

The firing of a German supermarket cashier: A case of class justice

An answer to Professor Rieble

Justus Leicht, Peter Schwarz
24 August 2009

The dismissal of the supermarket cashier Barbara E, often referred to as “Emmely”, has provoked broad public indignation in Germany. The 50-year-old, whose monthly earnings after over 30 years of work amounted to just €1,700 pre-tax, was sacked without notice because she had redeemed store coupons worth €1.30 left by a customer. Her dismissal was upheld both by a Berlin labour court and an appeal court.

The public anger generated by the case is in large measure due to the double standard in the way ordinary workers are treated as compared to the financial elite. While those bankers and speculators responsible for the economic crisis face no retribution for their criminal behaviour, the life of a cashier has been destroyed because of a trifle, with the benediction of the courts. For this reason, the *World Socialist Web Site* characterized the judgement against Emmely as a case of “class justice” in an earlier article.

This provoked an answer from Professor Volker Rieble. The professor for labour and civil law at Ludwig Maximilians University in Munich published a five-page article justifying the judgement against Emmely in the *Neue Juristische Wochenschrift* (NJW, *New Legal Weekly Review*) and referring explicitly to the article by the *World Socialist Web Site*.

Rieble’s essay attempts to refute the accusation of class justice, but ends up doing the opposite. His aggressive and in part insulting tone, his exaggerated and absurd social prejudices and his partisanship for bankers and managers who have gambled away billions or evaded taxes, only serves to underline the class character of the judgement against Emmely.

It is unusual for the NJW, probably the most renowned legal periodical in Germany, to publish such an overblown polemic. This shows that the Emmely case is not an individual case. The more the social and economic crisis intensifies, the more openly the judiciary reveals its class character—as it did in the Weimar Republic.

Why class justice?

The class character of the judgement against Emmely is not limited to a one-sided interpretation of the law by the courts. It is contained in existing law and legal precedents that are vehemently defended by Professor Rieble.

Thus, in labour law the presumption of innocence does not apply. The mere suspicion of malpractice is sufficient for dismissal, even if that means the “person will never again find a job”, as Rieble writes with satisfaction about Emmely; that is even if dismissal is a lifelong punishment.

Citing judgements of higher courts, Rieble justifies “dismissal on

grounds of suspicion”. Such dismissal, he writes, is not a reaction to an offence, but rather a reaction to the loss of confidence arising from the suspicion. In other words: If an employee is suspected of an offence, he or she can be sacked because the mutual trust no longer exists, even if the offence is not proven at all.

Rieble justifies Emmely’s dismissal with an “unacceptable breach of mutual trust”. He rejects the reproach of “disproportionality—here a loss of 1.30 euro, there the loss of a job”. Such a reproach, he writes, displays “limited precision of thought”. “Indeed, the loss of one’s job would be disproportionate as punishment or sanction for a petty criminal offence”, he writes. “Only this does not apply here at all.... The issue is mutual trust in the future”.

This argumentation is grotesque. After thirty years employment, a trifle such as redeeming a coupon worth 1.30 euro is supposed to represent an irrevocable breach of trust. If that is not disproportionate, then what is?

Barbara E. had worked continuously since 1977 for the Kaisers/Tengelmann supermarket chain. Only once, in 2005, did she receive a warning as a result of a customer complaint. The substance of this complaint and the warning are not referred to either in the judgement or by Rieble. Otherwise she has an unblemished record of thirty years. After her dismissal notice had already been served the employers added the (unproven) accusation, that she once used a so-called digital coupon without authorisation, at a cost of 3 euro to the company.

Moreover, the redemption of the coupon caused no loss to the company, since rightfully it belonged to an unknown customer. For this reason, the initial labour court had accused Emmely not of theft or misappropriation but fraud. The second court ruled that it did not matter if she had committed a criminal offence, because she had broken workplace rules at any rate.

