

**“Less than ever a terror problem, but a political problem”**

**Dr. Rolf Gössner interviewed by *Junge Welt***

**Translated from the German by Janet Biehl**

In January 2020, the Belgian Court of Cassation ruled that the Kurdistan Workers' Party (PKK) was not a terrorist organization but rather a legitimate party to an internal conflict in Turkey. In Belgium, therefore, the PKK cannot be prosecuted under anti-terror laws. Rolf Gössner (b. 1948) is a German attorney, journalist, and author of works on human rights, security, and democracy. He currently co-publishes the Berlin magazine *Ossietzky* and a member of the board of trustees of the International League for Human Rights. Has been defending the human rights of Kurds in Europe since the 1990s. He was interviewed by *Junge Welt* in April 2020. (--trans.)

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**The Court of Cassation in Brussels recently issued a ruling concerning the Kurdistan Workers' Party (PKK). In January 2020 it upheld the March 2019 decision of an appeals court that the PKK is not a “terrorist organization.” What do you make of this ruling?**

I consider it to be an encouraging ray of hope, because it pits a realistic perspective, and one compliant with international law, against the portrayal of terrorism that has prevailed in Europe up to now. Back in the 1990s the international lawyer Prof. Norman Paech held, in an expert opinion, that the PKK could not be classified as a terrorist organization but rather was to be considered part of a liberation movement against nationalist and ethnic-racist oppression in Turkey.

And like the Belgian appellate court, the Court of Cassation decided in January 2020 that the PKK was not a terrorist organization but a legitimate party to an internal armed conflict in Turkey.

All those who, in all these years of judicial proceedings, have been charged with membership in or support for a “terrorist organization” have therefore been acquitted. This highest judicial finding resulted from an intensive engagement with the historical and political background of the decades-long unresolved Turkish-Kurdish conflict. In Germany, this kind of engagement, with such intensity and consistency, has so far been scarce in “terrorism proceedings” against Kurdish activists.

**What consequences and changes will this judgment have regarding the policy of criminalizing Kurds?**

If one follows the Belgian Court of Cassation's ruling that the PKK cannot be classified as a terrorist organization, then in principle the PKK can no longer be prosecuted in Belgium under national anti-terror laws; nor can its alleged members and supporters.

However, I must emphasize that we are talking about the national case law of a Belgian court. And that means that for now this decision applies only in Belgium and not beyond. The Belgian policy of criminalizing Kurdish activists associated with the PKK will have to come to an end; they may no longer be persecuted as terrorists. If Belgian government officials nonetheless continue to classify the PKK as a “terrorist organization,” that would constitute an open breach with and clear violation of the rule of law. However, one must also consider that this ruling contradicts the presence of the PKK on the EU terrorist list, so legal irritations and contradictions may well arise in Belgium in the future.

**What about outside Belgium?**

Thinking beyond Belgium, this supreme court judgment of an EU state should, in my opinion, also lead to a rethinking in the EU and should have pan-European effects. To give up the construction of the PKK as terrorist in favor of decriminalizing the conflict would require every EU member state, including Germany, to take political steps and decisions, and at the EU level as well. Because the Belgian ruling sends a clear message that is worth considering: that the conflict between Turkey and the Kurds can ultimately be resolved neither militarily, nor by police action or by criminal law, but solely through peace negotiations, that is, through political channels.

That's what the PKK has been demanding for a long time, and such attempts have been made in Turkey in the past.

### **Doesn't this decision contradict the PKK ban that has existed in Germany since 1993?**

Unfortunately, the judgment in Belgium has nothing to do with the PKK ban in Germany—and therefore it has no direct influence on it. The German prohibition of PKK activities, which incidentally is unique within the EU, will remain in force and will be enforced until it is abolished. The federal minister of the interior and the federal government would have to make a conscious political decision. The PKK, a once violence-oriented cadre party in Europe, has shifted toward a peaceful and democratic solution to the conflict, yet its ban in Germany continues to this day. And in recent years the federal government has even considerably expanded the ban—for example, to include symbols and images that were not banned during the Kurdish struggle for political and cultural rights and democratic autonomy.

