

Specialist for hopeless cases

or

Sowing the seeds of doubt

**Many see defence lawyers like Gerhard Strate as the bane of justice.
Yet they also demonstrate how short trials, no matter how efficient, can have disastrous results.**

Text: Peter Bier
Photo: Petra Paulina Kohl

“Of course he's upset. He's a lawyer - he's paid to be upset!”

(Billy Wilder, film director)

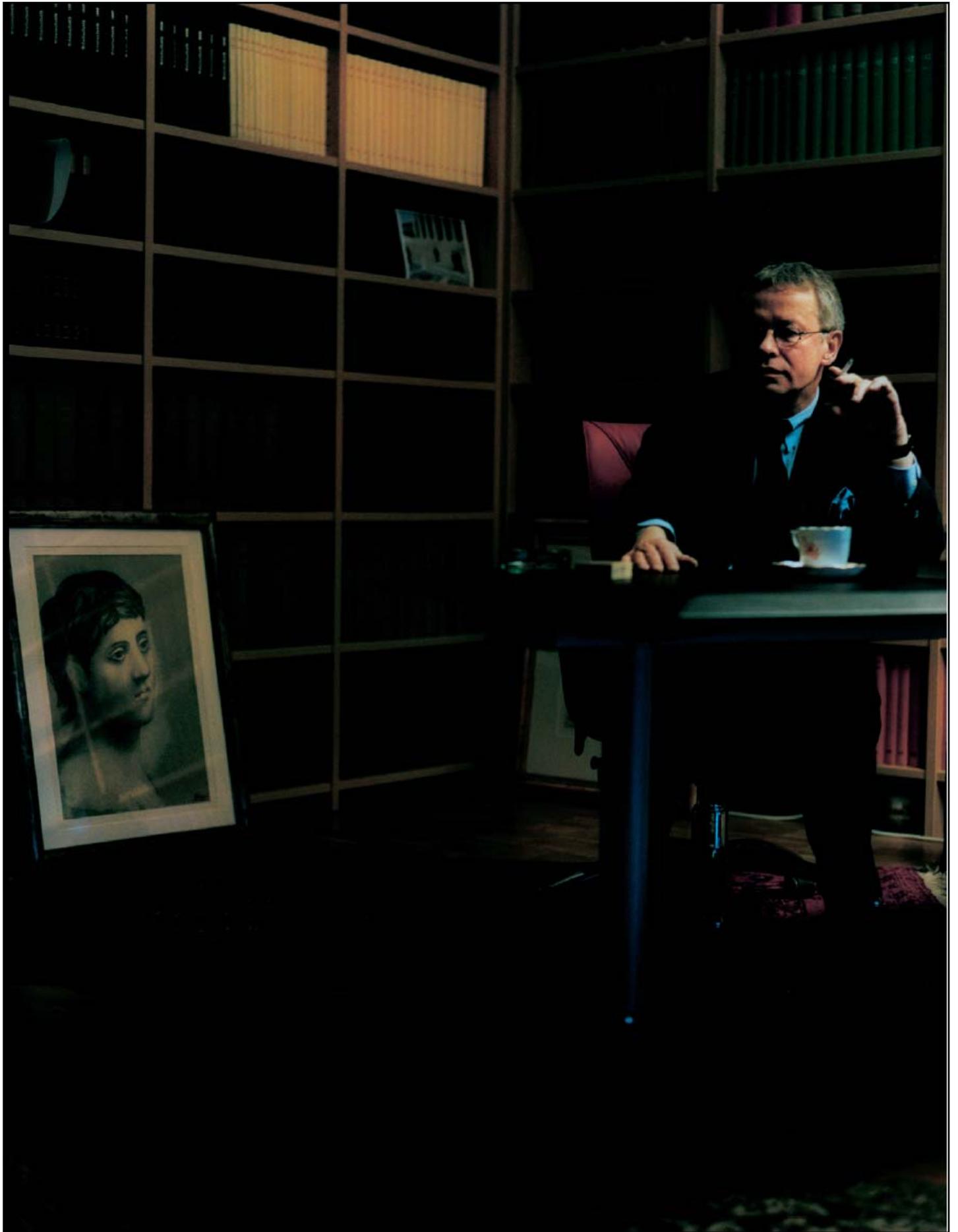
“We hate all our clients. It's good to hate, allows us to overcharge and still sleep at night”

