

# International alarm at “anti-terrorist” prosecutions

## “Political provision” in the Criminal Code used to try and control extra-parliamentary activity

In the wake of the prosecution of six men and women on grounds of "membership of a terrorist organisation", anti-terrorist legislation in Germany as well as the conduct of the trial, has been strongly criticised by a wide range of national and international civil liberties groups. On the basis of evidence given by a single witness, obtained under the much criticised crown witness regulation, the Federal Public Prosecutor's Office (*Bundesanwaltschaft*, BAW) is re-opening Germany's history of anti-imperialist/anti-racist struggles and using police methods and security precautions reminiscent of the "terrorist" heyday of the 1970s (see *Statewatch* vol 10 no 1).

Most of the charges relating to specific incidents (physical attacks as opposed to vague allegations of "membership of a terrorist organisation") have passed their limitation period and are now statute-barred crimes. Moreover, the "terrorist" organisation in question, the *Revolutionäre Zellen/Rote Zora*, which was active in Germany for almost 20 years, declared its dissolution almost ten years ago.

Inconsistencies in the evidence to the trial and the lengthy remand periods the accused have served, together with what is seen as the politically motivated nature of the prosecution, has led to renewed demands by extra-parliamentary groups and MPs to abolish §129/129a of the German Criminal Code. This is an anti-terrorist provision which, after the dissolution of Germany's armed resistance movements in the 1980s, has been almost exclusively applied to extra-parliamentary pressure groups such as the anti-nuclear movement, peace campaigns, animal rights groups and squatters, and in particular to the anti-racist and anti-fascist movements.

### Background

The Berlin court case sees Harald Glöde, Axel Haug, Sabine Eckle, Matthias Borgmann, Lothar Ebke and Rudolf Schindler on trial for membership of the "terrorist organisation *Revolutionäre Zellen*" and for allegedly participating in various bomb attacks. The charges need to be understood in the context of long-standing attempts by the BAW and the German Federal Criminal Police Office (*Bundeskriminalamt* - BKA) to prosecute active members of the *Revolutionäre Zellen* (RZ), which conducted attacks against several institutions and individuals between 1973 and the late 1980s. The RZ defined their actions as anti-imperialist and anti-Zionist and also had a militant feminist section. Their targets ranged from the Federal Constitutional Court in Karlsruhe (for its role in the anti-abortion law) and the OPEC conference in Vienna in 1975 (in support of the Palestinian struggle), to bomb attacks on German Aliens Offices and individuals held responsible for the curtailment of asylum rights. Germany's racist *Ausländerpolitik* (foreigner politics) were the main target of the RZ's anti-imperialist struggle from the mid 1980s onwards. Unlike the trials of *Rote Armee Fraktion* (RAF) members, every attempted prosecution of alleged RZ members has been unsuccessful.

In 1998 public prosecutors in Germany started to actively pursue Germany's unsolved history of militant resistance with the arrest of Hans-Joachim Klein in France in September 1998. Klein was extradited to Germany in May 1999, and gave evidence under the *Kronzeugenregelung* (crown witness regulation). This allows lighter sentences under its witness protection programme, for those charged with serious offences, if they gave evidence against former colleagues. Klein named Schindler, amongst

others, and both were tried in a regional court in Frankfurt last year. Klein was convicted for his part in the bombing of the OPEC conference in Vienna in 1975, but Schindler was cleared of all charges. The court decided that it "could not verify" Schindler's involvement in the attack based on Klein's evidence.

After Schindler was cleared the BAW challenged the judgement and attempted to retry him for "membership" of the RZ. The Berlin Supreme Court rejected this move referring to the provision of *Strafklageverbrauch*, which regulates that criminal offences related to the same crime cannot be tried when the accused has been cleared of all charges relating to this crime. However, in an appeal to this decision, lodged with the Supreme Court in Karlsruhe, the BAW got the ruling overturned on a technicality: due to a "temporary restructuring and change in the proclaimed aims of the *Revolutionären Zellen* between 1976 and 1981" the Berlin RZ "was not the same terrorist organisation according to 129a", the Court declared. By differentiating between a national RZ and a Berlin-based RZ "cell", the court declared the charge of "membership" in the BAW appeal different from that tried in Frankfurt. The BAW had argued that Schindler had temporarily stopped his involvement with RZ after the OPEC bombing, and then taken up his activities again around 1981. They were therefore prosecuting different "memberships". After just three days in court, and without any charges having been laid due to protracted legal arguments, the judge decided to link the prosecution of Schindler to the other five people in Berlin and ordered a retrial which is set for 17 May.

### The Berlin RZ trial

If Klein's statements under the *Kronzeugenregelung* were central to the first trial in Frankfurt those of Tarek Mousli, under the same regulation, are apparently the sole basis for the Berlin prosecutions.

