

Freedom of speech under attack:

The autonomous province of Bozen/Bolzano is suing the Munich Environmental Institute, the author Alexander Schiebel and the oekom publishing house for public criticism of pesticide use in fruit cultivation

Summary:

In September 2017, the Vice President of the Autonomous Province of Bozen/Bolzano at the time, and provincial minister for agriculture Arnold Schuler¹, filed charges against the Munich Environmental Institute, Alexander Schiebel, the author of the book "Das Wunder von Mals" ("The Miracle of Mals") and his publisher Jacob Radloff, the managing director of oekom verlag. The charges are also being brought in the name of more than 1,300 growers.

The case arose following criticism from the Munich Environmental Institute and Schiebel about the massive use of pesticides that is ubiquitous in South Tyrolean fruit plantations. The province encompasses more than 18,000 hectares of land that is used for apple cultivation. Around 10 percent of the apples harvested in Europe are grown in this region. In some instances, the apple plantations are sprayed more than 20 times every year. These toxins have an adverse impact on biodiversity and human health.

Now, three years after the charges were first filed by Arnold Schuler, the public prosecutor's office at the Bolzano Regional Court is filing charges of defamation against Karl Bär, an employee of the Munich Environmental Institute, as well as against the author Alexander Schiebel. In the event of a defeat in the criminal courts, the defendants face not only a financial penalty², but also possible claims for damages amounting to millions of euros from potentially thousands of South Tyrolean growers, which would undoubtedly mean financial ruin.

In the view of the Munich Environmental Institute and its lawyers, the charges and accusations are an attack on freedom of speech. If opponents and critics of industrial agriculture must fear immediate judicial consequences, who will still dare to speak up?

The charges represent a broader strategy that is being increasingly applied across Europe by companies, politicians and influential individuals to obstruct or intimidate activists and critical journalists through baseless criminal charges and civil lawsuits.

¹ Arnold Schuler had to give up his position as Vice President as the result of a Corona aid scandal in August 2020, but remains provincial minister for agriculture: https://www.suedtirolnews.it/politik/bonus-affaere-das-sind-die-folgen-fuer-die-svp-mandatare (GER, accessed August 28 2020)

² In addition to the financial penalty, a prison sentence is also possible under the Penal Code.

CONTENTS:

- 1. Background:
- a) The Pesticide Rebels of Mals
- b) The Miracle of Mals by Alexander Schiebel

2. Involvement of the Munich Environmental Institute in Südtirol /Alto Adige

- 3. In court for criticising the use of pesticides in Südtirol /Alto Adige
- a) The Munich Environmental Institute, its board of directors and Karl Bär, adviser on agricultural and trade policy
- b) Alexander Schiebel, author, and Jacob Radloff, managing director of the publishing house oekom verlag
- 4. Assessment of the lawyers of the Munich Environmental Institute and oekom verlag
- 5. Consequences for the defendants
- 6. The Europe-wide significance of the lawsuits for civil society ("SLAPP" concept)
- 7. Use of pesticides in Südtirol /Alto Adige
- a) Importance of fruit cultivation for Europe and Germany
- b) Quantities and effects of the pesticides used in Südtirol /Alto Adige
- 8. Appendix: Chronology of the involvement of the Environmental Institute in Südtirol /Alto Adige
- 9. Appendix: Overview of legal proceedings against opponents of pesticides in Südtirol /Alto Adige

1. Background:

a) The Pesticide Rebels of Mals

In 2014, the South Tyrolean municipality of Mals held a legally binding referendum on the banning of chemical-synthetic pesticides, which passed by a large majority. The council of Mals implemented the referendum in a municipal regulation³ that does not prohibit the use of pesticides entirely, but which places severe restrictions that makes it virtually impossible. With this vote, the citizens of Mals also found themselves in opposition to the interests of their provincial government, the farmers' association and the agro-industry. The government of the autonomous province of Bozen/Bolzano has spared no effort in placing obstacles in the path of the municipality. By means of a new law in 2016, they even managed to restrict local authorities' ability to regulate the use of pesticides.⁴

In 2016, a number of landowners and growers took legal action against the Mals regulation at the Bolzano Administrative Court. In autumn of the following year, the court ruled that the regulation was unlawful because the municipality was deemed to have exceeded its authority, among other reasons. The municipality of Mals has appealed, leaving the decision on the legality of the regulation to the Council of State in Rome.⁵ Here, the municipality considers its prospects to be good, referring to the mayor's responsibility for local health as set out in the Italian Constitution and a precedent case from the neighbouring province as well as to the fact that provincial law on the division of powers emerged only after the adoption of their pesticide regulation.

In the course of this dispute, both the initiator of the referendum petition as well as the mayor of Mals have also had to stand trial as private citizens in the Bolzano courts.

• Johannes Fragner-Unterpertinger, spokesperson for the citizens' initiative "The Way of Mals" (Der Malser Weg/ La via da Malles) was summoned to the Bolzano Regional Court because he made the original application for the referendum and collected signatures for the vote. The proceedings against him as a private individual were brought by miscellaneous growers. In the entire initial court proceedings, the lawyers of the plaintiffs could not specify any law that Fragner-Unterpertinger is supposed to have violated. While the judgment of the lower court stated that, as a private individual, he should not have been summoned to court, he was nevertheless required to pay the costs of proceedings out of his own pocket. He appealed the first court ruling at the Higher Regional Court of Bolzano as a private individual. There, a judgment on December 2019 confirmed this point and he was also reimbursed by the plaintiffs for the procedural costs of both hearings. In early 2020, nine growers contested the judgment of the appeals court at the Court of Cassation⁵ in Rome, where proceedings can take several years until a verdict is reached.

