

# German court sentences members of leftist Turkish party to prison

By Justus Leicht  
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In late July, following proceedings lasting more than four years, a clearly political trial has ended with heavy prison sentences for 10 members of the Maoist TKP/ML (Turkish Communist Party/Marxist-Leninist). The sentences were passed by the Munich Higher Regional Court (Oberlandesgericht). The entire trial was a scandal and demonstrates the extent to which German political and legal authorities are prepared to ignore basic democratic norms.

The defendants, including German citizens and a number of asylum seekers whose asylum applications in Germany had been accepted, were sentenced to prison terms ranging from two years and nine months to six years and six months.

The harshest punishment was meted out to Müslüm Elma, who was sentenced to six and a half years in prison on charges of being a TKP/ML “ring leader.” After more than five years in prison on remand, the Munich Higher Regional Court (OLG) revoked its arrest warrant against him in what amounts to a travesty of justice. During the course of the trial the court had persistently refused to release him from remand custody.

Elma had already spent 22 years in prison in Turkey for his activities in the TKP/ML. He was tortured there under the rule of the 1980 military coup regime and was then given political asylum in Germany due to this political persecution.

In total, the 10 accused received more than 40 years in prison. None of them was accused of acts of violence or any other criminal act in Germany. The charges related only to their membership in the TKP/ML, which in turn is not classified as a terrorist or criminal organisation in Germany. The group is not banned in Germany and does not appear on any international terrorist list, including that of the European Union, which has a long list of alleged terror organisations based on the political criteria determined by individual EU governments.

The TKP/ML is considered a terrorist organisation only in Turkey, where it is engaged in a hopeless guerrilla war with the reactionary Turkish state. In neighbouring Syria, the organisation combats Turkish-backed Islamist militias such as the Islamic State of Iraq and Syria (ISIS). However, none of the 10 accused have been charged with involvement in any type of violence. The indictment was directed solely at membership or “ring-leadership” in a “terrorist organisation abroad,” according to paragraph 129b of the German Criminal Code.

Section 129 of the Criminal Code, i.e., the law that prohibits membership in criminal organisations, has not been primarily directed against so-called “organised crime,” which could be

described as “apolitical,” such as drug and human trafficking. Section 129 of the German Criminal Code (StGB) received its present name and basic structure (with minor subsequent amendments) in the context of the 1st Criminal Law Amendment Act of 1951, which was used to prosecute Communists in post war Germany.

The memorandum to the 1951 government draft stated: “The modern state needs new protective regulations to advance its line of defence and prevent enemies of the state under the mask of non-violence from obtaining power by fraud.” Under the SPD-led federal government of Helmut Schmidt, this legislation was supplemented in 1976 by paragraph 129a StGB (Terrorist Associations). In 2002, the SPD-Green government led by Gerhard Schröder introduced paragraph 129b StGB, which was decisive in prosecuting the TKP/ML. This extension of the law had already been discussed at EU level in 1999 and was enforced after the September 11 terrorist attacks in the US.

In all three legal forms, membership in an association, including “its purposes or activities”—according to the text of the law—is punishable when there is evidence of “intention” to commit a crime. Whether an individual is involved in committing an offence (or had already committed one) is irrelevant. Thus, the term “organisational offence”—irrespective of whether it has a political background or not—means that it is not deeds, but rather standpoints or mere intentions to commit an act, which can be punished. Since it is not a question of participation in concrete crimes at home or abroad, the paragraphs have been used primarily for investigative purposes and intimidation.

If, as in this case, the “offence” (i.e., mere membership) relates to an organisation outside the jurisdiction of the EU, the law stipulates that the German Ministry of Justice must authorise prosecution. Such an authorisation was apparently given over four years ago by then Minister of Justice and current Foreign Minister Heiko Maas (SPD).

The concrete accusations made by the Federal Prosecutor’s Office, which the court followed, were essentially that the defendants had recruited members in Germany, and had organised propaganda events and fund-raising campaigns, i.e., had used legal means to support an organisation legally recognised in Germany.

The German domestic intelligence agency (Verfassungsschutz) which monitors the TKP/ML as “Turkish left-wing extremists,” also admits that it was unaware of any “appeals for the use of force or carrying out of violent acts in Germany.” Likewise, there

were “no indications that this practice would change in future.” Instead, the Verfassungsschutz accuses the organisation of “striving for a violent overthrow” of the government in Turkey and committing attacks accordingly.

The defence team for the accused TKP/ML members described the trial as “a piece of work commissioned” by Turkish President Recep Tayyip Erdogan, who is establishing an authoritarian regime in Turkey and increasingly using violence to prosecute opposition forces. The defence also challenged the German Ministry of Justice’s authority to prosecute and demanded the trial be halted at its outset.

In fact, paragraph 129b of the German Criminal Code states that the ministry, when deciding on authorisation, must take into account “whether the efforts of the organisation are directed against the basic values of a state order that respects human dignity or against the peaceful coexistence of peoples and, after weighing all the circumstances, appears punishable.” On this basis, the authority to prosecute should never have been granted in the first place.

In 2016, the same court had already made a ruling declaring that it did not matter whether the Turkish state committed human rights violations or—as in Syria—supported Islamist terrorist groups.

The court also denied that the authorisation by the ministry to prosecute was arbitrary. It admitted that there was no such authorisation in the case of the “Free Syrian Army,” which also fights for the violent overthrow of a state order using force. But, the court reasoned, this was happening in another country, in Syria. At the same time, the ministry had also given authority to prosecute the DHKP-C, a leftist guerrilla group also operating in Turkey.

In fact, the arbitrary nature of the court’s rulings is particularly evident here. Whether or not an organisation is prosecuted as terrorist depends, according to the court, not on the nature of its methods, but rather whether it seeks to overthrow a state which is an ally of Germany. The TKP/ML acts in Syria as a de facto agency of US imperialism. It works together in Syria with the Kurdish-dominated YPG (People’s Defence Units), which in turn has long collaborated closely with the US military.

It is more or less undisputed that in the course of the prosecution the Federal Prosecutor’s Office also used extensive material it received from Turkish authorities and that Turkish spies had illegally collected such evidence in Germany. Although the Attorney General is investigating the espionage activities of the Turkish secret service (MIT) in a number of other cases, the court presented a letter from “Police General Directorate Istanbul,” openly admitting to acts of spying.

According to the *Tagesspiegel* newspaper, the letter declared that as a “result of the compilation of secret service information” about the defendants’ milieu, it had been discovered that “in Germany there is a cadre of about 700 to 800 people and this number increases to 2,000 at organised events. When the court handed down its verdict, however, it claimed that the “evidence” from Turkey “played almost no role.”

The entire trial recalled the methods used by an authoritarian regime. The defendants had spent several years in pre-trial detention, on occasion under extremely repressive conditions.

They were isolated, were only allowed to speak with their lawyers through glass partitions, and their correspondence with defence attorneys was monitored.

In her closing remarks, one of the defendants, a doctor, Dilay Banu Büyükavci, compared the trial to that of the NSU terrorist Beate Zschäpe, who appeared before the same court.

Public prosecutor Heise had repeatedly claimed “this is a criminal trial and not a political trial,” Büyükavci said, “but all the measures we have been subjected to demonstrate the opposite.” While she had been subjected to isolation and other measures, Zschäpe, who “killed 10 people, robbed a bank and planned bomb attacks, and was thus accused of attempted murder, did not have to endure the type of special measures imposed on me.”

The same applies to the defendants accused of membership in the neo-Nazi Old School Society. Among its activities the Old School Society had hoarded large quantities of explosives and planned attacks on homes for asylum seekers. Its “ringleaders” were also sentenced by the Munich Higher Regional Court to between four and a half and five years in prison, i.e., considerably less time than Müslüm Elma, whose only “crime” was leading an organisation that was legal in Germany.

The verdict amounts to a persecution of opinions (Gesinnungsjustiz), an arbitrary means of intimidation aimed at influencing foreign and domestic politics. The message sent is that anyone who is left-wing and/or opposes a regime allied with Germany can be imprisoned in Germany for years, even if he or she resorted to entirely legal means within an organization that is legal in Germany. The preparations for a right-wing, authoritarian regime in Germany are rapidly developing.

The defenders of the TKP/ML members have announced they plan to appeal the verdict.

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