Mousli, who had been active in the Berlin autonomous scene for many years, was arrested in November 1999 on Klein's evidence. During the following months, and particularly on 30 December 1999, one day before the controversial *Kronzeugenregelung* was due to expire, Mousli incriminated several people, some of whom were actively engaged in anti-racist work in Berlin, namely Harald Glöde and Axel Haug (see *Statewatch* vol 10 no 1).

On the basis of Mousli's evidence, Glöde as well as Borgmann, Haug and Eckle are now being prosecuted for "membership of a terrorist organisation" under §129/129a StGB, a regulation which allows for the prosecution and far-reaching investigation of people without establishing if the people in question actually committed a specific crime. The charges they face are often vague for example, the prosecution includes allegations of the kneecapping of Harald Hollenberg (the former chair of the Berlin Foreigners Office, October 1986) and Günter Korbmacher (the then presiding judge of the Federal Constitutional Court, September 1987), despite the fact that both are statute-barred. The BAW justifies this move on the grounds that they portray "the danger of the terrorist organisation RZ".

Although a raid of the *Mehringhof* social centre last December, on the basis of allegations by Mousli that it had a hidden weapons and explosives depot found no evidence (see *Statewatch* vol 10 no 1), Haug is still being charged with having been in charge of the arms depot. Together with Glöde, he is alleged to have run a "coordinating committee" distributing

money to illegal groups. Borgmann, Glöde, Haug and Eckle are further accused of having taken part in actions against Germany's refugee policies. Namely, a bomb attack on the Social Security Centre for Asylum Seekers (ZSA) in Berlin on 6 February 1987. Borgmann, Glöde and Haug are further charged with a bomb attack on Berlin's *Siegessäule* in January 1991. These latter charges ("membership" of the RZ and the possession and handling of explosives) are not statute-barred.

The prosecution has made an extradition request for Lothar Ebke, who is currently resident in Canada.

### "Paid perjurers"

With the likelihood of long prison sentences for prosecutions under §129a StGB, many have argued that the *Kronzeugenregelung* encourages false statements because the giving of evidence considerably lessens the sentences.

In Mousli's case, it was not only the sentence which was reduced, but the charges against him were changed during his year and a half of interrogation by the BKA. After a relatively short court case in December 2000, he was sentenced to two years on probation.

The Berlin trial defence lawyers have also pointed out that after removing Mousli's income with his arrest (he ran a Karate studio in the "alternative" district of Berlin), the financial support he now receives under the BKA witness protection programme makes him dependent on the authorities.

Apart from arguing that the *Kronzeugenregelung* solicits potentially fabricated evidence in return for reduced prison sentences and financial rewards, the Berlin defence team has questioned the reliability of Mousli as a witness. In an application to halt the prosecutions for violating the principle of a fair trial, Kaleck, the defence lawyer of Matthias Borgmann listed serious inconsistencies in Mousli's accounts. These had been played down, ignored, or, perversely taken as proof of Mousli's credibility by the prosecution.

On the kneecapping of Hollenberg, Mousli described the wrong escape route and wrongly contended that the escape car was stolen when it had been bought. He described the gunman as male where the RZ and the victim described the person shooting as female. Similar inconsistencies are found in Mousli's statements on the attack on Korbmacher and the bombing of the ZSA Berlin. On the latter he claimed Glöde had been involved in preparing the attack when in fact he was in police custody on the night in question. He claimed the attack was aimed at destroying the central computer system but it was aimed at the main utilities area. These (and other) inconsistencies are explained away by the prosecution: the flight plans had obviously been altered retrospectively without informing Mousli and Hollenberg could not actually take in all the details of the attack. Concerning the false incrimination of Glöde, the BAW contends that Mousli was in fact a credible witness, as he at least had distinguished between definite and less definite recollections.

Kaleck, a defence lawyer, further argues that after one and a half years of intensive discussions with BKA officers - during which Mousli was repeatedly given summaries of his own statement as well as extensive background material on the RZ: "his statement will be a mixture of concrete memories, additions and extracts from his imagination, [and] learnt facts, corrected by the investigating authorities...". All of the defence lawyers question Mousli's credibility claiming that he had been under pressure from the police and prosecution. One public prosecutor said that during one of his interrogative prison visits to Mousli he had made it clear that: "the help in solving the case [*Aufklärungshilfe*] [under the *Kronzeugenregelung*] would have to lead to the investigative authorities catching other perpetrators. In relation to this I talked about "scoops"".

The judge in the trial against Mousli even commented that: "It is noticeable that at the end of December 1999 [close to the

expiry date of the witness regulation] there appears a certain change in [Mousli's] statement".

