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Press Release

Explosive Verdict in Germany: German Arms Export Controls Have Deadly Gaps

German Federal Court of Justice pronounces its judgement in the case of illegal arms exports by Heckler & Koch to Mexico

Berlin/Freiburg/Stuttgart/Tübingen, March 30th, 2021 – In the case of illegal arms exports by Heckler & Koch (H&K) to Mexico, the German Federal Court of Justice (BGH) in Karlsruhe today rejected the appeals by the prosecutor's office and the defendants respectively, thus largely confirming the verdict from the previous instance. More than three million euros will be confiscated from Heckler & Koch of revenues from the illegal deal. End-use declarations were judged not to be part of export licences under the War Weapons Control Act. This is a landmark ruling that puts a match to the entire German arms export control system.

"This is the end of German arms export controls as we know them," said Jürgen Grässlin, spokesperson of the "Action Outcry – Stop the Arms Trade" campaign and chairperson of the Arms Information Centre. "Business as usual' is no longer tenable in German arms export control. The legislature must immediately develop a new arms export control law that puts a stop to the current export practices and finally takes the interests of those affected by gun violence into account." Support for this can be found in the ruling, "According to the presiding judge, Dr. Schäfer, if the legal situation was to be changed, this would be the task of the legislature."

Following a criminal complaint filed by Grässlin and the Tübingen-based lawyer Holger Rothbauer from 2010, the Stuttgart Regional Court first heard the case of illegal arms exports by H&K between 2018-2019. The court concluded that the licences for the export of more than 4.200 assault rifles to Mexico had been obtained by tricking licensing authorities with deliberately false end-use declarations. End-use declarations are a core element of German and European arms export controls. They document in advance to the German licensing authorities where the exported weapons are to be used.

In the case of the illegal export of G36 assault rifles by H&K, several Mexican provinces, which German authorities considered to be problematic destinations, were not listed as recipients in the end-use declarations. Nevertheless, the Stuttgart Regional Court did not consider the declarations to be part of the export licence. In the licence, Mexico was listed as the end user. Consequently, the defendants could only be convicted on the basis of the Foreign Trade and Payments Act for fraud when obtaining the licences.

"This verdict is a political earthquake. Until now, the German government has argued that end-use declarations are part of an arms export license and can ensure that weapons exported from Germany are not passed on to undesirable recipients," said lawyer Holger Rothbauer. "Today's ruling, which confirms the assessment of the court in Stuttgart that end-use declarations are not part of the export license, proves the absurdity of this core element of German arms export control. This confirms what we have been criticizing for years: End-use declarations are not worth the paper they are printed on and are rather used as a fig leaf for problematic transactions," notes Rothbauer.

“The verdict reveals a gaping hole in arms export law,” adds Stephan Möhrle of the Arms Information Centre Freiburg. “Both the Regional Court and the Federal Court of Justice have argued that they must accept the fact that the War Weapons Control Act – in contrast to the Foreign Trade and Payments act – fails to consider the fraudulent obtaining of licenses a punishable offense. A license that has been obtained by fraud is therefore in principle still valid. This failure must be remedied immediately by the legislature, and this can only be done definitively with a separate law, an arms export control law,” Möhrle said.

Those who suffer as a result of Germany’s arms export practices are those affected in the recipient countries. “The export restrictions of the G36 rapid-fire rifles excluding a few particularly conflict-affected Mexican provinces were indefensible from a human rights perspective at the time either. Rather, this supposed compromise was struck to allow the exports. Even when the licenses were granted, Mexico was marked by violence, human rights violations, corruption and impunity. It is shameful that the victims of this irresponsible export practice were not considered at any point in the entire trial,” criticizes Carola Hausotter of the German Human Rights Coordination Mexico. “Legislators must clarify that arms export controls must protect victims of gun violence in recipient countries. They have a right to be involved in the proceedings,” adds Christian Schliemann of the human rights organization ECCHR.

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