

Punishment is a Must

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Morally speaking, the guilty parties in the financial crisis have long since been exposed. The legal processing is now beginning: public prosecutors and politicians everywhere are looking for those responsible. Here, a visit to the investigators of the scandal of the century

A lion's skin lies on the bare parquet floor, in the corner huddle a few terracotta soldiers, silent witnesses to a fierce battle. Gerhard Strate receives visitors in his chambers at the exclusive Holstenwall in Hamburg. His office and private library cover the entire sixth floor; cigarette smoke hangs in the air, the walls boasting countless works of art. This is where he often spends hours working on his papers, going through balance sheets and e-mails received – all in his personal crusade against financial corruption.

“We are dealing with actors here who are undermining our society,” he says quite calmly, his voice rough and husky from years of smoking. “Gamblers of the very worst kind. And they are supposed to get away with it?” He draws on his cigarette. “No way.”

Strate is a lawyer, a defence attorney, a fighter who is not afraid of big names. During the Kosovo War, he was in all the media when he took the Federal Republic of Germany to court. He has defended Monika Böttcher, accused of double child murder. A case that held the country in suspense during the eighties and nineties. He represented the Internet entrepreneur Alexander Falk, the Hamburg-based Kiez investor Burim Osmani, the suspected terrorist Mounir al-Motassadeq. All major trials dealing with key issues of society, the constitutional state's own perception of itself vis-à-vis murder, war, corruption or terror. And now Strate has got his teeth into the financial crisis.

In the past few months he has sent out no fewer than ten papers, indictments against managers of the HSH Nordbank, Hypo Real Estate and Bayern LB, against the management of Germany's bankrupt banks. These all involve serious embezzlement and falsification of balance sheets. Yet, for Strate, it is also a matter of crime and punishment, perhaps even democracy.

“This is a new quality of criminal action,” he says excitedly. He leans forward in his chair, resting his elbows on a quarterly report from the HSH Nordbank. “Yet, out there, there is a silence that gets to me. It appears as if no one dares to hold individual persons responsible; that shows how powerful they appear to be.”

It is more than 17 months since the American investment bank Lehman Brothers collapsed, more than 16 since the dramatic rescue of the Hypo Real Estate (HRE). The German state has saved banks with ridiculous sums, tying itself up decades to come, forced into a drastic policy of savings. Morally speaking, it has been clear for a long time where the guilty parties lie in this debacle: in the boardrooms of the banks. But, in legal terms, nothing has happened to date, not in Germany or anywhere else in the world.

“It’s a scandal,” rails Marcus Lutter, spokesman for the Centre for European Economic Law at the University of Bonn. “It is unacceptable that the guilty parties simply get away with it, completely unscathed.” And Hans-Ulrich Wehler, one of the most important social and economic historians in the country, urges: “So far, public debate has turned a curiously deaf ear, verging on apathetic. Yet the staggering greed cannot be allowed to go unpunished.” If this diffuse feeling of anger with those at the top becomes entrenched among the people, it could even become dangerous: for the legitimization of the political system, for democracy. It is time that the courts took action.

Legal processing of the financial crisis is only just beginning. More and more indictments are gradually trickling in, more than a hundred people in Germany alone are under investigation and facing charges. In just under two weeks time the first trial in connection with the financial crisis is about to start in Düsseldorf – against the former head of the IKB, the collapse of which saw the chaos first reach Germany. And there appears to be some movement in the other cases too, thanks to the perseverance of one or two incorruptibles who refuse to succumb to the force of the crisis.

One of these is the lawyer Gerhard Strate who cannot accept that the bankers simply get away with it. And the public prosecutor Hildegard Bäuml-Hösl who is trying to expose the disastrous business exploits at Bayern LB and the HRE. And also the politician Wilfried Wengler who is doing his best to understand why the collapse of the HSH Nordbank virtually forced his federal state to the brink of ruin. They all want to break this silence, at last.

Gerhard Strate has already tried to improve the country. He sees himself as a representative of ‘68, as a defender of a liberal constitutional state, like many other lawyers of his generation. Yet, since so many others remain silent, he has decided to take on the banks alone. Colleagues accuse him of being too outspoken, too absorbed in himself. Strate enjoys his reputation as an agitator – and that as a brilliant researcher, obsessed with detail, hard, unrelenting. Often he sits in his office, well into the night, drinking coffee from delicate porcelain, sifting through the rules of equity and ad hoc messages, deciphering the vocabulary of a world that is foreign to him. He has no previous experience of the financial markets.

He is spurred on and on, far into the depths of mortgage trading, single-purpose companies, credit substitute transactions. Strate claims he is doing it voluntarily. His sole payment (Eur 20,000) was for his brief concerning the Bayern LB. "I really got into the subject. At some point there was no going back, like a spine-chilling thriller." He enjoys the creativity and finesse with which the banking professionals apparently covered up their actions. For Strate, it is an intellectual pursuit. "I'm right on their heels," says Strate.

About 80 people have been affected by the indictments he has served, right across the country. He brought his first charges on 31 March 2009 against the boards of managers and administrative boards of the HSH Nordbank on the grounds of serious embezzlement, and against their auditors for accessory to embezzlement. His outrage literally oozes from every single line of his 15-page treatise. The case is now being pursued by the Hamburg prosecution service.

Yet, that is not enough for Strate. At the end of January he served indictments on the boards of managers and administrative boards of the Bayern LB from 2004 to 2008, in all around 30 persons, again a particularly serious case of embezzlement. This was followed in early February by indictments on the managers of HRE and HSH again on account of falsification of balance sheets involving an intricate crossover business in late 2007. Strate taps his files, piled high on his desk. "And there's a lot more to come yet," he adds.