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Charges filed in the Tinner case

Bern, 13.12.2011 - On 8 December 2011, the Office of the Attorney General of Switzerland (OAG) filed charges under the War Material Act in the Federal Criminal Court in the Tinner case against the father and his two sons. The accused are charged with aiding the illegal nuclear weapons programme of an unknown state through various activities.

In response to a report filed by the State Secretariat for Economic Affairs (SECO) and the (then) Service for Analysis and Prevention, the Office of the Attorney General of Switzerland initially began criminal proceedings in October 2004 against the Tinner brothers alone on suspicion of offences under Art. 34 of the War Material Act (WMA). On 18 August 2005, the OAG expanded the criminal proceedings to include their father. From the outset, the OAG's enquiries indicated that the accused had links with the network of Abdul Qadeer KHAN, the "father of the Pakistani atom bomb", who supplied Libya with nuclear weapons technology. Based on the results of the enquiries, offences of forgery, money laundering and pornography (in the case of one person only) were investigated. The criminal proceedings were further expanded to include a fourth person suspected of offences against the WMA, although this person played only a subordinate role.

On 31 January 2008, the OAG requested a federal preliminary investigation, which was concluded at the end of 2010.

Based on the admissions made by the Tinner brothers and their father and at their request, the OAG in November 2011 ruled that accelerated proceedings should be conducted under Art. 358 ff. of the Criminal Procedure Code; the fourth suspect faces his own separate proceedings. In the indictment, the accused and the Office of the Attorney General of Switzerland request that the court return verdicts of guilty in relation to offences under the WMA and against one of the sons for forgery of documents. The proceedings in respect of other offences have been dropped as they are now time barred. In addition, the court will be requested to accept a plea bargain between the parties covering sentences, the allocation of costs, the forfeiture of assets and other matters. It is the task of the Federal Criminal Court to decide whether it is lawful and reasonable to conduct accelerated proceedings in this case. As a result of the admissions made by the suspects, no evidence will be heard in the main proceedings.

The Office of the Attorney General of Switzerland was unable to clarify satisfactorily whether the accused after a certain point in time assisted foreign services in uncovering the Libyan nuclear weapons programme. This is because the Swiss government in the summer of 2007 declined to authorise the prosecution of the relevant offences (Art. 271 SCC and Art. 301 SCC), which are of a political nature. Accordingly, the Office of the Attorney General of Switzerland is unable to bring these matters before the court for judgment.

Other important issues in the proceedings:

Pre-trial detention of the accused:

The father and one of his sons were arrested on 5 September 2005 in Switzerland. The father was released from pre-trial detention on 31 January 2006, and his son who was arrested on the same day was released in January 2009. The other son was extradited from Germany to Switzerland on 30 May 2005 and arrested by the Office of the Attorney General of Switzerland on the same day; he was released from pre-trial detention in December 2008.

The two sons applied twice for release while in pre-trial detention, but on each occasion the Federal Supreme Court upheld the request of the Office of the Attorney General of Switzerland to have their applications rejected. The sons appealed the second Federal Supreme Court judgment to the European Court of Human Rights, which held that their pre-trial detention was reasonable and dismissed their appeals. In addition, the Court held that the Office of the Attorney General of Switzerland had pursued the case with the required urgency.

Files:

On 14 November 2007, the Swiss government decided that material seized in the course of the criminal proceedings should be destroyed. The federal examining magistrate was able to obtain copies of some of the files destroyed, but others were permanently lost. None of the data carriers seized and none of the forensic images of other data carriers exist any longer.

International mutual assistance:

The Office of the Attorney General of Switzerland filed requests for mutual assistance in 18 different states. Due to the mutual assistance provided by the Office of the Attorney General of Switzerland to the prosecution authorities in Germany and South Africa, Switzerland helped to secure the convictions of persons accused in those countries of aiding Khan's network, all of whom received lengthy prison sentences.

As the Federal Criminal Court advised, notice of the date of the main proceedings and of the content of the indictment will be made public at an early stage. Until then, no information will be given.

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