(from the legal serial “Boston Legal”)

- If life is kind to us, we are usually spared any dealings with criminal prosecution. If – be it justified or not – a person is ever charged with a serious crime, arrested, imprisoned for months and finally taken to court, that person’s civil existence is usually destroyed and it is very difficult for them to find their feet again, if ever. Criminal prosecution is a traumatic experience for both prisoners in custody and at the bar; acquittal will never compensate. At the mercy of the public authority, branded in the media as a crook or a gangster, that person needs support, he needs a lawyer.

And not just any lawyer, but one who is a match for any public prosecutor, any witness for the prosecution, any judge. The weekly paper »Die Zeit« once described defence lawyers as “*the bane of justice*“, a fitting yet by no means disparaging summation. The paper highlighted one in particular: the Hamburg lawyer Gerhard Strate, 56.

He has acquired a reputation as one of the top experts in appeals. He has successfully contested a huge number of sentences before the Federal High Court of Justice (BGH). He alone is responsible for three re-trials: murder trials that were closed and



yet re-opened in light of new findings. Two of his clients were acquitted, one had his sentence considerably reduced. This has only happened about a dozen times in the history of the German federal legal system. Strate has set high legal standards with critical statements that prompted the BGH to amend the prevailing doctrine, as in the case of offences involving controlled substances. The Faculty of Law at Rostock University awarded him an honorary doctorate and as a defence lawyer he is in great demand: he has worked for Mounir el-Motassadeq who was persecuted for aiding the Hamburg terrorist pilot on 11 September 2001, and for Alexander Falk, heir to millions, or for the managers of the so-called waste mafia in Cologne. Lawyers' Champions League.

And, strangely enough, there was also Burim Osmani, a Kosovo-Albanian who moved to Hamburg with his family in the nineties and was said to have very quickly amassed a small fortune in the red light district of St. Pauli with sex clubs and trendy bars, as well as numerous properties and establishments on the "Kiez". The current charge against Burim Osmani for aiding serious fraud – as far as is known – involves apartments valued at around five million euro which the Albanian is supposed to have bought in an old people's residence in Potsdam. However, once a loan was paid out by a Wiesbaden bank, he withdrew from the purchase – could this in fact have been a sham agreement in the first place? – and put the cash to ulterior use. Osmani's name constantly appears in connection with the problems of a small Volksbank in Lauenburg that granted loans for real estate in the millions without collateral.

Real estate contractor Burim Osmani has been in custody in Bavaria now since May 2006. The public prosecutor's office in Würzburg is investigating him for breach of trust, violation of his duty to keep accounting records and failure to file for insolvency. The total damages imputed to him are comparatively negligible. At first glance, more of a contrast between a shell game and international crime. Or might there be something completely different involved? Didn't Al Capone eventually land up behind bars for tax evasion because not even the US judiciary, renowned for its anything but delicate approach, was unable to prove anything more serious? Osmani's lawyer is called: Gerhard Strate.

In order to be able to understand why this caused such a sensation, general muttering and offensive insinuations in Hamburg, and to ask why a respectable solicitor, particularly one with a left-wing past, should get involved with this sort of client, we have to go back a bit.

Since the summer of 2006, the press has been stirring things up with a touch of sensationalism with a report by the Federal Intelligence Service (*Bundesnachrichtendienst (BND)*). This report, dating from 2003, claims that the Osmani family is suspected of being involved in trading drugs and people, pimping,

prostitution, money laundering, illegal gambling and the protection racket. Organized crime is said to be involved. The official dossier, however, is stamped "secret" and therefore cannot be published; nor can it be examined in court to establish the accuracy of the contents. Yet this did nothing to stop members of the Hamburg SPD, under the guise of an enquiry with the City-State Parliament, to try to bring the secret service dossier to light. Their assumption: members of Parliament can ask whatever they wish, including questions about alleged dealings between Osmani and the CDU senate. Questions and answers in the protocol are then public domain. However, things did not work out as expected.

