

# The TV film “Terror” and the attack on democratic rights in Germany

**Johannes Stern, Peter Schwarz****24 October 2016**

The TV film “Terror—Your Verdict”, shown by the public broadcasters ARD (Germany), ORF (Austria) and SRF (Switzerland) on Monday at peak viewing time, was a deliberate political spectacle to promote German militarism and nullify elementary democratic rights and principles, which were anchored in the constitution following the experiences of the Kaiser’s Empire, the Weimar Republic and the Nazi dictatorship.

The film is based on a theatre piece by Ferdinand von Schirach. It depicts the fictitious trial of a 32-year-old air force major who, in an unauthorised action contrary to orders, shoots down a Lufthansa airliner with its 164 passengers to prevent it being flown into a football stadium where there is a crowd of 70,000 people gathered.

The verdict—and thus the end of the film—was decided by the public. In Germany, 87 percent of callers voted that the army pilot was not guilty, 13 percent voted guilty.

In the following talk show, “Harsh but Fair”, the invited representative of the military, a certain Major Thomas Wassmann (retired), openly called for the constitution to be amended to reflect the “new conditions” of war and terror, such that in “extreme situations” soldiers would be authorized to act contrary to the constitution, the Bundeswehr (Armed Forces) would be deployed inside Germany, and elements of martial law would be introduced on the home front.

The entire spectacle, extensively promoted by ARD and reaching a large audience, was an attack on the Supreme Court, which had refused to sanction the state-ordered killing of human beings. On February 15, 2006, the court struck down the “Aviation Security Law”, introduced by the Social Democratic Party-Green Party government, as unconstitutional. The law would have empowered the defence minister to order the shooting down of civilian airliners if “the circumstance indicates” that the plane “was being used against peoples’ lives”.

The Supreme Court based its ruling directly on Article 1 of the constitution, which declares that human dignity is inviolable and that the “duty of all state authority” is to respect and protect it. If the state orders the killing of people to protect others, according to the ruling of the Supreme Court, it violates “those affected as subjects with dignity and inalienable rights”.

This “cannot be reconciled” with the “concept of people as beings invested with self-determination and freedom,” who cannot be made “the mere objects of state action”.

This ruling has since become a thorn in the side of all those advocating the build-up of repressive state powers at home and abroad. It not only stands in the way of shooting down hijacked planes, but every form of state ordered killing of alleged “terrorists”, “enemies” and “opponents”. The deliberate killings by drones—routine for the US in the so-called “war against terror”—is, according to the ruling, just as illegal as their detention without trial and torture.

The film “Terror—Your Verdict” is a smear against the Supreme Court ruling. In an interview, the author, Ferdinand von Schirach, a grandson of the Nazis’ National Youth Leader, stressed that he himself would have found the army pilot guilty, and he respects the principle that “the dignity of man is inviolable”.

The film is made in such a way that the defender of democratic rights (the state attorney, played by Martina Gedeck) appears as an unworldly dogmatist, while the accused military pilot (played sympathetically by Florian David Fitz) is a sensible pragmatist. Faced with the choice between the deaths of 164 passengers or those of the 70,000 in the stadium (in addition to the 164 passengers), one can understand, under this hypothetical scenario, the decision of the military pilot.

In reality, however, the film aims to justify not only the shooting down of a hijacked plane, but a broader assault on fundamental democratic rights. The tendentious hypothetical scenario envisioned by the film is merely a pretext for an attack on the constitution itself, which proclaims that the state must respect the dignity of human beings and cannot make them mere objects of state action. If the state killing of human beings is permitted under the constitution, then the door is wide open for every arbitrary state action.

The fact that the question of legitimizing state killings is being discussed in Germany, of all places, is particularly alarming. In no other country in the world have state violence and terror taken on such a scale as in Germany under the Nazis. The state ordered and organised the killing of millions of Jews, Sinti, Roma, the disabled, war prisoners and political opponents. Those involved were not just morally uninhibited

Nazi henchmen, but hundreds of thousands of supposedly honourable jurists, officers and civil servants.

To create the maximum confusion regarding these questions, the actual legal situation has been deliberately distorted.

Heribert Prantl, who heads the domestic affairs department of the *Süddeutsche Zeitung* and is himself a lawyer, accuses Schirach and ARD of misleading viewers in order “to betray the most important legal principle of human dignity”. Using the logic of Schirach and ARD, one could “make waterboarding a necessary means of fighting terrorism, guilt- and penalty-free”.

