

Prosecution of acts of piracy off Somalia by German prosecution authorities

Why is the Public Prosecutor's office at Hamburg in charge of acts of piracy off Somalia?

Under the German Code of Criminal Procedure (StPO), criminal acts that have been committed on the High Seas, outside German territory, have to be dealt with by the Hamburg Public Prosecutor's office (10a, 143) which, in Germany, is the first authority involved in such cases. Thus, whenever an act of piracy involving German interests has been committed by pirates off the Somalian coast, the Hamburg Public Prosecutor normally is the first German legal institution that has to deal with the case.

In a second, more detailed analysis of the particular incident it will then be decided whether or not the case has to be transferred to another authority. That will be the case whenever a vessel flying the German flag has been attacked. In such cases, it is primarily the Public Prosecutor's office at the ship's port of registry that has to deal with the matter (10 StPO). If a shipping company domiciled in Germany has been blackmailed, the case is transferred to the judicial authorities at the company's headquarters (7, StPO).

What other agencies co-operate with the Public Prosecutor in cases of piracy?

You may ask yourself how a Public Prosecutor's office manages to conduct investigations over a distance of several thousand kilometres. Since early 2009, the Hamburg Public Prosecutor's office has had to deal with several cases of piracy. Depending on the particular case, it has involved different police agencies in the investigations, namely the Federal Police and the Federal and State Criminal Police Offices, some of which have assigned officers to the area to conduct investigations. The Public Prosecutor's office has also obtained vital information from the Federal Navy, which is operating in the sea area off the East African coast. Such information mainly concerned cases in which the Navy had been able to detain pirates.

What are the German authorities' primary concerns in criminal prosecution?

In case of crimes committed abroad, the Public Prosecutor does not have the same strict obligation to prosecute which it has in domestic crime.

Criminal prosecution measures may be initiated by the Public Prosecutor at its discretion (153c StPO). In the case of attacks affecting maritime transport (316c German Criminal Code), German law prescribes that prosecution is the responsibility of the German authorities. Here, the so-called principle of world-wide uniform law applies (Art. 6, 3, StGB). The Public Prosecutor thus always may have to answer the question why it is, or alternatively why it is not, carrying out investigations in a particular case. What is totally clear, however, is that the German judicial system cannot, and should not, act as World Police.

Active prosecution measures will only be initiated if the German State has a particular, well-defined interest in prosecution - this, I think, is in accordance with the stance taken by all German ministries and authorities.

From the point of view of the Hamburg Public Prosecutor, prosecution measures will be initiated

- when German nationals have been killed or injured
- when a ship flying the German flag has been attacked by pirates
- when pirates are blackmailing a German shipping company
- when pirates have been detained by the German Navy

Since the beginning of the year, the Hamburg Public Prosecutor's office has been investigating cases that fall into these categories, and some of them have not yet been concluded.

How can proceedings in cases affecting German interests be concluded?

I would like to repeat my former statement that the German judicial system cannot, and should not, act as World Police. Also in cases affecting German interests, we will always be very careful in our decision as to how far we continue the prosecution. Let me explain this by some concrete examples.

a) When pirates, after having attacked a ship off the coast of East Africa, have been successfully pursued and detained by the German Navy, there will always be the question of whether or not it would make sense to let Kenyan authorities prosecute the case. Just recently, on 6 March 2009, the European Union concluded an agreement with Kenya on the prosecution of suspected pirates. By signing the agreement, Kenya agreed to conduct criminal proceedings in conformity with European standards.

Up to now, the German Navy has detained pirates in two cases; in both of these cases, the suspects have been transferred to Kenya. If Kenya had refused to take them, provisions had already been made which would have allowed their immediate transfer to Germany, because in both of these cases warrants for their arrest had been issued in Germany. In this way, it had been ensured that the pirates would not escape criminal proceedings (and punishment).

Proceedings in Germany were halted when Kenya took charge of the prosecution. However, the competent German authorities will closely watch the proceedings in Kenya. As Kenya had agreed to abide by certain standards in its court proceedings, I am confident that the matter will be dealt with satisfactorily and that future incidents in the area will be handled by Kenya as agreed.

b) As I had already pointed out earlier, piracy incidents will also be prosecuted in Germany if the ship that has been attacked is flying the German flag or pirates blackmail a German shipping company. The investigation of such cases is rather difficult. Without going into more detail regarding the individual measures taken, the purpose of such measures obviously is to ensure that proceedings can be instituted in Germany. Of course, while pirates are still on board a ship, the safety of the crew and passengers will always have top priority. But as soon as they are out of danger, basic measures such as hearing of witnesses and preservation of evidence concerning any damage suffered by the vessel will be taken. This cannot be done without support from other states and co-operation with their judiciary and police agencies, for instance in the port to which the hijacked ship sails after the attack. Ultimately, at the end of the proceedings, international warrants of arrest may be issued against the pirates involved in the attack.

Outlook

At the end of my brief presentation, to avoid any misunderstandings, let me state quite clearly that piracy should be fought wherever it occurs. Therefore, the agreement on the prosecution of suspected pirates that has been concluded with Kenya certainly is a reasonable approach. Nevertheless, my personal view is that prosecution and repressive action on the part of Governments only is the second best solution. It would be more important to eliminate the causes of piracy and take preventive action. But I am fully aware that repressive action is indispensable in the current situation. There has been an extremely worrying increase in cases of piracy off Somalia lately. The sums of money extorted by pirates probably have already been used to buy better equipment. This is an alarming prospect for international shipping and the world trade.