### **What have been the consequences of the PKK ban so far?**

Overall, the PKK ban—which was enacted 27 years ago at the urging of Turkey—has wrought an enormous amount of havoc. Tens of thousands of politically active Kurds have been discriminated against and criminalized—often only because of verbal or symbolic “acts.” They have been, for all practical purposes, placed under general suspicion, and labelled as potential violent criminals and as dangerous “terrorists,” and so have been marginalized as domestic political enemies and security risks. Kurds—who often fled oppression, persecution, and torture in Turkey—have found that the ban makes it all but impossible for them to exercise their basic human rights in this country without fear.

The prohibition of activity massively restricts the fundamental rights of freedom of association and assembly, freedom of expression, and freedom of the press and thus free political activity. Bans on demonstrations; raids and searches of private homes, associations, printers, editorial offices, and publishers; and seizures and imprisonments were and still are the order of the day, as are intelligence investigations and infiltration by internal security agents. The PKK ban has resulted not only in restrictions and confiscations; fines have been imposed, people have been imprisoned, naturalizations have been rejected, citizenship has been revoked, residence permits have not been extended, asylum recognitions have been revoked, and people have been deported.

No matter how critical one might be of the PKK, its politics, and its actions, one thing should have become clear by now: such bans solve no pressing problems but rather create more problems; and those who advocate this ban policy are doing nothing to address the development of the PKK and its supporters or the situation in Turkey and the Middle East.

This prohibition of activity long ago became a counterproductive anachronism, and so, as well-known civil and human rights organizations have advised, it should be lifted as soon as possible.

**What effects does all this have on court proceedings under Paragraph 129a/b of Germany's Criminal Code? And how can lawyers, in such proceedings, promote the content of the Brussels decision?**

It remains to be seen what effects the Belgian decision will have on German “terrorism proceedings”—usually involving Section 129b of the Criminal Code, “Terrorist Organization Abroad.” It will have no effect on legal proceedings here that is immediate. However, defendants’ lawyers will not fail to bring the arguments of the Belgian Court of Cassation and the international law dimension into various proceedings and confront judges with them. This has already happened in terms of content, but it should now become more difficult for the competent courts to ignore or dismiss a supreme court argument from another EU state.

**Even before the Brussels decision, similar judgments held that the PKK should long ago have been removed from the EU's so-called terrorist list. But it has not yet been done. Could that change now?**

Here again I must dampen expectations: unfortunately, one has nothing directly to do with the other. The Brussels decision has no direct impact on the EU terrorist list or its content. The terrorist list names individuals and organizations who are to be considered “terrorists” throughout the EU and in EU member states—with all the negative consequences for those affected. And this continues to apply regardless of the Brussels ruling. The PKK (and its successor organizations) has been on this list since 2002, even though it has committed no acts of violence in Europe for years; has even apologized for earlier violence here; has initiated ceasefires and peace negotiations in Turkey; and its Kurdish allies in northern Syria have become a stabilizing factor in the Middle East and in the fight against IS terrorism. Actually, after the ruling of the Court of Cassation, one would expect the Belgian government to initiate the removal of the PKK from the EU terrorist list and to seek allies toward that goal.

**What was the political background to the inclusion of the PKK on the EU's terrorist list?**

When the EU put the PKK on the terrorist list, it was responding to the wishes of its NATO partner Turkey—a country that, however, was and is guilty of serious human rights violations and of state terrorism. This politically motivated listing at EU level gave the Turkish state additional legitimacy to use repression and state terror against “terrorist” Kurds, their organizations, and their alleged supporters at home, and to repeatedly wreck any peaceful solution to the Kurdish question.

The EU, by willingly accepting Turkey's pervasive “anti-terrorism” policy and by allowing it to refer to the EU terrorist list, has enabled thousands upon thousands of Kurds in Europe to be criminalized, prosecuted, and imprisoned as “terrorist helpers,” because this listing forms the basis for litigation against Kurdish activists in European countries that have no special PKK ban like Germany's.