³You can find the regulation here (Ger/It): <u>https://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedti-</u>rol/Verordnung_ueber_den_Einsatz_von_Pflanzenschutzmitteln_im_Gemeindegebiet_zweisprachig.pdf

⁴ The Landesgesetz vom 15. April 2016, Nr. 8 ("Provincial Law of 15 April 2016, No. 8") titled "Bestimmungen auf dem Gebiet des Pflanzenschutzes" ("Provisions in the Area of Plant Protection") very clearly regulates that the Province of Südtirol /Alto Adige is responsible for all matters concerning plant protection and the use of pesticides, and the municipalities only have those powers that the province actively transfers to them: "In the area of sustainable use of pesticides, the municipalities have the administrative powers that are assigned or transferred to them by the Province of Südtirol /Alto Adige in accordance with the Council of Municipalities." (http://lexbrowser.provinz.bz.it/doc/de/204538/landesgesetz vom 15_april_2016_nr_8.aspx?view=1 Art. 7, Para. 5). The new law is clearer than the previously existing situation and more restrictive for the municipalities, but does not affect the Mals regulation as the law was only adopted after the referendum. By comparison, the Provinzgesetz vom 30. Dezember 2015, Nr. 21 ("Provincial Law of 30 December 2015, No. 21") of the neighbouring province of Trento expressly grants the municipalities permission to obtain a higher level of protection through further measures (https://www.consiglio.provincia.tn.it/ leggi-e-archivi/codice-provinciale/Pages/legge.aspx?uid=28097 Art. 24, Absatz 2).

⁵ The Council of State (Consiglio di Stato) is the second and highest tribunal of administrative jurisdiction in Italy.

⁶The Court of Cassation is the highest court of appeal in Italy, and resolves disputes in civil and criminal proceedings from lower courts.

• The public prosecutor's office in Südtirol /Alto Adige accused the Mayor of Mals, Ulrich Veith, of misappropriation of funds for failing to prevent the vote, and demanded a payment to the state treasury of almost 25,000 euros. The rationale for this decision was that the referendum was not lawful; as the argument goes, Ulrich Veith should have known this in his capacity as mayor and should thus have prevented the vote. However, the referendum did take place and costs of around 25,000 euros were incurred by the municipality. These costs were to be paid by the mayor as a private individual. In May 2019, Ulrich Veith won a legal victory at the Court of Auditors of the Autonomous Province of Bolzano, which ruled that the referendum had been carried out correctly, thereby acquitting the mayor of the accusation of misappropriation.

b) The Miracle of Mals by Alexander Schiebel

In his book "Das Wunder von Mals" ("The Miracle of Mals")⁷ and in the film⁸ of the same name, Alexander Schiebel introduces the pioneers, activists and organic farmers from the municipality of Mals, and from a documentary as well as personal perspective, follows the history of their struggle for a pesticide-free community. For Schiebel, one particular aspect of this story remains incomprehensible: Why are the people of Mals, who wish to live pesticide-free without environmentally harmful modes of production, and who are actively seeking out future-oriented alternatives in their own region, being combated with such vehemence?

Since its release in September 2017, the book "The Miracle of Mals" has attracted remarkable public and media interest. Through intensive press work, numerous interviews and film screenings in Germany, Austria and Italy, the author and activist Alexander Schiebel has played a crucial role in shaping the reporting on the Mals case. The book has sold over 10,000 copies in German-speaking countries. More than 13,000 people have seen Schiebel's "The Miracle of Mals" documentary at around 250 screenings, most of which were organised and attended by Schiebel himself.

Alexander Schiebel (author and filmmaker)

- Born on 4 February 1966 in Vienna, grew up in Salzburg. Currently on a worldwide research tour after time spent in Meran, Mals and Leipzig. Married with six children.
- Worked from 1993 to 2012 in the areas of software development and online marketing, and became one of Austria's Internet pioneers.
- Began a second career as a filmmaker in 2015 (with training at national public service broadcaster Österreichischer Rundfunk in the 1980s) and non-fiction writer, and among other activities created and maintained the documentary film blog "suedtirolerzaehlt".
- Since 2015, he has run the online video platform "Das Wunder von Mals", which also led to a 30-minute documentary "Leben ohne Ackergifte" (Life Without Pesticides) (WDR /arte 2017) as well as a book (oekom verlag 2017) and cinema film (2018) titled "Das Wunder von Mals".

More information: www.alexanderschiebel.com www.wundervonmals.com https://de-de.facebook.com/wundervonmals/

⁷ Alexander Schiebel, "Das Wunder von Mals ("The Miracle of Mals") . Wie ein Dorf der Agrarindustrie die Stirn bietet" (How one village is standing up to the agricultural industry), 256 pages, softcover, ISBN 978-3-96006-014-7, 19.00 Euro (Ger).

Book info incl. sample, cover download and short description: <u>https://www.oekom.de/buch/das-wunder-von-mals-9783960060147</u> (Review copies are available from the publisher on request >> presse@oekom.de)

⁸ Documentary "Das Wunder von Mals" ("The Miracle of Mals"), which can be viewed at <u>https://vimeo.com/ondemand/wundervonmals</u>

oekom verlag

- The largest German-language publisher for ecology and sustainability, oekom verlag has been committed to a more sustainable development of politics, economy and society since 1989.
- Publishes eleven magazines and more than 70 new book publications every year along with a broad network of authors, cooperation partners and sponsors. Topics at the publishing house range from climate protection and biodiversity to post-growth economics and agriculture.
- The publishing house not only emphasises environmental protection in its publications but also in production and the company's daily processes.

