



Presseerklärung

Loveparade prosecution charges rejected

Press conference at 2 p.m. on 05.04.16 at Duisburg District Court

The 5th Upper Criminal Chamber of Duisburg District Court has rejected the prosecution charges in the Loveparade criminal proceedings. Opening of main proceedings was refused. The decision was reached on 30.03.2016 and communicated to those concerned today. Accordingly no main action will be brought against the ten defendants.

The Court first has the legal task of examining the charges brought by the prosecution to determine whether main proceedings would be sufficiently likely to result in conviction of the accused. Only if it would, would such a main action be brought. An exhaustive examination of the prosecution's case and the presented evidence by the 5th Upper Chamber of Duisburg District Court has shown that there is no sufficient case to answer. The prosecution charges based on the shown evidence cannot be proven. No conviction is therefore to be expected. The Chamber has shown as much in detail in its 460-page-long decision.

The most important piece of evidence on which the prosecution has based its case is the report prepared by the expert witness Prof. Dr. Still. In the opinion of the Court, however, this expert report is inadmissible. It suffers from serious contentual and methodological defects (on this see section 1 below). It can therefore not be explained on the basis of the expert report how and why the tragic events on the occasion of the Loveparade in 2010 could have come about. There is also a concern that the expert may be partial (see on this section 2.). Moreover the prosecution's assertions on the question of whether planning and permission errors were responsible for the accident are not supported (see on this section 3). However, no other convincing evidence to support the prosecution's case is available to the Court. In particular the Court is not permitted by law to obtain a new expert report in interlocutory proceed-

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Dr. Matthias Breidenstein
Pressesprecher

Telefon 0203 9928-209
Mobil 0170 9217858
Telefax 0203 9928-299

pressestelle@lg-
duisburg.nrw.de
[www.lg-duisburg.nrw.de/
behoeerde/presse](http://www.lg-duisburg.nrw.de/behoeerde/presse)

Dienstgebäude und
Lieferanschrift:
König-Heinrich-Platz 1
47051 Duisburg
Telefon 0203 9928-0
Telefax 0203 9928-444
verwaltung@lg-
duisburg.nrw.de
www.lg-duisburg.nrw.de

Öffentliche Verkehrsmittel
Linien 901, 903, U 79
Haltestelle
König-Heinrich-Platz



ings. Although the Court may also order individual pieces of evidence to be gathered in interlocutory proceedings, it may not replace main evidence with new main evidence. Accordingly the Chamber put 75 questions to the expert, but these led neither to conclusive clarification of the unanswered questions nor to rectification of the fundamental errors.

When explaining the fundamental reasons for its decision, the Chamber stated specifically the following:

1. Contentual and methodological defects

Prof. Dr. Still's expert report suffers from serious methodological and contentual defects, as a result of which the fundamental questions about the causes of the Loveparade accident are not answered.

- The expert has merely conducted an „initial rough risk analysis” from a planner's point of view before the start of the event. This cannot furnish the necessary proof that errors in planning or authorisation would have led to the deaths and injuries (proof of causation).
- Prof. Dr. Still has inadmissibly limited the choice of facts on which his report is based to local conditions. Any other possible reasons for the accident, particularly the actions of persons present at the event, he has not taken into consideration.
- Prof. Dr. Still bases his calculations on the event organiser's forecast figures for visitor flows. Despite asserting that these forecast figures have been manipulated he nevertheless uses them for the purposes of his report.
- Despite repeated requests by the Chamber for him to do so Prof. Dr. Still has not been able to convincingly substantiate the attendance figures he has used as a basis. For example, he merely cites estimates of transport capacities of the Rhein-Ruhr Verkehrsbund [Rhine-Ruhr Public Transport Network] in substan-



tiation of the attendance figures accepted by him. They do not show how many visitors actually got onto the event site. It is therefore by no means certain that an – allegedly – incorrect calculation of the visitor flows by the Defendants caused the actual accident.

- The expert report is also inconsistent in the most important points. For one thing, Prof. Dr. Still assumes that because of the turnstile systems situated in front of the accident site at most something like 44,000 persons per hour could get onto the event site from outside. For another, in basing his conclusion on faulty planning, he assumes, amongst other things, that somewhere between 55,000 and 90,000 persons were to arrive on the site every hour.
- Prof. Dr. Still has breached his duty to prepare his report personally. He has never fully inspected the whole of the available documents but left the independent selection of all the documents to be used for the report to two colleagues. He could not have examined this selection of documents himself because he does not know any German.
- Nor has Prof. Dr. Still clearly shown the standards of care that he has demanded of the defendants. He has not made any effort to familiarise himself with the standards and regulations to be applied to event planning in Germany. The maximum throughflow of 82 persons per minute and per metre on which the expert bases his constricted-space calculation is not to be found in the decisive standards. Nor is it generally acknowledged to be the current standard applying in correct event planning.
- Prof. Dr. Still's report is based on a false concept of causation. He mixes up the categories of causation to be distinguished in German law and foreseeability. For a conviction, however, it is necessary in German law for a specific planning or authorisation error by a defendant to result in a specific breach of duty.



2. Concern that Prof. Dr. Still is not impartial

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Prof. Dr. Still's expert report cannot be used in main proceedings, because Prof. Dr. Still would have to be rejected as partial. Notice of rejection applications to this effect have already been given in interlocutory proceedings. An application for partiality is in itself successful if there is a good reason to question the impartiality of an expert witness. Here it is not important whether the expert is actually partial. Such reasons for successful rejection of the expert in any main proceedings are stated by the Chamber as follows:

- After he had presented his expert report, Prof. Dr. Still commented subjectively on the accident in public statements, which were also accessible on the Internet. Thus, for example, he has asserted without any substantiation or objective proof that the data for the authorisation proceedings had been manipulated. He also stated that the planners of the event had not followed the simplest laws of mathematics that his son had mastered at the age of four.
- He has also in public statements and a textbook after presenting his expert report identified specific causes of the accident and specific results. In particular he has without taking other causes of the accident into consideration definitely identified errors in the planning, authorisation and conduct of the event as being the cause. A retraction of these widely disseminated public assertions might mean for Prof. Dr. Still considerable damage to his professional reputation.
- Nor has Prof. Dr. Still regarded himself as an independent expert witness not bound by instructions but rather as someone engaged by a security firm and an English university. These have at least partly determined what procedure to follow when preparing the expert report. He has also considered examination of his report to be necessary in the interest of his employers' third-party liability insurer and has had the report examined accordingly.



3. Events not irreversible

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The Chamber doubts the causation considerations on which the prosecution charges are based:

- The prosecution charges assume that at a specific time of day (3.30 p.m. or 4.02 p.m.) the tragic events were irreversible, that is, would have inevitably resulted in the accident regardless of any further action. Here it cites data supplied by Prof. Dr. Still. Prof. Dr. Still, however, believes that the events were at best irreversible at much later times. For this reason too, as regards the question of whether any planning and authorisation errors were the cause of the deaths and injuries, other possible causes, in particular the police cordons hastily deployed later, failure to close access ways and later removed perimeter fences at the entrance systems, must be taken into consideration.

State attorneys and joint plaintiffs may enter an immediate appeal within one week. This appeal will be decided by the Düsseldorf Higher District Court.

Excerpts from the decision will shortly be published on the Court's Website. As soon as a completely anonymised version is available, the decision will be published on it in full.