Rieble will also not accept a threshold for such trivial matters, even though he himself cites a decision of the Federal Administrative Court that officials accused of misappropriating public funds cannot be dismissed if the amount is below 50 euro. He justifies this by saying that “the legal bonds between public officials and their employers are more intensive than between [ordinary] employees and employers”. The professor does not explain why more intensive bonds justify a lower level of trust.

Barbara E. has accused her employer of firing her because of a strike in the retail trade in which she had participated. This accusation, which she also related in court, has thrown the professor into a rage. What she was seeking, he writes, is, “objectively speaking, a special protection against dismissal for striking offenders. Anyone who has committed or plans to commit a serious breach of duty would be advised to join a union, so as to be able to cite antiunion motives in response to the expected dismissal”.

Here as well Rieble simply reverses the burden of proof. While, in the case of dismissal on mere suspicion, he had argued that it was unnecessary

to prove that an offence had actually been committed, he now argues that strong indications for the real reason for the dismissal, such as participation in a strike, are irrelevant. He even turns Barbara E's accusation that she was fired for participating in a strike against her by insinuating that she is seeking "special protection against dismissal for striking offenders". Such an argument can be used to deny any protection against victimization. In both cases, Rieble's argumentation opens the floodgates to arbitrary action on the part of the employers.

Since the professor obviously feels that his arguments are not very convincing, he demonizes the poor cashier atrociously. Although he admits that "no public prosecutor would pursue such a case where the damage was valued at 1.30 euro", he continuously calls her a "criminal offender", insults her as "a notorious liar", accuses her of mounting a defence strategy based on "lies and deceit", and finally calls on the public prosecutor to investigate her.

The reason he gives for this last demand is even more trivial than the redemption of the coupons worth 1.30 euro. Since Emmely probably suspected what was about to happen when she was accused of redeeming the coupons, she explained that possibly her daughter or a colleague might have put the coupons into her purse. For Rieble, this harmless excuse represents a crime—"simulating the commission of a punishable offence"—in which "the Berlin public prosecutor should be interested".

There were times, in which chicken thieves were condemned to death by German courts. But charging someone who claimed that another person had smuggled coupons worth 1.30 euro in her purse for a criminal offence may well be unique even in German legal history.

Rieble justifies his call for prosecution with the fact that Barbara E has publicly opposed the judgement against her—which is her democratic right. "Precisely because of the campaign conducted by Mrs. Emmely attacking the Berlin jurisdiction and placing a question mark over the rule of law, there is a substantial public interest in punishing any criminal offences in the context of these proceedings", he writes. What the professor is demanding here is prosecution as retaliation for criticising the courts.

Other yardsticks

As soon as the professor addresses the conduct of bankers and managers he imposes completely different standards than in the case of the cashier. This is particularly obvious in the case of Deutsche Post CEO Klaus Zumwinkel, who had to vacate his post because he had evaded millions in taxes. Here the presumption of innocence applies, and mutual trust suddenly no longer plays a role.

Responding to a reference by the *World Socialist Web Site* to the extremely mild punishment Zumwinkel received, the professor answers, "Herr Zumwinkel has 'only' evaded taxes. Outside the public service this would not form grounds for dismissal on the basis of suspicion and also not on the grounds of fact—since the crucial link to the employer-employee relationship is lacking".

If mere suspicion of inappropriate behaviour by an employee suffices for dismissal, it is entirely different in the case of a manager worth millions: "Even custody and certainly house searches do not suffice for dismissal on grounds of suspicion". Rieble states regretfully that under "public pressure" Zumwinkel eventually gave up his job voluntarily "after radio and television were allowed to report on the search of his property". He received a compensation of 20 million euro, something Rieble does not mention.

It does not even occur to the professor that the "bond of trust" could be destroyed if the boss of a large corporation engaged in evading millions in taxes, in particular when this company belongs to the state. What he

regards as self-evident in the case of Emmely—that the redemption of coupons worth 1.30 euro destroys the bond of trust irrevocably—does not apply when the public purse is cheated by millions.