Read more about the publisher and its commitment to sustainability at www.oekom.de

2. Involvement of the Munich Environmental Institute in Südtirol /Alto Adige

In 2014, it seemed to be nothing less than a miracle that of all places, a community in Vinschgau looked set to become Europe's first pesticide-free municipality. This was considered an extraordinary outcome, not least considering the ubiquitous use of pesticides in the many fruit plantations of Südtirol /Alto Adige (for more information on fruit growing and pesticide use in Südtirol /Alto Adige, see the separate discussion on p. 9).

As the first pesticide-free municipality in Europe, the significance of the decision taken by the people of Mals goes far beyond the borders of Italy. The Mals referendum is seen internationally as proof that local and direct democracy can bring about decisive change. A book about the events in Mals has even been published in the United States.⁹ Citizens' initiatives (among others in Conegliano in Venetia and Miltenberg in Franconia) inspired by and based on the example of Mals are conducting local campaigns against pesticides.

As a Europe-wide environmental protection organisation that has long been involved in efforts to combat the use of chemical-synthetic pesticides, the Munich Environmental Institute soon recognised the pioneering work that was underway in Mals, and has supported the people of Mals since early on in their campaign. The Munich Environmental Institute also provided its support to Alexander Schiebel in his project "The Miracle of Mals", and has used its own reports and campaigns to ensure that Mals' campaign against pesticides is publicised of outside of Südtirol /Alto Adige as well (see table in Appendix, from p. 13).

The Munich Environmental Institute

- Founded in 1986 after the nuclear disaster in Chernobyl.
- An environmental organisation active in Germany and abroad.
- Recognised as a non-profit association.
- Campaigns against nuclear power and for GMO-free food, the energy transition and organic farming.
- Financed predominantly through small donations and regular contributions from over 9,000 supporting members.

More about the Environmental Institute: http://www.umweltinstitut.org/english.html

⁹A Precautionary Tale: How One Small Town Banned Pesticides, Preserved Its Food Heritage, and Inspired a Movement by Philip Ackerman-Leist, Chelsea Green Publishing, 2017. <u>https://www.chelseagreen.com/product/a-precautionary-tale/</u>

Karl Bär (advisor at the Environmental Institute on agricultural and trade policy)

- Born on 13 March 1985 in Tegernsee, grew up in Holzkirchen in Upper Bavaria. Studied agricultural science, Islamic studies, sociology and political science in Berlin and Istanbul; has worked since 2014 for the Munich Environmental Institute as a consultant for agricultural and trade policy.
- In this position, Bär was involved in the Europe-wide campaign against the Transatlantic Free Trade Agreement TTIP, conducted the analysis of German beers for the herbicide glyphosate, and is currently a representative of the European citizens' initiative "Bienen und Bauern retten!" (Save bees and farmers!) at the EU commission.
- A father of one daughter, Bär is a council member in an honorary capacity in his hometown of Holzkirchen.

3. In court for criticising the use of pesticides in Südtirol /Alto Adige

a) Munich Environmental Institute board members and Karl Bär, adviser on agricultural and trade policy

In September 2017, provincial minister Arnold Schuler filed criminal charges against the board of directors of the Munich Environmental Institute and against Karl Bär, adviser on agricultural and trade policy at the Environmental Institute. The proceedings were brought by 1,367 growers from the region of Südtirol /Alto Adige. The accusation: The "Pestizidtirol" ("Pesticide Tyrol") campaign by the Munich Environmental Institute amounted to harmful defamation of South Tyrolean agriculture and of the province itself. In addition, the Munich Environmental Institute was accused of encroaching on the "Südtirol /Alto Adige" umbrella brand.



The specific impetus for the criminal proceedings was the provocative "Pestizidtirol" ("Pesticide Tyrol") campaign in the summer of 2017 during which, for a few days in August, the Environmental Institute displayed a billboard in the Karlsplatz underground station in Munich to draw attention in Germany to the high levels of pesticide use in Südtirol / Alto Adige.



Designed in the style of the tourism marketing campaign for Südtirol /Alto Adige, the poster was intended to illustrate the use of pesticides on the fruit plantations in the region. In place of "Südtirol sucht dich" ("Südtirol /Alto Adige is looking for you"), it read "Südtirol sucht saubere Luft. Südtirol sucht sich." (Südtirol /Alto Adige is looking for clean air. Südtirol /Alto Adige is looking to find itself.") In ironic fashion, the logo for Südtirol /Alto Adige was transformed into "Pestizidtirol" ("Pesticide Tyrol"). The campaign was accompanied by the website pestizidtirol.info.¹⁰ The image chosen for the poster by the Munich Environmental Institute, which shows an organic farmer spreading sulphur instead of a conventional farmer spreading synthetic pesticides, resulted in a misunderstanding. This mistake became an issue some days after the start of the campaign when the organic farmer recognised himself on the poster, whereupon the Munich Environmental Institute stopped using the image. However, this does not change the fact that pesticides are used to an extremely high extent on the fruit plantations of Südtirol /Alto Adige.

The allegation of brand infringement concerns the logo "Pestizidtirol" ("Pesticide Tyrol"), which is based on the logo used in Südtirol /Alto Adige tourism marketing. We consider this accusation to be unfounded: the Munich Environmental Institute has not acted out of commercial interest, and criminal liability under trademark law requires activities to be of a commercial nature.