Strate approached the President of the City-State Parliament, claiming that the charges against his client had been "proven unfounded". He demanded that no further quotes from the BND report be circulated, that the enquiry not be approved and the ensuing debate not be published in the protocol; otherwise he would call in the Administrative Court.

Conflict over the Constitution was threatening, the judiciary versus Parliament. Following legal review, the politicians decided to rest their case and deleted the controversial passages from the protocol. Why? "Because, to the knowledge of the President, there were no investigations pending in the matter of those charges." This was a unique occurrence in the history of the Federal Republic.

What kind of person defends Mafia bosses? Someone who does not believe everything

Anyone wishing to discuss the Osmani case with Gerhard Strate or the limits and responsibility of a defence lawyer will be reminded of what makes our society and judicial system civilized: fairness, decency, respect for civil rights and equality in the eyes of the law. "Criminal law is not divided into a law for friends and a law for enemies," says Strate. "The principles of a constitutional state apply equally to everyone living there." So too for Burim Osmani who, apart from a previous conviction for tax evasion, had never attracted any attention. Innocent until proven guilty. And he must be protected against anonymous claims which he is unable to defend.

With this composed reaction, Strate more or less reveals his credo as a lawyer: only if the rules of democracy are observed is a state constitutional. But after 27 years as a lawyer he has been forced to accept how often judicial practice deviates from this; that justice comes at a price, that it has to be fought for, sometimes in the face of fierce resistance.

It was ultimately this sense of justice that prompted Gerhard Strate to enter this profession. Other lawyers decide to go in for



Strate's office: modern art. And neatly ordered on the shelves: all sentences passed by German supreme courts and the Supreme Court of the USA

politics, pursue a career at university or with the administrative authorities, are appointed human resources director in industry or specialize in family, copyright or labour law. Strate, as was clear at an early stage, chose a different path.

One of the most important milestones – while he was still a law student upholding Communist beliefs – was probably a demonstration against an increase in the price of public transport in Hamburg. When he saw a fellow-student who was handicapped being bullied by a policeman, he intervened. This led to his being arrested and escorted to a police station. The net result: the local court imposed a fine for 1000 Marks for aiding and abetting the escape of a prisoner and resisting a law enforcement officer. He led the appeal himself and was successful: his first acquittal in his new profession.

It was some years before he hooked his first big clients. Until then he defended asylum seekers, pot-heads and junkies in court. His experience and commitment led to a »Brief on Aliens Law« which was published at regular intervals. He still co-publishes this today along with his Internet Newsletter *hhr-strafrecht.de*; and

hundreds of articles for specialist journals such as »*Strafverteidiger*« and legal textbooks.

In one of these entitled: "*Juristen im Spiegel ihrer Stärken und Schwächen*" (Lawyers mirrored in their strengths and weaknesses), Gerhard Strate admits in 1998 to being a "party supporter" which he describes as the better half of the maverick: "It is the difference that clothes him," he writes. He focuses his attention on the tiny detail overlooked by everyone else. And he has an uncanny feeling for covert partiality on the part of his counterpart who rapidly becomes his adversary. The party supporter fights his fight until his adversary [that is the allegedly objective prosecution and the impartial court, ed.] confesses to being of the party itself." Strate openly admits he is partial, in the interests of his client. And he wants to win.

Anyone who has experienced him in court and has read his written statements – considerable and impressive documentation on the trial against Alexander Falk has been put together under *hhr-strafrecht.de* – may occasionally start at the offensive tone and unrelenting attacks, but will soon be fascinated by his astuteness and the elegance of his arguments.

He has good reason to be partial, Strate explains: “Nowhere else can the judicial system impact so indelibly on a person’s life as during criminal proceedings where, in the worst case scenario, that person risks a life sentence.”

Take the case of Monika Weimar (now: Böttcher) whom he stood by in several trials and courts over an entire decade, ultimately with no success. While he was sitting on a mountain of debt, his client was in jail. He was unable to prevent the outcome despite his efforts. He sees this as one of life’s experiences. Finally, as is so often the case in prestigious trials, it was no longer a matter of finding the truth, but of coming to a decision. A defence lawyer has to cope with this without becoming cynical.