Through a false presentation of the legal situation, according to Prantl, the population is being forced “to vote for setting aside legal principles in order to defend the law and people in extremis”, such that “in the fight against terror, every extra-legal means is legal”.

In his regular column in *Die Zeit*, Thomas Fischer, a federal judge on the Supreme Court, expressed similar sentiments. He described the film as “an unashamed, difficult-to-bear manipulation of public opinion”. Everything was “so false and involved and twisted that it makes you sick”. The viewer is “royally screwed over”.

The manipulation begins with the voting public being posed with the alternative of sentencing the major who authorizes shooting down the plane with freedom or life imprisonment. “The audience is not told that it is possible to find a culprit guilty and nevertheless to impose a mild sentence or even none at all”. In other words, the major could be found technically guilty but nevertheless receive no sentence.

Fischer also points out that illegality and guilt under the law are not the same. Paragraph 35 of the Penal Code expressly notes that a person acts “without guilt” if, under certain circumstances, they “commit an illegal act in a situation that presents an unavoidable danger to life, limb or freedom”. Here, also, the major could have violated the law and nevertheless be found not guilty.

In its ruling on the Aviation Security Law, the Supreme Court had ruled not on the guilt of an accused but exclusively “regarding the legality of a law”, which would have permitted “Mr. Koch [the military pilot in the film], also against his will and conscience, to kill the people”. The Supreme Court ruling concerned the question, “May a minister order the shooting of innocent people? Can a police chief order the torture of a prisoner? Are those who are ordered to carry out such orders legally and officially obliged to carry them out?”

The film was conceived to manipulate public opinion so that they would say yes to these questions. How far the attacks on elementary democratic rights have advanced could be seen in the broadcast that followed the film, titled “Harsh but Fair”.

The appearance of retired Major Thomas Wassmann, who had been a military pilot and is today the president of the Military Air Transport Forum, recalled the military figures of the Weimar Republic, who made no secret of their disdain for the constitution. He bluntly called for soldiers to disregard the

constitution. In an “extreme situation”, he said, one must be “able, in individual circumstances, to retrospectively reach a verdict that deviates from the constitution, that is perhaps contrary to normal jurisprudence”.

Later, he said that the constitution was “not handed down by God in tablets of stone”. Instead, it must be modifiable. “When the constitution was written, people were still under the impact of the Third Reich”. Today, he said, life is essentially quite different. Germany was “out and about in umpteen countries” and was sending soldiers “into war, into crisis areas, into war zones, and also sending soldiers to kill people there and sometimes the innocent”.

Wassermann also advocated the deployment of the Armed Forces internally, which is banned by the constitution. Where the former SPD Defence Minister Peter Struck had said, “in future, we will defend our security in the Hindu Kusch”, perhaps one must “also question whether we shouldn’t also defend our security in the Federal Republic of Germany”.

The previous Defence Minister Franz Josef Jung (Christian Democratic Union, CDU) has also argued in favour of laws that would permit soldiers to “kill innocent people” in Germany, if deemed necessary. He considers it “unrealistic” that in an emergency, “half the cabinet have to be rounded up” to decide on the possible shooting down of a hijacked airplane. There simply is not time for this. In an emergency, the defence minister should give the order directly. According to the constitution, he is the “bearer of authority and the power of command”.

Jung made clear that already during his time as defence minister (2005 to 2009), existing law had been flouted. Naturally, he had “discussed these questions with the Inspector of the Luftwaffe (Air Force)”. He had clarified that in Luftwaffe formations, pilots are not permitted to fly unless they “are prepared to implement such a decision”—that means: to obey orders to shoot down an airplane with possibly hundreds of innocent people on board.

The former Interior Minister Gerhard Baum (Free Democratic Party), a liberal, had gone to court successfully in 2006 against the “Aviation Security Law”. Baum defended elements of the constitution against figures such as Jung, but as a member of the ruling elite, he naturally did not explain the open discussion of state killings in Germany as a product of the deep crisis of capitalism, the growth of national and social contradictions and the growth of militarism and war.

Anyone who wants to defend democratic rights must do so from the socialist standpoint of the working class, and fight for the overthrow of capitalism.



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