In the context of the complaint and to underpin the accusation of defamation, provincial minister Schuler put up an elaborate defence of the practices of intensive fruit cultivation. He asserts that all the pesticides used have passed strict European approval and were used as sparingly as possible. As such, the plaintiffs claim there was no cause for concern as regards biodiversity in the plantations or for the health of residents or consumers. However, the Munich Environmental Institute intends to prove in court that there is a material background to the statement that Südtirol /Alto Adige has a pesticide problem.

Following the initiation of the criminal charges by Arnold Schuler, the Bolzano public prosecutor's office took more than two years to come to a determination. In the course of their enquiries, they also requested judicial assistance from the Munich public prosecutor's office. They were, however, unsuccessful: the Munich I public prosecutor's office refused to cooperate and referenced the German legal situation and the right to freedom of speech as guaranteed in Article 11 of the Charter of Fundamental Rights of the European Union.¹¹

Despite this, the public prosecutor's office in Bolzano is still pressing ahead with charges against Karl Bär for defamation. The trial is set to begin on 15 September 2020 in Bolzano. In addition to Karl Bär, six current and former board members of the Munich Environmental Institute are also being prosecuted. In this case, the Bolzano public prosecutor's office has requested for enquiries to be halted. This proposal was met with objections from provincial minister Schuler and many of the growers in their role as plaintiffs. The hearing to decide whether the case against these six individuals should be dropped, resumed or even if indictments are necessary will take place on 22 October 2020.

b) Author Alexander Schiebel and Jacob Radloff, managing director of oekom verlag

In September 2017, Arnold Schuler simultaneously initiated criminal charges against Alexander Schiebel, filmmaker and author of the book "The Miracle of Mals" and against Jacob Radloff, managing director of the publishing house oekom verlag. The charges in the case were brought by a total of 1,601 individuals. Once again, the accusation is defamation, specifically due to a passage in the book "The Miracle of Mals" in which Alexander Schiebel criticises the use of pesticides in Südtirol /Alto Adige and the conduct of the farm lobby and provincial government.¹²

The enquiry proceedings into Alexander Schiebel have also come to an end and he likewise faces formal charges.

As in the case against the board of directors of the Munich Environmental Institute, the public prosecutor's office has requested that the case against Jacob Radloff be dropped due to a lack of evidence. A hearing on whether to press charges on this matter will also take place on 22 October 2020.

¹⁰ The homepage has no longer been active since the end of the campaign. You can find a screenshot and the text of the original at <u>https://www.umweltinstitut.org/</u><u>fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/20170908_Screenshot_und_Text_der_Webseite_www.pestizidtirol.info.</u> <u>pdf</u> (Ger)

¹¹You can find the letter from the Munich I public prosecutor here (Ger): <u>https://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_</u> Landwirtschaft/Pestizide/Suedtirol/20190411_Schreiben_der_Oberstaatsanwaltschaft_M%C3%BCnchen_I.pdf

¹² You can read the parts of the book highlighted in the accusation in the yellow paragraphs at the end of the three pages by clicking on this link: <u>https://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/Ausschnitt_aus_Das_Wunder_von_Mals_.pdf</u>

4. Assessment of the lawyers of the Munich Environmental Institute and oekom verlag

Karl Bär from the Munich Environmental Institute as well as Alexander Schiebel and oekom verlag are represented in the legal proceedings by the two Italian lawyers Nicola Canestrini and Francesca Cancellaro, who also represent Carola Rackete and the other crew members of the rescue vessel "Juventa".

In the view of the lawyers Canestrini and Cancellaro, the Bär/Schiebel cases concern the exercise of the fundamental right to freedom of speech. Article 21 of the Italian Constitution ("Everyone has the right to freely express their thoughts with words, writings and any other means of dissemination."), Article 10 of the European Convention on Human Rights and the equivalent Article 11 of the EU Charter of Fundamental Rights ("Everyone has the right to freedom of speech. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.") guarantee this right at the highest legal level.

The Italian case law on defamation places certain limits on freedom of speech. In particular, criticism must have a factual background in order to not be defamatory. The homepage Pestizidtirol.info and the book "The Miracle of Mals" did not overstep this boundary: The topic is relevant and of great public interest, the problem genuinely exists, the criticism is not factually inaccurate and the form taken by this criticism is appropriate.

5. Consequences for the defendants

Though the allegations are unfounded, in the case of conviction all of the defendants face not only a fine¹³, but also possible financial ruin from claims for damages from more than 1,000 co-plaintiffs. In the worst case scenario, yet more South Tyrolean growers could claim "non-material damages" and other compensation. Alexander Schiebel and numerous employees of the Munich Environmental Institute and oekom verlag are currently tied up almost exclusively with these legal proceedings, which are expected to continue for several years. In addition, the defendants face high legal and procedural costs.

Even if the proceedings end in acquittal, the actions of provincial minister Schuler and the fruit industry are likely to deter interested parties from Südtirol /Alto Adige and elsewhere from exercising their right to freedom of speech. Anyone who dares to give voice to opposing or uncomfortable opinions and viewpoints must reckon with serious legal risks – and all of the expenditure of time and money that this entails.

6. The Europe-wide significance of the lawsuits for civil society ("SLAPP" concept)

The civil proceedings against the Munich Environmental Institute, Alexander Schiebel and oekom verlag are part of a broader and increasingly commonly-used strategy in Europe for silencing activists and critical journalists. Using targeted strategic lawsuits, government officials, corporations, and influential individuals are attempting to silence critics by intimidating them with absurd accusations or by tying them up in gruelling court cases that can last years.

In specialist circles, this type of lawsuit is known as "strategic litigation against public participation" (SLAPP), which is an increasingly utilised tactic in the EU. For NGOs, activists and critical journalists, SLAPP lawsuits are one expression of an increasingly repressive work environment ("Shrinking Spaces")¹⁴.

In contrast to volunteer activists, the Munich Environmental Institute and oekom verlag are in a strong position to defend themselves. Nevertheless, the case is bringing the defendants to the limits of their capacities, and is placing an extreme strain on their resources. With claims for damages potentially reaching millions of euros, any conviction would threaten their financial existence.

https://ec.europa.eu/info/sites/info/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf https://storage.googleapis.com/planet4-eu-unit-stateless/2020/07/20200722-SLAPPs-Sued-into-Silence.pdf https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf https://www.indexoncensorship.org/campaigns/the-laws-being-used-to-silence-media/

¹³ In addition to the financial penalty, a prison sentence is also possible under the Penal Code.

¹⁴ https://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/University_of_Amsterdam_GPI_Research_SLAPPs_.pdf

Umweltinstitut München e.V., 4th of September 2020

7. Use of pesticides in Südtirol /Alto Adige

a) Importance of fruit cultivation for Europe and Germany

There are around 18,400 hectares of apple orchards on agricultural land in Südtirol /Alto Adige. Around 950,000 tonnes of apples are harvested each year. This corresponds to around 50 percent of the Italian apple harvest and almost ten percent of the EU's entire apple harvest.¹⁵ Südtirol /Alto Adige produces around as many apples as the entire Federal Republic of Germany.¹⁶ Since the rest of the country consists of mountains, all of this cultivation takes place on a narrow strip of land just a few kilometres wide, which is made possible by the favourable climate and the high intensity of apple cultivation in Südtirol /Alto Adige. Fruit plantations in Südtirol /Alto Adige harvest an average of 51.6 t of apples per hectare.¹⁷ The Italian average is 41.3 t, the German average 29.6 t, and across the EU only 22.2 t on average per hectare of apple orchards per year.¹⁸

South Tyrolean apples are exported all over the world. Even in Spain, which exports significant quantities of fruit and vegetables itself, you can find South Tyrolean apples bearing the ladybird logo. Around every tenth apple in Germany comes from Südtirol /Alto Adige.¹⁹

b) Quantities and effects of the pesticides used in Südtirol /Alto Adige

• How much spraying takes place?

This high intensity of apple cultivation necessitates a correspondingly high level of pesticide use. While the average cultivation area per operation in Südtirol /Alto Adige is quite small at less than three hectares²⁰, the large quantity of small growing areas forms a vast monoculture of over 18,000 hectares that is susceptible to the spread of pests. In its selection of varieties, the South Tyrolean apple industry depends on just a few varieties such as "Golden Delicious" or "Gala", which are often highly susceptible to fungal diseases. In 2017, almost 70 percent of the area given over to apple cultivation in Südtirol /Alto Adige was planted with varieties that were highly susceptible to disease, with "Golden Delicious" and "Gala" alone accounting for around half of the total area.²¹ This approach to growing is associated with a very high use of pesticides, with fungicides and insecticides playing a particularly significant role. Weed killers such as glyphosate are only used underneath the trees and play a lesser role in terms of quantity.

In addition to apples, wine grapes are also grown in Südtirol /Alto Adige, and these are also comparatively pesticide-intensive.

At the same time, in other parts of the country where apple cultivation is not possible, dairy cattle farming is a different form of farming that uses very little pesticides on its grasslands.

According to current figures from the Italian Federal Statistical Office ISTAT, in 2018 around 38.8 kg of active pesticides per hectare of usable area (i.e. horticultural and agricultural land, not including meadows and pastureland) were sold in Südtirol /Alto Adige. These figures can fluctuate strongly as the quantities sold do not have to be used immediately.

¹⁵ https://www.suedtirolerapfel.com/de/suedtirol-und-der-apfelanbau/anbaugebiet.html Accessed on 6.4.2020.

¹⁶ According to the website "Südtiroler Apfel", 950.000 t are harvested in Südtirol /Alto Adige every year. According to the FAO, Germany harvests an average of 949,7773.3 tonnes per year over 10 years, from 2009-2018. (http://www.fao.org/faostat/en/#data/QC).

¹⁷ Calculated from the above information using a simple calculation of harvest yields divided by the area under cultivation.

¹⁸ The figures are 10-year averages calculated from data from the FAO: <u>http://www.fao.org/faostat/en/#data/QC</u>

¹⁹ An average of 1.739.000 t of apples were consumed in Germany from 2016 - 2019 (source: <u>https://www.bmel-statistik.de/fileadmin/daten/SJT-4040800-0000.</u> <u>xlsx</u>)

²⁰ <u>https://www.suedtirolerapfel.com/de/suedtirol-und-der-apfelanbau/anbaugebiet.html</u>

²¹ The source for these figures is the 2018/2019 activity report of the South Tyrolean Apple Consortium, page 7, found at https://www.apfelwelt.it/smartedit/documents/content/sub/_published/apfel_tb19_5-final-einzelseiten_2.pdf

Also, the weather has a strong influence on yields, pest populations and fungal diseases, and the development of new active substances influences the effectiveness and side effects per kg. In the years 2001 - 2018, the highest value of sold pesticide active substances was 58.8 kg/ha in 2006; the lowest value was 31.9 kg/ha in 2012.²² ha in 2006; the lowest value was 31.9 kg/ha in 2012.21 By comparison, the total figure for Italy is between 10.3 kg/ha in 2002 and 5.9 kg/ha in 2013.²³

• What is being sprayed and what are the possible effects on humans and nature?