Nevertheless, Rieble states incessantly he upholds the principle of the equality of all before the law. Against a judge, who had expressed the belief that Zumwinkel would have gotten off before a German court if he had deliberately inflated his travel expenses by a small amount, an outraged Rieble cites a few judgements in which managing directors were sacked for small amounts. Such bizarre argumentation recalls the quotation of the French writer, Anatole France: "Equality before the law forbids the rich as it does the poor from sleeping under bridges, begging on the streets or stealing bread".

Regarding those "guilty" (the quotation marks come from Rieble) for the current financial and economic crisis, the professor from Munich insists on the presumption of innocence. He opposes their "condemnation in advance by an inexpert public" and writes, "Humorously enough, nobody here is speaking about the presumption of innocence, although it directly applies in the case of the 'bankers' and those responsible for their supervision."

Whether bankers, whose greed for profits make them speculate billions, thereby destroying or endangering millions of jobs, should be held liable in criminal or civil cases, "nobody at present" can judge, maintains Rieble.

Some public prosecutors, however, have arrived at a judgement—completely along the lines of Rieble. Thus the *Financial Times Deutschland* reported that the public prosecutor's office announced that preliminary investigations against the former head of IKB bank, Stefan Ortseifen, have mostly been shelved. He will probably face no punishment for his involvement in the risky speculative business actions of the IKB.

The *FTD* describes Ortseifen's activities as follows: "For many years, the bank had invested vast sums of money in the American junk mortgage market; the depreciation in their value finally brought the bank to the brink of failure." It continues, "On this point, it is not possible to show embezzlement on the part of the IKB directors, according to the public prosecutor's office. At most they can be accused of acting negligently, which however is not punishable by law. Also in comparable cases investigators face the problem of proving that former bank managers have carried out punishable actions. A manager can be only condemned for embezzlement if intent can be proven."

Rieble himself had already spoken out last October in favour of the IKB management. When the bank demanded its former directors repay the profit shares they had received worth millions, he regarded this as the "disfranchisement of a whole profession". In the context of the financial crisis, bankers had "become a socially outlawed profession", he was quoted saying by news magazine *Focus*.

A similar argument was also deployed by the house sheet of the Frankfurt stock exchange, the *Frankfurter Allgemeine*. Referring to the Bochum lawyer Klaus Bernsmann, the paper regards the criminal law altogether as "unsuitable for judging on collective actions like the financial crisis", and arrives at the conclusion that it is not in the interest of the capitalist free-market economy if those responsible for the financial crisis were summoned before the courts. If the requirements faced by directors became stricter, there was a "danger that harsher laws would produce cowards. Executives would lose the desire to take risks from fear of the courts".

Insulting polemic

Against all those who do not share his one-sided view of things, the professor from Munich sprays fire and brimstone. In his eagerness to defame his critics he abandons any objectivity.

He calls critics of the Emmely judgement “infuriating social romantics” and—referring to “the authors of the WSWS and *taz*”—regrets that “freedom of opinion allows non-state organisations to attack the courts and judicial rulings non-objectively and emotionally”.

Even Horst Seehofer (Christian Social Union, CSU) is attacked: “That the Bavarian Prime Minister could not escape this populist trap goes without saying”, writes Rieble.

Much stronger insults are directed against Wolfgang Thierse (Social Democratic Party, SPD), who called the Emmely conviction “a barbaric judgement of anti-social quality”, but then immediately withdrew this reproach. Rieble calls this SPD politician who originates from the former GDR—and who from 1998 to 2005 was president of the German Bundestag, the second highest representative of the German state—an “East German Sandman”, a derogatory reference to the children’s fairy-tale character who is known for his “unqualified anti-constitutional criticism of judgements”, and asks, “Does he want to reactivate the people’s courts (*Volksgerichte*)—reviving the Conflict Commissions of the good old GDR?”