### Political prosecution?

Apart from the vague accusations based on conflicting evidence (see [www.freilassung.de/prozess/ra/290301.htm](http://www.freilassung.de/prozess/ra/290301.htm) for a detailed outline by Borgmann's defence lawyer), many have argued that the Berlin RZ trial is politically motivated. Probably the most striking aspect of the prosecution's conduct is the prolonged imprisonment of the five men and women on trial. Defence lawyers have made repeated applications for their release, all of which were refused (the most recent on 12 April after the postponement of the trial until mid-May).

The defence says the justification for refusal (danger of flight) is unjustified because all of them live and work in "stable conditions", have no previous criminal records (except one verdict from 1987) and because the organisation in question had declared its dissolution years ago. Remand periods are usually restricted to six months, obliging the courts and public prosecutor to ensure a swift processing of the case. However, the "emergency" nature of §129/129a allows for exceptions.

Their prolonged imprisonment is compounded because they are being treated as "security risks" by the authorities. On their arrests in December 1999, Glöde, Eckle and Haug (who have been on remand for 15 months) were put into isolation cells and transferred to different prisons around the country. This is called "ghosting" (a practice which was used against the RAF to avoid contact between prisoners) which seriously undermines the prisoner's contact with relatives, friends and lawyers.

The "security risk" tactics continued during the trial and was condemned by the Group of International Trial Observers (GITO). During prison visits and on the opening day of the trial, the international observers and members of the public were subjected to what they claim were disproportionate security measures. In court Mousli was accompanied by armed officers and the passports of those attending the trial were copied.

The GITO members (Sean McGuffin, Irish jurist and author, Saskia Daru, member of UNITED, Frances Webber, UK based immigration lawyer and member of the Institute of Race Relations, Pierre Jourdain, from the *Fédération des Associations de Soutien aux Travailleurs Immigrés* and Marcel Bosonnet, Swiss based defence lawyer and member of the Democratic Lawyers Zurich) claimed they were obstructed from conducting their work as they were not allowed to take pen and paper into the courtroom. Their press release says:

*"The search of [all] trial observers with the use of plastic gloves [including] the removal of shoes as well as comments by the BAW, which tried to justify the security measures with reference to organised events associated with the trial, left the impression that the public was regarded as a threat...[In this practice] we see a deliberate attempt of deterrence by the court and the BAW".*

The prosecution has also been accused of protracting the trial. Relevant files were not passed to the defence and although preliminary investigations finished in early 2000, the Chief Federal Prosecutor only brought charges towards the end of the year, thereby violating the rule of swift processing of court procedures (GITO press release, 21.3.01).

### §129/129a

The Berlin RZ trial has raised serious civil liberties concerns about German anti-terrorist legislation created during 1970's. Last year, several parliamentarians called for an abolition of §129/129a StGB, including Green party member Renate Künast, the Minister for Agriculture and Consumer Protection. In 1997 the former liberal Interior Minister Gerhard Baum said that the terrorist legislation was an "overreaction by the state" and that: "a revision of these "emergency regulations", which have not and

are not leading to anything, is urgently necessary".

The use of §129/129a shows that far from prosecuting dangerous "terrorist" for "membership", 85% of prosecutions deal with the lesser allegations of "promoting" organisations. A Munich GP medical assistant was sentenced to 12 months imprisonment for spraying a citation by the German author Büchner ("Krieg den Palästen - analogous to "fight the palaces") and a five pointed star (symbol of the RAF) on an underground carriage. Her friend, who allegedly helped her was sentenced to six months imprisonment.

However, §129/129a is not restricted to charges and sentences which do not require the proof of a specific crime ("promotion" suffices). It allows the investigating authorities to: impose restrictions on the defence (including limiting access to relevant files) and to use increased powers of covert police methods (interception of telecommunications, surveillance, the

use of undercover agents, raids and arbitrary stop and search operations). Civil liberties groups have argued that far from constituting a legal basis for the prosecution of specific crimes, §129/129a is a political provision (*Gesinnungsparagraf*), intended to surveil and control extra-parliamentary movements. The socialist faction of the Lower House of the German parliament has said it will initiate a motion to abolish §129/129a. But Künast is being pressurised to withdraw her signature from the initial appeal. According to Guido Westerwelle, secretary general of the same liberal party (*Freiheitlich Demokratische Partei Deutschlands*, whose members demanded the abolition of §129/129a four years ago), Künast had attacked the "independence of the judiciary".

*For all press releases and updates on the current situation of the RZ trial see [www.freilassung.de](http://www.freilassung.de) ; jungle world No 13 (21.3.01.) & No 16 (11.4.01).*