The majority of South Tyrolean fruit-growing holdings operate according to the guidelines of the Workgroup for Integrated Fruit Production in Südtirol /Alto Adige (AGRIOS). While these guidelines are more rigorous than Italian laws, they do permit a large number of sprayings as well as the use of active substances that are classified as problematic even by the EU Commission, or which are no longer approved in other parts of Europe. The EU Commission is seeking to replace ten active substances which were approved in the AGRIOS guidelines for 2017 (the year in which Arnold Schuler initiated the civil proceedings) due to their particular risk potential (substitution candidates)²⁴: Thiacloprid, Pirimicarb, Bromadiolone, Difenoconazol, Etofenprox, Fludioxonil, Myclobutanil, Cyprodinil, Quinoxyfen and Etoxazol.

Some extremely problematic active substances permitted by the 2017 AGRIOS guidelines, such as Phosmet (suspected of reducing human fertility), Chlorpyrifos-methyl (damages the brain development of children in the womb), Clothianidin (extremely toxic to bees), Iprodione (suspected carcinogenic effect), Thiamethoxam (extremely toxic to bees), Emamectin benzoate (extremely toxic to bees), Thiram (risk to users and consumers), Propineb (a degradation product of the active substance interferes with the human hormone system), Metiram and Mancozeb (suspected damage to foetuses), were not used at the time in apple cultivation in Germany because no products containing these active substances were approved by the German Federal Office of Consumer Protection and Food Safety (Bundesamt für Verbraucher-schutz und Lebensmittelsicherheit).

Some of these substances are now banned throughout Europe or their use has been restricted drastically, e.g. Thiacloprid, Propineb, Iprodione, Chlorpyrifos-methyl, Clothianidin and Thiamethoxam. The insecticide Imidacloprid, of which less than 4 ng is enough to kill a bee²⁵, has also been prohibited for outdoor use since 2019, although it was still in use in Germany and Südtirol /Alto Adige in 2018.

Experience shows that the South Tyrolean fruit-growing sector continues to use substances that are long recognised as dangerous until the very end of the period in which it is legally permitted. In February 2020, the South Tyrolean Advisory Council for Fruit and Winegrowing advised its members to purchase and use the insecticide Chlorpyrifos-methyl, which, after a long discussion, was banned by the EU Commission in January 2020 with effect from April 16 due to evidence of damage to brain development in children. The Advisory Council drew specific attention to the deadline for purchases of the toxic substance. For years, there have been warnings from scientists about this product, and its use in Südtirol /Alto Adige was the subject of controversial public debate as early as 2012.²⁶ The insecticide Thiacloprid, which is suspected of being harmful to human fertility and of interfering with the human hormone system, will continue to be used in Südtirol /Alto Adige throughout 2020. The Europe-wide ban on the chemical that passed in January 2020 will not take effect until 2021.²⁷

²² These figures are our own calculations based on the values for pesticide active substances sold and the applicable cultivated area for the province of Südtirol /Alto Adige in the annual reports by the Italian Statistical Office ISTAT (Annuario statistico italiano): <u>https://www.istat.it/it</u>. More current data is not yet available (as at 30 August 2020).

²³ The figures for Italy can be found in the table on page 33 of the 2018 annual report from the Italian environmental agency ISPRA: <u>https://www.isprambiente.gov.</u> it/files2019/pubblicazioni/stato-ambiente/annuario-2018/1_Agricoltura.pdf

²⁴ The guidelines of the Workgroup for Integrated Fruit Production in Südtirol /Alto Adige (AGRIOS) for 2017 can be found here: <u>https://www.umweltinstitut.org/</u><u>fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/AGRIOS_Richtlinien_2017.pdf</u>

The source for classification as a substitute candidate is the European Commission's Pesticide Database: https://ec.europa.eu/food/plant/pesticides/eu-pesticides-database/public/?event=activesubstance.selection&language=EN

²⁵ https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2018.5178, p.21

²⁶ https://www.umwelt.bz.it/index.php?option=com_k2&view=item&task=download&id=115_48a4acb4dfe8c857971c3b851d6d72b5 (Ger)

²⁷ http://www.umweltinstitut.org/presse/presse-details/aspresse/129/skandal-um-integrierten-anbau-in-suedtirol.html (Ger)

• How do the toxins disseminate in the air?

When used in fruit plantations, the active substances in the pesticide should reach the whole tree. To this end, the pesticide is sprayed sideways at a height of up to three metres. As a consequence, there is a high risk that the pesticides are blown out of the fruit plantations at the time of application. This drift is a core issue in the controversy that surrounds the use of pesticides in Südtirol /Alto Adige, and is a constant cause of local disputes and political arguments. Time and again, the provincial government and AGRIOS have responded with technical reforms and the tightening-up of requirements.

The most recent reform only came into effect on 1 January 2020 and obligates growers to use injector nozzles when spraying.²⁸ But technical measures are not a solution to this problem. While South Tyroleans were required to stay at home in the spring of 2020 because of the coronavirus pandemic, the controversy flared up once again despite the new rules. Many people were worried about being in their own garden during the heavy spraying that takes place in the region in the spring.²⁹

Based on its own studies in the Vinschgau Valley in 2018, the Munich Environmental Institute could demonstrate that there is a constant exposure to pesticides in the air from spring to at least August, and that some of the active substances from pesticides could be detected up to three kilometres from the nearest probable source – on one mountain slope at an altitude of 1,600 metres.³⁰

The drift also results in disputes between conventional fruit firms and organic farming, which is gaining an ever-stronger foothold in Südtirol /Alto Adige. As a result of the drift, organic products can become so heavily contaminated with pesticides that they are no longer permitted to be sold as "organic". In his book, Alexander Schiebel describes organic growers that have spoken publicly about this issue and have been ostracised by neighbours and colleagues as a result.