By this remark, Rieble disqualifies himself. There were no “people’s courts” in the GDR, something that the professor should know. He selected this term probably consciously for its resemblance to the notorious *Volksgerichtshof* of the Nazis. The Conflict Commissions to which he alludes were not “people’s courts” but were a kind of labour arbitration commission. They were elected by employees and were responsible for disputes at work and for minor legal infringements. They were under the direction and control of the local and district courts and the supreme court.

There were “peoples’ courts” in Germany, as far the authors know, only from 1918 to 1924 in Bavaria. Established by the social democratic state government after the November revolution, following the suppression of the Munich soviet republic, they were converted by the right wing into courts martial, conducting brief trials of leftwing “troublemakers”. They attained a sad celebrity shortly before their dissolution, when the Munich people’s court acquitted Adolf Hitler during a scandalous trial following his putsch attempt and praised him for his “pure patriotic spirit and noble will”.

Rieble’s reference to “people’s courts” is, thus, a complete historical misrepresentation. However, his tirades nevertheless make clear that for him any influence exercised by the people over the legal system is an abomination. “The courts”, he writes, “must decide coolly and unemotionally... Whoever wants peoples’ courts basing their decisions on emotions should be clear what this really means”!

His article comes to the conclusion that the Emmely case is “not a case of class justice—but proof that the citizens do not understand their (!) justice system”. That is not because of the justice system, but because “of the readiness of the citizen, free of knowledge and effort, to pass judgement based on their own indignation”.

That is a revealing admission. If “the citizens do not understand their justice system”, this can only mean that the courts, even though they pronounce their judgements “in the name of the people”, stand apart from the people and defend different interests, i.e., the interests of another class. This is precisely the essence of class justice.

Rieble’s argumentation is deeply undemocratic. The direct influence of the citizens on the judicial system is an elementary characteristic of democracy, an achievement of the struggle against feudal class justice. In bourgeois democracies steeped in tradition like the US, France and Britain, important cases today are still decided by juries. In Germany, something similar came into being after the revolution of 1848, but juries were then to a large extent abolished in the Weimar Republic. What has

remained are the lay assessor courts, district courts, that deal with smaller criminal cases in the first instance with one professional and two lay judges.

Professor Rieble is in reality reacting very sensitively to the fact that the citizens are beginning to understand his justice system. The myth of the constitutional state standing above the classes begins to crumble. He is not so much concerned about the legal aspects of the Emmely case. Rather he is conducting a campaign that seeks to prevent that the law and official politics from coming under the influence of mounting social discontent and public pressure.

Who is Professor Rieble?

If one investigates Rieble’s background, his views do not come as a surprise. Despite his professorship and university chair he is a paid lobbyist of the employers’ associations.

He draws his salary from the Centre for Labour Relations and Labour Law (ZAAR), whose director he is. ZAAR is funded by a foundation that is financed by big business, and is attached to the Ludwig Maximilians University Munich (LMU). The board of trustees, foundation advisers and foundation board contain exclusively representatives of the employers’ associations and large-scale enterprises, in particular the chemical, metal and electrical industries, as well as Daimler, Bosch and Siemens.

Rieble is a tenured professor, whom the university has given unpaid leave of absence. He has the right to return to his university position at any time. According to a statement by ZAAR, this arrangement was established in an agreement between the LMU and the state of Bavaria. The whole construct is a classical example of the close links between big business, the state and academia.

The objectives of ZAAR leave nothing to imagination. It approaches labour law “as an important factor for business location and competition”, as the preamble of the foundation’s statutes states, and studies “the economic impact of labour laws protecting workers”. In other words, Rieble’s ZAAR regards worker’s rights exclusively as a disadvantage affecting business location and competitiveness. Despite all its statutory independence, ZAAR and Professor Rieble are in reality nothing more than a lobby and a think tank for employers in the garb of a university institute.



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact