

A case of class law: harsh judgement against Berlin cashier

Verena Nees
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Some incidents provide a particularly keen insight into the present political situation in Germany. It is only necessary to examine two court decisions made one after the other at the start of this year.

In one case, the former chairman of the German Post, Klaus Zumwinkel, was found guilty by a regional court in Bochum of tax evasion totalling €970,000. He was given a suspended sentence of two years and a fine of approximately €1 million—i.e., the same sum which he withheld from German tax authorities via his bank account in the tax haven of Liechtenstein.

In the second case, the dismissal of supermarket cashier Barbara E., known as Emmely, was confirmed by the Higher Labour Court in Berlin at the end of February. She was dismissed by her employer on the suspicion of pocketing two bottle deposit slips with a combined value of €1.30.

Klaus Zumwinkel, 65, will suffer no personal consequences as a result of his conviction. In his function as head of German Post in 2008 he received a payment of €714,045, including a bonus payment of €480,184, plus share options with a current value of more than €1 million. His private wealth is currently estimated at €8 million. In addition, he possesses a castle at Lake Garda valued at €5 million, which is now his retirement home. Just a few days ago, Zumwinkel drew out his pension from German Post—a lump sum of €20 million!

The situation looks very different for 50-year-old Emmely, who, in her 31 years of hard work as a cashier had never committed any sort of offence. Her reputation has now been blackened by the judgement of the Berlin court and she will have great difficulty finding any alternative employment. In the months before receiving her notice in February 2008, she had been living on a monthly wage of just €1,700. Since her sacking she receives the paltry Hartz IV unemployment payments, and it is now likely that she will spend the rest of her life in poverty—despite her long working life. In accordance with a demand from the employment agency, she has already been forced to move from her 90-square-meter apartment into a smaller flat.

Her sacking had been preceded by a strike by the Verdi trade union, of which Emmely was a member. The union had

undertaken strike action for a wage increase for retail trade workers, and Emmely was one of the most militant participants in the strike. She presumes that there is a connection between this fact and her sacking. Following the strike, Emmely and another colleague were not invited to a festivity organised by the company and shortly afterwards the incident with the deposit slips took place. In the course of tabulating her own purchase of food in the store where she worked, she allegedly cashed in two deposit slips valued at 48 and 82 cents, which a customer had lost 10 days before. She was promptly sacked on the spot, which was later converted into a notice within the prescribed period.

According to Emmely, two of her colleagues were present at the cash point when the incident is alleged to have taken place and both testified that the mother of three had cashed in the slips. Emmely denies their accusation, which cannot be backed up because video recordings that could have helped to clarify the incident were deleted a short time afterwards. "Why should I steal €1.30 after 31 years of work for the company?" Emmely asked. "The accusation is crazy."

The fact that the video recordings had been deleted, and that the accusation against Emmely could have been lodged by the management as an excuse to get rid of her, were not even considered by the Berlin court. Contradictions that emerged in the testimonies of the witnesses were also not challenged. In her verdict the presiding judge declared that the act was proven and that her employer had every right to sack her. The Labour Court also ruled out any appeal.

As the verdict was declared, Emmely's supporters in court expressed their anger and called out "class justice" and "what are the managers up to?" Emmely's lawyer announced that an appeal would be lodged with the Federal Constitutional Court.

The cases of Emmely and Zumwinkel are two sides of the same coin: the more society is divided into a super-rich elite and a growing social layer condemned to poverty, the more clearly emerges the class nature of the state and its judiciary.

In the case of Emmely, her employer—the food company Kaiser's Tengelmann—was able to rely on a judicial relic from the era of the German Kaiser, the possibility of "dismissal on the basis of suspicion," according to paragraph 626 II BGB. According to this law, an employer can sack an employee

without notice on the basis of suspicion of a punishable action that leads to a breach of confidence between the employer and employee. The employer must state the reasons for his suspicion, but must not prove that the deed actually took place. Instead the burden of proof lies with the accused employee. When in doubt, criminal law decides in favour of the accused, but this does not apply to German labour law. Since the beginning of the organised workers' movement in Germany this paragraph has been frequently used by employers to get rid of militant or left-wing workers.

The judge presiding over the court in Berlin, Daniele Reber, had given a paper dealing with the possibilities of "a dismissal on the basis of suspicion" in a seminar held by the Forum Institute for Management in October last year. The forum institute is run by the Springer Science Business Media company, which trains high-level personnel.

In making her judgement, Reber was able to base herself on previous similar cases. In 1984 the Federal Labour Court arrived at a decision of general principle, on the case of a baker's shop assistant who had taken a one-day-old piece of cake. In Hanover the head of a small chain of bakeshops was sacked without notice, because he had drunk a cup of milk valued at 59 cents. The expiry date of the milk was long past.

In view of the present economic situation, however, such juridical decisions take on a whole new dimension. So far, none of the bankers or fund managers who have plundered the economy in criminal fashion and pocketed astronomical sums has been called to account and prosecuted. At the same time, the incidence of cases where workers are sacked for thoroughly trivial offences is on the increase. Just a few weeks ago a new case was reported of a baker's shop in Dortmund which had sacked two employees because they had taken something to spread on their bread rolls—valued at 50 cents! In this case, however, the court argued against the dismissals for formal reasons.

The verdict of the Berlin court against Emmely has unleashed a wave of popular anger and indignation. According to Emmely, the union leadership of Verdi has shown little interest in her case and merely provided her with the legal means to defend herself. In a press release the union appealed to the responsibility of politicians and companies "committed to social fairness" to behave appropriately.

Federal politicians such as Wolfgang Thierse (Social Democratic Party) and media representatives reacted with shock to the judgement. In a discussion in the conservative *Tagesspiegel* newspaper, political editor Rüdiger Schaper grumbled, "Do the judges not read newspapers or watch the news on television about what is taking place in the job market and in the world of the economy and finance? ... A woman with a small income has been left destitute because of €1.30, while finance managers wipe out billions, drive companies into the abyss, endanger tens of thousands of jobs, squeeze dry national budgets and attack the democratic, social order with their greed,

with their absolutely inexcusable and irresponsible behaviour. How can one not feel sick with rage—and helplessness!" The frightened editor then concluded: "With its unyielding manner this judgement creates the basis for a social explosion. ... And it emerges once again: the notion of class justice."

Nevertheless such appeals and warnings have gone unheard.

The class character of the law has deep roots and a long inglorious tradition in Germany going back to the authoritarian Prussian state. The delayed bourgeois development in Germany, which only gathered pace in the second half the 19th century under conditions of a rapid industrialisation and the emergence of a strong workers' movement, meant that the bourgeoisie reacted in a hostile fashion to a genuine democratic movement and preferred to realise its goals through the authoritarian Prussian state headed by Bismarck.

These traditions of the authoritarian state have continued, but have been adapted to new conditions. The Weimar Republic was notorious for its prosecution of pacifists and leftists who were tossed into prison while the terrorist attacks of the Nazi hordes were treated as harmless offences.

The tradition of the Weimar judiciary was absorbed by law by the Nazi regime and after 1945 not a single judge active in the Nazi Court of Justice was brought to trial for their crimes.

The return of class justice confirms the maxim laid down by Karl Marx in 1875 in his critique of the Gotha Program, when he declared that economic relations are not determined by law, but rather that the basis for law is determined by the prevailing economic relations.



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