• Effects on health and the environment

As the Munich Environmental Institute learned from personal discussions and emails from the individuals concerned, residents as well as tourists in Südtirol /Alto Adige are sometimes hit by a pesticide cloud that will often cause irritation to the skin, eyes and respiratory tract.



²⁸ http://www.provinz.bz.it/news/de/news.asp?news_action=4&news_article_id=628354

²⁹ Examples are the municipal political discussion in Merano (Ger): <u>https://www.suedtirolnews.it/politik/corona-krise-pestiziden-sorgen-fuer-streit-zwischen-anrai-nern-und-bauern</u> (It): <u>https://www.altoadige.it/cronaca/</u>

merano/a-sinigo-striscioni-e-proteste-basta-pesticidi-in-agricoltura-1.2310482?fbclid=IwAR0AtsGMDboogbiwOJL1GjsDxyogBEVWZV4BR4Bdc0pnkVk0Y-5tAmB8RBIs) or this open letter from an employee of a retirement home on the outskirts of Bolzano, whose residents were not permitted to leave the premises because of the coronavirus pandemic and could not go into the gardens of the facility because of the pesticides (It): <u>https://www.der-malser-weg.com/mela-concorona/</u>

³⁰ http://www.umweltinstitut.org/aktuelle-meldungen/meldungen/2019/pestizide/vom-winde-verweht-luftmessungen-im-vinschgau.html (Ger)

More important, however, is the long-term danger to human health posed by continuous exposure to environmental toxins. Among the products that are applied in agriculture in Südtirol /Alto Adige are several that scientists and authorities believe are likely to cause cancer, impair fertility, disrupt the development of foetuses, interfere with the human hormonal system or damage the genome. There are also others that are suspected of similar effects that are not yet scientifically confirmed, such as the fungicide Boscalid.³¹

It is difficult to assess the combined effect of the various substances and their breakdown products with one another as well as with other pollutants, among others from traffic and industry. One of the few officially confirmed cases of this so-called "cocktail effect" is the impact of Thiacloprid on honeybees. If fungicides from the class of ergosterol biosynthesis inhibitors (e.g. Penconazole or Difenoconazole) are also present, the body of the bees is unable to fully break down the Thiacloprid. As a result, these fungicides greatly increase the effect of insecticidal toxins on bees.³²

Far above the apple orchards, the effects of intensive fruit cultivation with its heavy use of pesticides are visible even on the meadows of the mountain slopes. For decades, scientists have observed that, since plantations have become established at increasingly higher altitudes, the diversity and number of sensitive butterflies hundreds of metres above these locations also decreases.³³ The orchards in the valley areas are described in the compendium The Beetles of Südtirol /Alto Adige published by the Südtirol /Alto Adige Museum of Nature as a "green desert"³⁴. The absence of insects and the unvarying landscape also leads to a decrease in the variety and number of birds as well as to problems with pollination: since bees have no homes in and around the plantations, the apples must be fertilised semi-artificially by purposefully deploying bee hives in the plantations, sometimes paying beekeepers to bring their bees to pollinate the plants.

³¹ The discussion surrounding a carcinogenic effect of boscalid was only set in motion in April 2018 by scientific employees from a variety of French official agencies (Fr): https://www.liberation.fr/debats/2018/04/15/une-revolution-urgente-semble-necessaire-dans-l-usage-des-antifongiques_1643539.

³² See: https://www.bvl.bund.de/SharedDocs/Fachmeldungen/04_pflanzenschutzmittel/2018/2018_11_12_Fa_Bienenschutz_Tankmischung_Insekt_Fung.html; or http://ocs.julius-kuehn.de/index.php/NWF/YSM2017/paper/viewFile/424/268

³³ Tarmann, Gerhard, "Zygaeniden lügen nicht" (Zygadenines don't lie) in: Yearbook of the "Verein zum Schutz der Bergwelt" (Association for the Protection of the Mountain World), 2019

³⁴ Kahlen, Manfred, Die Käfer von Südtirol (The Beetles of Südtirol /Alto Adige), 2019, page 468

APPENDIX

Involvement of the Munich Environmental Institute in Südtirol /Alto Adige

2015				
December	Support for the "The Miracle of Mals" The Munich Environmental Institute supported the crowdfunding campaign for the making of the film "The Miracle of Mals" by Alexander Schiebel.			
2017				
March	Start of the online campaign "Support the Pesticide Rebels of Mals"As part of the online campaign "Support the Pesticide Rebels of Mals", the MunichEnvironment Institute calls for support from the state governor of Südtirol /Alto Adigefor a pesticide-free Mals, which would set a precedent for all of Südtirol /Alto Adige.			
April	Action day in MalsTogether with supporters from Germany, the Munich Environmental Institute travelledto Mals to publicly confirm its solidarity with the pesticide opponents. The village was de-corated with thousands of colourful flags supporting the cause and bearing the names ofmany participants of the campaign.			
August	 <u>Südtirol/Alto Adige becomes "Pestizidtirol" ("Pesticide Tyrol")</u> With a billboard campaign and the website pestizidtirol.info, the Environmental Institute drew attention to the contrasts and contradictions between the idyllic tourism marketing for Südtirol /Alto Adige and the realities of the fruit-growing sector. The poster featuring the catchphrase "Südtirol sucht saubere Luft. Südtirol sucht sich." (Südtirol / Alto Adige is looking for clean air. Südtirol /Alto Adige is looking to find itself."), was intended to mimic the style of the current tourism advertising for Südtirol /Alto Adige. On the same day, the provincial government of Bozen/Bolzano announced that it would be taking legal action against the Munich Environmental Institute. The billboard was removed after just one day due to a legal threat against the billboard leasing company. <u>Bicycle campaign in Mals</u> In August 2017, the Munich Environmental Institute was back in Südtirol /Alto Adige to support a protest campaign by local pesticide opponents. Around 30 people in protective suits and respiratory masks pedalled the Adige Valley cycling route, which twists and turns through the fruit plantations for over 100 kilometres. The activists hoped this day of action would draw attention to the issue of pesticide drift from plantations to or- 			

