

Investigation and prosecution of terrorist crimes in Germany

Der Generalbundesanwalt beim Bundesgerichtshof
(*The Federal Public Prosecutor General at the Federal Court of Justice*)

Outline

The target of the presentation is to give an overview about the handling of terrorist threats in Germany. The institutional framework is exposed and the questions are answered, which government agencies deal with the fight against terrorism and how they do cooperate. The relevant regulations of the penal law are outlined and the significant procedural rules and their applications described:

I. Institutional framework

In Germany, essentially the following government agencies deal with the fight against terrorism: The Federal Public Prosecutor General (Generalbundesanwalt), the Higher Regional Courts (Oberlandesgerichte) and the Federal Court of Justice (Bundesgerichtshof) are responsible for the **prosecution** of terrorist acts. They are supported in this by the Federal Criminal Police Office (Bundeskriminalamt) and the Land Criminal Police Offices (Landeskriminalämter). The Federal Criminal Police Office, the Land Criminal Police Offices and the Federal Border Police (Bundespolizei) also exercise **preventative duties** within the framework of fighting terrorism.

The **intelligence services** also perform duties related to fighting terrorism. These intelligence services include the Federal Intelligence Service (Bundesnachrichtendienst), which is responsible for the acquisition of information abroad, the Federal Office for Protection of the Constitution (Bundesamt für Verfassungsschutz) and the Military Counterintelligence Service (Militärischer Abschirmdienst) as domestic intelligence services.

According to the German law the various involved services and authorities are obliged to exchange information and to get in contact to each other when there is a case of responsibility in more services. With regard to formal exchange of information and organisational measures, the establishment of a **Joint Terrorism Defence Centre** in 2004 needs to be pointed out. The special and investigation units of the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution are brought together at this centre. The Federal Intelligence Service, the Criminal Police Offices and Offices for the Protection of the Consti-

tution of the German member states, the Federal Police, the Customs Investigations Police and the Military Counterintelligence Service are all integrated into the work flow. The Federal Public Prosecutor General responsible for state security and in particular for terrorist offences is also represented there. The Federal Office for Migration and Refugees is included in the centre for purposes of a holistic terrorism defence.

II. Penal law

Germany counters terrorism with the "classical" set of tools available in criminal law and with measures to avert dangers. There is neither a separate law in Germany relating to the fight against terrorism nor a legal definition of "terrorist offences".

Section 129a of the Penal Code contains a special provision concerning terrorist organisations. Whoever participates in an organisation as a member or forms an organisation, the objectives or activity of which are directed towards the commission of murder, manslaughter, hostage-taking or other serious criminal offences, shall be punished. A prison sentence from 1 year to 10 years shall be imposed. In the event that the perpetrator of these criminal offences is one of the **ringleaders** of an organisation, then a prison sentence from 3 years up to 15 years shall be imposed. Whoever **supports** a terrorist organisation as defined in the Penal Code or recruits members or supporters for such an organisation shall be punishable, too. There a prison sentence from 6 months up to 10 years is possible.

The provision set out in **Section 129b of the Penal Code**, which was effective as of August 2002, enables the prosecution of the founding, membership, supporting and recruiting of members or supporters of criminal or terrorist organisations abroad, that is organisations that do not have at least one independent sub-organisation in Germany. In the event that the case involves a foreign organisation outside the Member States of the European Union, prosecution shall only be possible in the event that there is a domestic connecting factor set out in law (e.g. the suspect's activity is exercised in Germany, the alleged perpetrator or a victim is a German national or is within Germany). Furthermore, such cases shall only be prosecuted on authorisation by the Federal Ministry of Justice. Such authorisation may be granted for an individual case, as well as in general for the prosecution of future acts relating to a specific organisation.

Individual terrorist acts, at least, are punished in accordance with the provisions of the general criminal statutes (as a rule, homicide and bodily harm, criminal offences against personal liberty, criminal offences against public order and criminal offences dangerous to the

public, such as arson, creating an explosion and poisoning, money laundering, money transfer to listed persons and organisations).

III. Procedural rules

There is no separate procedure in Germany for sentencing persons suspected of having committed terrorist offences. For this reason, all provisions of the **Code of Penal Procedure** which apply to other accused persons before or during trial are to be applied to those suspected of terrorism. In particular, those accused persons have the same rights as all other accused persons during interrogation, in the main hearing and as to the possibility to submit appeals against court rulings.

The prosecution of terrorism is the responsibility of only one authority for all of Germany. Under the **Courts Constitution Act** the Federal Public Prosecutor General has jurisdiction for the prosecution of terrorist criminal offences in respect of the accusation of the "formation of terrorist organisations" in accordance with the Penal Code. The investigating judge at the Federal Court of Justice has special jurisdiction for judicial investigation measures. The criminal senate of the Federal Court of Justice with jurisdiction for national security matters rules on complaints against investigation measures. Court jurisdiction at first instance (trial court instance) was placed for these proceedings with those Higher Regional Courts in whose districts the Land governments have their headquarters. These provisions promote the necessary special public prosecution, as well as judicial expertise in prosecuting criminal offences related to terrorist associations, but change nothing with regard to the appeals procedure.

In the **counterterrorism investigations** the Federal Public Prosecutor General is supported by the Federal Criminal Police Office and the Land Criminal Police Offices. The investigation tools are as follows (without claim of completeness):

- a) the ordering of remand detention / detention while awaiting trial
- b) the monitoring of the telecommunications
- c) the observation
- d) the search and the seizure of evidence
- e) the deployment of undercover agents or informants
- f) the examination of evidence by technical methods (e.g. DNA)