mortgage debt, instead of claiming its rights stemming from a “title insurance;” that the bank therefore had pillaged Gumapac’s house according to the international laws of war (BB.2015.36-37 case files, box section 3 and 5);
- that the office of the Federal Attorney General on February 3, 2015 decreed a decision of non-acceptance of the criminal complaints and civil suits against Ackermann, Abercrombie, Tsutsui, Pablo and Wisch on

account of war crimes allegedly committed in Hawaii between 2006 and 2013 (BB.2015.36-37 case files, box section 3 = act. 1.1);

- that Gumapac and ██████ introduced, in opposition to this, an objection on March 31, 2015 to the Objections Chamber of the Federal Criminal Court and accordingly requested the cancellation of the decision of non-acceptance, and the carrying out of the criminal proceedings against the defendants indicated by them (BB.2015.36-37 act. 1);
- that the Objections Chamber, through its decision BB.2015.36-37 of April 28, 2015 did not accept the objection, since the ten day time limit was not adhered to;
- that on May 6, 2015 a collaborator of Sai, Lorenz Gonschor, told the Objections Chamber by telephone to have received the decision of April 28, 2015 without signatures and seal (BB.2015.36-37 act. 8);
- that the Objections Chamber on May 7, 2015 sent to the objectors a second copy of the decision of April 28, 2015 (BB.2015.36-37 act. 9);
- that the objectors on May 15, 2015 addressed the Objections Chamber with a “notice of intention to appeal;” that the Objections Chamber forwarded this submission based on Art. 39 StPO to the Federal Supreme Court (BB.2015.36-37 act. 11 and 12), where the objection case is currently pending as case number 6B\_563/2015 (BB.2015.36-37 act. 14);
- that the objectors by their submission of June 8, 2015 (received here on June 16, 2015) requested a new time limit in order to object to the decision of non-acceptance by the objection’s defendant of February 3, 2015 (act. 1).

**The Appeals Chamber considers:**

- that according to Art. 94 par. 1 StPO, a party that has failed to comply with a time limit and has thus incurred a significant and irremediable loss of rights, may request that a new time limit be fixed; that in doing so he or she must credibly show that he or she was not at fault for the failure to comply with the time limit;

- that the application must be made in writing with a statement of reasons and submitted within 30 days of the reason for default ceasing to apply to the authority before which the relevant procedural act should have been carried out, and that the relevant procedural act must be carried out within the same time limit (Art. 94 par. 2 StPO);
- that a default of the time limit is considered without fault if objective or subjective reasons such as illness, accident or natural events have rendered it impossible for the person in question to comply with the time limit (BRÜSCHWEILER, in: Donatsch/Hansjakob/Lieber [eds.], Kommentar zur Schweizerischen Strafprozessordnung [StPO] ["Commentary on the Swiss Criminal Procedure Code"], 2<sup>nd</sup> ed., Zürich/Basel/Genf 2014, N 2 on Art. 94); that on the other hand difficulties of postal delivery from abroad, ignorance of law or lack of language competency do not constitute reasons for a new time limit (Judgement of the Federal Supreme Court 1B\_250/2012 of July 31, 2012, E. 2.3; RIEDO, in: Niggli/Heer/Wiprächtiger [eds.], Schweizerische Strafprozessordnung [StPO] ["Swiss Criminal Procedure Code"], 2<sup>nd</sup> ed., Basel 2014, N 38 on Art. 94);
- that the petitioners state that the decision of non-acceptance first had to be translated into English and the objection then had to be translated from English into German, so that the objection was only ready to be sent on April 1; that the petitioners stated to have had de facto only 3 days to draft the objection, since the remaining days were used for the translations;
- that in the absence of SwissPost and/or a lawful consular representation of Switzerland in the Hawaiian Islands, the petitioners stated to have had no other recourse but to use a private courier to which they stated to have handed the objection, in good faith, on April 1, actually one day before the end of the time limit;
- that, however, failure to comply with the time limit due to translation work and ignorance of the procedural laws in force do not constitute reasons for a new time limit; that hence the petitioners have not credibly shown either objective or subjective reasons that they were not at fault for the failure to comply with the time limit, that the failure to comply is thus considered to have been the petitioners' fault, and that therefore the request for a new time limit is to be rejected immediately and without an exchange of written submissions (Art. 390 par. 2 StPO e contrario);

- that under these circumstances the question of the timely submission of the application for a new time limit does not have to be clarified.
- that with this decision the appellants would be responsible for the court costs (Art. 428 par. 1 StPO), that however under the given circumstances a court fee is to be waived (DOMEISEN, in: Niggli/Heer/Wiprächtiger [eds.], Schweizerische Strafprozessordnung [StPO] [“Swiss Criminal Procedure Code”], 2<sup>nd</sup> ed., Basel 2014, N 5 on Art. 428).

**Therefore the Appeals Chamber decides:**

1. The application for a new time limit is rejected.
2. No court fee will be charged.

Bellinzona, June 19, 2015

In the name of the Objections Chamber  
of the Federal Criminal Court

The President:

[signature]

The Court Clerk:

[signature]

[seal: FEDERAL CRIMINAL COURT BELLINZONA]

**Delivery to**

- David Keanu Sai. Delivery address: c/o Michico Testini, avenue Eugène Lance 44, 1212 Grand-Lancy
- Office of the Federal Attorney General, Andreas Müller, Federal Prosecutor, Taubenstrasse 16, 3003 Berne (SV.15.01010-MUA; attaching a copy of act. 1);
- Federal Supreme Court in case 6B\_563/2015

**Instructions concerning the right to appeal**

Against this decision there is no due legal recourse

[rectangular stamp: FEDERAL CRIMINAL COURT  
June 19, 2015  
FOR DISPATCH]