How does he cope, other than through meticulous preparation? Gerhard Strate jogs. He goes running regularly, in all sorts of weather. And he has run in 13 city marathons, in Hamburg and Rome, in Berlin and New York. When asked about his best time for the almost 42 kilometres, he replies: “Running for five hours is much harder than running for 3 hours.” He learns from this experience, an experience that wholly reflects his approach to work and success: demonstrating persistence and tenacity.

Mustn’t there be some truth in it when someone is remanded in custody for 100 days? Wrong question

He has two libraries in his offices: one in which dozens of metres of functional industrial shelving hold all the decisions ever taken by the German supreme courts, and specialist literature; the other all sentences reached by the Supreme Court of the USA. Modern art adorns the walls and the sound of Shostakovich emanates from the loudspeakers, moving and very loud, when he is alone.

He had always been interested in “gaining an insight into so many different worlds by defending criminal cases,” he explains. He stands up for his clients in his offices and in court, but privately he maintains distance: no invitations to dinner or an evening, no relaxing over a drink together, not even to celebrate a success in court. A retainer – despite all his commitment – is a purely professional and objective relationship that demands trust, but that has to be terminated immediately when there is no longer any cause to rely on each other.

A defence lawyer like Gerhard Strate has to ensure that he retains his credibility and integrity and defends his principles and values, while constantly being forced to justify why he has chosen to represent a particular person, with no regard for public opinion. As in the case of Burim Osmani, incriminated by the secret service. He may be asked, for instance, if he doesn’t sometimes wonder how the O. family came to amass such wealth in such a short space of time.

As defence lawyer, it is none of his business, replies Strate, who at the Elbchaussee came into money how and how quickly. And it is a fact that, in the Osmani case, the judicial system had never shown any interest anyway.

Yet, sometimes the judicial system itself focuses on the financial aspect and to the apparent exclusion of all else. This can become the driving force behind criminal prosecution. For instance, when government funds will benefit. Alexander Falk, Hamburg ex-entrepreneur, and five of his earlier managers have been accused of serious fraud and tax evasion: the legal settlement for the sale of Falk’s Internet company Ision AG for around 800 million euro at the height of the New Economy in 2000. The sales were said to have been manipulated by sham transactions. Falk was remanded in custody for 22 months. The trial, a battle fought out with sheer doggedness, has been running now for more than 100 days. The original charge has long since crumbled. But no pardon is forthcoming, from either party. There is too much at stake.

Which is why considerable endurance is called for to be successful in court. Gerhard Strate has filed eight complaints with the Federal Constitutional Court on behalf of his client. And each time the reply to his statements, often covering up to 70 pages, was no more than a single line: “... is not accepted for decision.” However, the ninth constitutional complaint was successful: Karlsruhe lifted the writ of attachment on Falk’s assets in the amount of 532 million euro, and released frozen assets and property that had been seized. Anyone reading Strate’s statement on this case “Against the priority of fiscal aspects in criminal proceedings”, might think that the existence of every other person accused by the Hamburg judiciary would have been irrevocably destroyed. Long before a decision was taken and sentence passed.

It is apparently such long, complicated and virtually hopeless cases that have always attracted Strate. This reminds him of something his friend Alan Dershowitz, Harvard Professor and legendary US defence lawyer, once said, that he sees as a leitmotif. In 1994, one of his clients, Claus von Bülow, was sentenced to 30 years imprisonment for allegedly administering an overdose of insulin to his extremely wealthy wife, leaving her in a coma. Dershowitz said to von Bülow: “Do you know what I like about you? That everyone hates you.” He fought for him until he was acquitted.

Amusing? Not in the slightest. Strate explained how seriously he takes this when he was awarded his honorary doctorate in Rostock: “It is the task of the defence lawyer to offer trust where everyone else rejects it; to show sympathy where feelings have died; to sow the seeds of doubt where there is none; and to raise hopes where these have long since faded.”

Had he lost his sense of conviction, he would presumably have given up a long time ago. Because the one sure thing about criminal prosecution is that it is a business fraught with defeat.