

Attorney of the Stars and Star of the Attorneys

Talking together where Hamburg is at its loveliest: by the Alster. A stroll with Gerhard Strate, one of Hamburg's best known defence lawyers

by Uwe Bahnsen

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The spectrum of the clichés which have been attributed to him during his really successful career ranges from the ambiguous term “know-all” through the impressive “man for all cases” to the growling finding “appeal terrier”. However, none of these classifications does justice to the wiry man in his mid-fifties whom I have arranged to meet at the “Alte Mühle” inn, a stone's throw from the Alster reach in Bergstedt: Gerhard Strate, who has achieved nationwide fame as a defence lawyer. “Star attorney”: a rather well-worn term. It does apply in his case. Unfortunately, it is raining, and so our stroll along the Alster takes place inside the restaurant.

As we know each other for a long time, we first talk about politics, because he is also at home in those circles. I still recall his beginnings as the Greens' justice deputy in the nineteen-eighties. At that time he was long since no longer so rebellious as he had been in the times when he had even belonged, for a while, to the Communist Students Association that was closely connected with Germany's Communist Party KPD. Admittedly, they soon ousted him – on account of his “conciliatoriness” and “anarchism”. After all, that was the phase when he liked to take to the streets – for example in a demonstration against fare increases. When the police arrested a disabled fellow student, this occurrence so incensed him that a fight broke out. He was sentenced by a local court judge to a 1000 Mark fine for “attempted freeing of a person under arrest and obstructing enforcement officers”, against which he appealed first on issues of fact, then on issues of law. The judgment was quashed – his first success. At that time he was a trainee lawyer. His experiences at that time were quite certainly one of the reasons why he decided on the profession of a lawyer, specialising in defence in criminal cases. By the way, to show how life turns out: The son of the police officer, who arrested him temporarily during the demonstration against the fare increases, today works as an attorney in his law office.

As a Green deputy, Gerhard Strate made things just as hot for the ruling Social-Democrats as for those officials in the Hamburg judiciary who carried a dogma of near Papal infallibility along in front of them. However, he caused a political sensation with far-reaching consequences in May 1993: As the lawyer of the Christian Democrat (CDU) rebel Markus Wegner, he won a sensational ruling by the Hamburg Constitutional Court that the 1991 elections to the Hamburg parliament had to be rerun on account of the deficits in the CDU's internal democracy when nominating candidates. I consider how his political position could be defined today:

“Would you accept my calling you a radical liberal?”

“I believe that hits the nail on the head.”

In the meantime, Gerhard Strate is on the board of the Hanseatic Bar Council, he was its vice-president for three years – one is no longer rebellious, but soigné. However, what has remained from his Storm and Stress years is a deep conviction: “The judiciary as the state institution for granting right, is not only dependent on the

independence guaranteed in the constitution, but also on the critical review and appraisal of its decisions.” That is a thesis with which I quite agree, and I also do not contradict his further remark that judicial independence is not just a matter of the relevant Basic Law article, but just as much of the inner attitude. I would like to hear from this lawyer, who as a rule formulates his thoughts perfectly, what led to his losing his former radicalism:

“Did you have some crucial experience?”

“Not at all. That was a quite organic development. I have also never been radical in a militant sense. However, it was always my fundamental conviction, and has remained so to the present day, that you have to defend civil rights with emphasis.”

This statement explains his legal political commitment – quite regardless of whether it is a question of data protection in police law, of how to deal with the East German Stasi files or a defence counsel's rights in criminal proceedings, may it be spectacular or a part of the everyday running of the judiciary.

We look out of the window at the cobbled street in front of the restaurant. The showers have turned into a really continuous downpour, and we call over the waiter again. Strate, who was born in Thuringia as the son of an engineer, grew up in Schwarzenbek, went to school in Geesthacht and was trained as a lawyer in Hamburg, is a passionate marathon runner and enthusiastic archer – two sporting disciplines which can safely be applied to his work as a lawyer. Because so canny an appeals specialist as he is, needs tenacity in order to work through the, as a rule, extensive files of each case, and in the course of this he must always keep his sights on the central point of the problem.

For him, the cases begin where they end for the state prosecution service – with clearing up the offence and proving the guilt of and sentencing the offender.

I shall dispense with listing the long series of criminal cases with which Gerhard Strate has gained the headlines as the defence counsel or as the representative of joint plaintiffs. Just this: The proceedings for reopening a case that are successful for the convicted person, in which a case that has become *res iudicata* is given a new trial, can be counted on one hand in West German post-war history. The lawyer's name was Strate on three such occasions. However, as he assured me with his typical mixture of distance from the facts of case, professionalism and a very personal commitment, his successes always had one prerequisite: “I must be convinced of my client's innocence, at least in the proceedings of a new trial.” That does not, however, rule out human and professional disappointments and he also speaks candidly about them.

The wiry attorney with his office in Brammer House on Holstenwall, a building formerly used by the public prosecutor's office, aroused nation-wide attention in 1987 when he gained the acquittal of Holger Gensmer, who had been sentenced to life imprisonment for a sexual murder “on account of proven innocence”. In the new trial, he had proved conclusively that Gensmer could not have been the offender. The disappointment: Three years after his release, Gensmer once again committed a sexual offence and was then justifiably convicted. That brings me to the question:

“Does such an experience weigh upon your mind?”

“Of course that is depressing. But both cases had nothing to do with one another. I am unchangedly convinced that Holger Gensmer did not murder the six-year-old Birgit König from Rahlstedt in 1971 and was therefore unjustly sentenced and imprisoned for this case.” And then the case of Monika Böttcher, divorcee Weimar – the case in which he achieved a sensational turn in 1997: Böttcher, who had been sentenced to life imprisonment for the murder of her two children, was acquitted in a new trial on

account of the lack of evidence. The disappointment, this time professional: In a new trial she was once again convicted for double murder.

Gerhard Strate was already in discussion as the Hamburg Senator of Justice on several occasions, and at times he would have also been prepared to take on the post. My question, whether, in the present situation, he would react positively to such an inquiry, perhaps in a Red-Green coalition, brings him to a small, thoughtful pause:

“A difficult office, with a comparatively high risk as far as the chances of political survival are concerned. It really would depend very much on the circumstances and the whole context. I love my profession.” Anyone who has experienced this lawyer in court, will believe that without hesitation.

I know lawyers who develop an affected self-confidence on account of their successes, with which they hardly pass through a normal door-frame. Gerhard Strate is not one of this species. A reporter who wanted to know from him how one could best describe him as a person, got as an answer: “Best of all, not at all.”

However, I would here like to prevent one misunderstanding: This reservation does not stop him from playing in a virtuoso manner on the piano of public opinion, if he considers that advisable. But he is certainly not at all extroverted.

When saying goodbye, outside the door of the restaurant, one question did still occur to me:

“You said earlier that there is a misunderstanding, often to be encountered, about the defence counsel's role. His task was not to defend the offence of which his client was accused, but his rights in the proceedings. All very well. But why do you so often concentrate on difficult cases that appear hopeless?”

He looked at me thoughtfully: “May I give you my answer by e-mail?”

On the following day, I found the following message in my mailbox:

“The defence counsel's task is to give confidence where everyone refuses to do so, to display sympathy where feelings have died away, to sow doubt where no-one has any, and to plant hope where it had long since disappeared. Best wishes, yours, Strate.”

It was the final sentence with which he recently expressed his thanks for the award of an honorary doctorate by the Faculty of Law at the University of Rostock.