Incidentally, inclusion on the terrorist list has existential consequences for affected groups and people: they are practically outlawed, politically ostracized, economically ruined, and socially isolated—or, as the former EU special investigator Dick Marty has said: “Once you are put on it, you have no more chance for a normal life”—that is, it is a “civilian death penalty” or, in my own words, the destruction of existence by an arbitrary act.

The EU, in its “war on terror,” is using a terrorist instrument from the arsenal of “enemy criminal law”—a special right against alleged “public enemies” who are practically unlawful and socially ostracized. Its draconian punishment will be carried out in a quasi-unlawful area—outside the law, without verifiable evidence, without judgment, and without effective control.

**In the meantime, however, judicial rulings on the EU terrorist list have held that individual organizations, such as the PKK, were wrongly listed there.**

Right. Despite all the disenfranchisement, the EU court has now provided legal protection and declared inclusion on the terrorist list and the freezing of the funds to be illegal in individual cases. However, for reasons of formal and procedural law rather than content-related reasons, the judges complained that for those affected, their rights to a justification of the listing measures, to a fair hearing, and to an effective defense have been blatantly disregarded. As a result, the listing procedure had to be changed. Afterward those affected were informed and heard pro forma, but no concrete remedy was found, because the procedural errors they complained of were thus remedied, and reasons were subsequently provided.

In the meantime, the inclusion of the Kurdish PKK / KADEK on the terrorist list has been declared illegal due to procedural errors—at least for the period from 2014 to 2017, as the EU court ruled in November 2018. The reasons and incidents that led to the listing of the PKK at that time have not been adequately documented. In addition, neither the temporary peace and negotiation process between the PKK / Kurds and the Turkish government nor the transformation process and the new role of the Kurds in the Middle East had been taken into account—for example, in the fight against the so-called Islamic State (IS) or in building of a democratic-emancipatory self-governing structure in northern Syria. However, this court decision applies to the PKK listing only until the end of 2017. Since its listing has also been decided after 2017 to this day, an action had to be taken against it. But this judgment is still pending.

**How might things go on considering the current developments?**

Well, as I’ve already indicated, the Belgian ruling could and should finally lead to a realization within the EU that a solution to the Kurdish question in the violent conflict with Turkey will be possible not through military, police and judicial means but only through political negotiation. In order to comply with this ruling, the PKK ban in Germany and the PKK’s inclusion on the EU terrorist list would have to be lifted and terrorism proceedings ended. This is the only way to end the stigmatization, criminalization and exclusion of essential parts of the Kurdish community, its organizations and media, as “terrorists” in Germany and in Europe. Of course, any acts of violence can be punished outside criminal terrorism norms.

In any case, the Kurdish question is less than ever a terror problem and ever more a political, human rights problem for Turkey, with far-reaching effects in Europe. This problem remains the key question, and solving it is a prerequisite for improving the precarious human rights situation and for democratizing Turkey—and thus also for an EU accession process that has not yet been completely broken off.

For all these reasons, we need a radical change in European policy on Turkey and the Kurds. And that means finally placing on the EU’s agenda, immediately and emphatically, Turkey’s international law violations, its catastrophic human rights situation, and the Kurdish question as a historical challenge. After all, the EU and Germany bear growing responsibility for dealing with the Kurdish question and for the further development of Turkey as a member of the Council of Europe and NATO.

Why? Because the EU and NATO and their respective member states are involved in the whole problem. NATO member Turkey has illegally mounted military attacks on northern Syria and the Kurdish self-government there. Germany and other EU states have made extensive and intolerable arms exports, even after they played a devastating role in the Turkish war against the Kurdish people both in Turkey and in northern Syria. And finally the refugee deal is dubious in terms of human rights, and it repeatedly subjects Germany and other EU member states to blackmail and acquiescence. As a result of these entanglements, the EU and Germany bear an increased responsibility and must finally live up to it. They will not do so without a clear change in policy.

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