September	Provincial minister Arnold Schuler files a complaint against the Munich Environmental Institute				
2018					
March– October	Measurement project in Südtirol /Alto Adige Air samples were collected every three weeks from four locations in the Venosta valley and examined for pesticide residues. The results ³⁵ were alarming: from mid-March to the end of August, the air was polluted continuously with numerous different substan- ces. In one tributary valley, six different toxins were detected at an altitude of more than 1,600 metres.				
2019					
March	<u>Publication of the results of the measurement project</u> The publication of the results of the measurement project elicited a major response from the media in Italy, Germany, Austria and Switzerland. Karl Bär, adviser at the En- vironmental Institute on agricultural and trade policy, discussed the issue with provinci- al minister Arnold Schuler live on South Tyrolean television.				
2020					
February	Open letter to the South Tyrolean Consultancy Circle In an open letter to the South Tyrolean Consultancy Circle for Fruit and Winegrowing, the Munich Environmental Institute criticised the recommendation to buy and use the insecticide Chlorpyrifos-methyl, which had only recently been banned by the EU Com- mission, before it was no longer legal to do so. ³⁶				

³⁵ The complete study can be found here: <u>http://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Messpro-jekt_Pestizide_Luft/20190306_Messprojekt_Vinschgau_Doppelseiten_web.pdf</u>

³⁶ The open letter with references is available here (Ger): <u>https://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pesti-</u> zide/S%C3%BCdtirol_Chlorpyrifos-methyl/Offener_Brief_Verwendung_von_Chlorpyrifos-methyl_200219.pdf

Defendants	Plaintiffs	Allegations	Process	Status
Municipality of Mals	Miscellaneous South Tyrolean landowners	The 2016 pesticide regulation from the municipality of Mals exceeded the authori- ty of the municipality.	Administrative law	In 2019, the munici- pality lost the case at the Administrative Court of Bolzano, and the regulation ceased to be valid. The appeal before the Council of State, Ita- ly's highest administ- rative court, is still pending.
Ulrich Veith (Mayor of Mals)	Public prosecutor's office at Bolzano Regional Court.	Misappropriation of municipal funds with the decision to hold the referendum in 2014	Court of Auditors	In 2019, the case was dismissed at the Court of Auditors of the Autonomous Pro- vince of Bolzano and Ulrich Veith was ac- quitted.
Johannes Fragner- Unterpertinger	Miscellaneous South Tyrolean growers	Still unresolved after second review.	Civil law	At the hearing in the appeals courtat the end of 2019, the de- fendant not only re- ceived confirmation that he should not have been sued as a private individual, but the plaintiffs were also ordered to reim- burse his legal costs for both hearings. However, in early 2020, nine growers requested a final ap- peal.
Karl Bär	Provincial minister Arnold Schuler as well as 1,367 growers	Defamation of South Tyrolean agriculture and brand infringe- ment in the form of the 2017 "Pestizidti- rol" ("Pesticide Tyrol") campaign	Criminal law	Charges were brought by the public prose- cutor's office of Bolza- no. The first day of proceedings will be on 15 September 2020.

Overview of legal proceedings against opponents of pesticides in Südtirol /Alto Adige

Alexander Schiebel	Provincial minister Arnold Schuler along- side a total of 1,601 growers	Defamation of South Tyrolean agriculture in the book "The Miracle of Mals"	Criminal law	Charges will be filed by the Public Prosecutor's Office of Bolzano.
Six former and cur- rent members of the board of directors of the Munich Environ- mental Institute	Provincial minister Arnold Schuler along- side a total of 1,601 growers	Defamation and brand infringement in their scope of re- sponsibility as board members of the Mu- nich Environmental Institute	Criminal law	The public prosecu- tor's office of Bolzano has requested that the case be dropped. This was opposed by Ar- nold Schuler and over 200 growers. The hea- ring on this applicati- on will be held on 22 October.
Jacob Radloff	Provincial minister Arnold Schuler along- side a total of 1,601 growers	Defamatory state- ments made as the publisher of the book "The Miracle of Mals"	Criminal law	The public prosecu- tor's office of Bolzano has requested that the case be dropped. This was opposed by Arnold Schuler and over 200 farmers.

Contact oekom

Bettina Reinemann Head of Press & Communication

oekom verlag GmbH Waltherstraße 29 D-80337 München

Tel.: +49(0)89-544 184-34 Fax: +49(0)89-544 184-49

Managing Director: Jacob Radloff District Court Munich HRB 102023 **Contact the Environmental Institute**

Karl Bär Referent für Agrarpolitik kb@umweltinstitut.org Tel: +49 (0)89 – 307 749 34 Mobil: +49 (0)176 – 100 941 26

Pressestelle Fabian Holzheid Pressesprecher, Vorstand fh@umweltinstitut.org Tel. +49 (0)89 – 307 749 19

Umweltinstitut München e.V. Goethestr. 20 D-80336 München

www.umweltinstitut.org facebook.com/umweltinstitut.org twitter.com/umweltinstitutM instagram.com/umweltinstitut