The Criminal Proceedings against the “Ulm 5”: Defending the Rule of Law Instead of Criminalising Political Protest

We are following with grave concern the criminal proceedings against the five individuals known as the “Ulm 5”, currently before the Stuttgart Regional Court. The defendants are accused of having entered the premises of Elbit Systems Germany in Ulm in September 2025 and caused property damage. In addition, they are charged with membership of a criminal organisation under Section 129 of the German Criminal Code (StGB).

Regardless of the legal assessment of the specific acts in question, the conduct of the proceedings, the prolonged pre-trial detention and the extensive use of Section 129 StGB give rise to serious concerns from the perspective of the rule of law and fundamental human rights.

1. Violation of fundamental guarantees of a fair trial

The placement of the defendants behind a substantial glass partition, physically separated from their defence counsel, seriously undermines their ability to exercise their right to an effective and confidential defence. Communication through microphones and headphones cannot be regarded as an adequate substitute for direct and confidential consultation with legal counsel.

This raises serious concerns under Article 6(1) and Article 6(3)(b) and (c) of the European Convention on Human Rights (ECHR), as well as Articles 47 and 48 of the EU Charter of Fundamental Rights.

Particularly relevant is the fact that all five defendants allowed themselves to be arrested at the scene without resistance. This circumstance should have been given due consideration when assessing the necessity and proportionality of the exceptional security measures imposed during the proceedings, including their appearance in handcuffs and their confinement behind a glass partition. In the absence of specific evidence of individual security risks, such measures appear difficult to justify. They risk creating an appearance of dangerousness and prejudging the defendants in the eyes of the public, contrary to the presumption of innocence guaranteed by Article 6(2) ECHR.

Further concerns regarding the presumption of innocence arise from public statements issued by the Baden-Württemberg State Office for the Protection of the Constitution (Landesamt für Verfassungsschutz) while the criminal proceedings remain ongoing. In publications dated 24 July and 4 September 2026, the agency referred to the defendants as members of Palestine Action, placing their case within the context of foreign-related extremism and terrorism. The September publication also presented their alleged involvement in the incident at Elbit Systems as an established fact, rather than a matter awaiting judicial determination. Such statements by a state authority risk prejudging the defendants' criminal responsibility and undermining the presumption of innocence guaranteed by Article 6(2) ECHR. Public authorities must refrain from statements that convey an impression of guilt before that guilt has been established by a competent court.

The repeated rejection of defence applications, restrictions on the documentation of the hearings (interdiction of pen and paper) and the apparent reluctance to hear exculpatory evidence further intensify concerns about compliance with the principle of equality of arms.

2. The charge of membership of a criminal organisation (Section 129 StGB)

The application of Section 129 StGB is particularly troubling. The prosecution of specific acts of property damage must not be conflated with the criminalisation of a political protest movement.

Section 129 StGB requires an organised association of more than two persons, established for a period of time, whose purpose or activities are directed towards the commission of criminal offences meeting the statutory criteria. Mere political agreement, participation in joint protest actions or the use of a common name is not sufficient. In particular, Section 129(3)(2) StGB excludes criminal liability where the commission of offences is merely of subordinate significance to the activities of the association.

The prosecution must establish both the existence of such an organisation and the individual involvement of each defendant as a member. Collective attribution of criminal responsibility on the basis of political convictions or participation in common actions would be incompatible with the principle of individual culpability.

Nor can the British government's designation of Palestine Action as a terrorist organisation replace the independent assessment of the legal requirements under German criminal law. That designation has no automatic binding effect on German criminal courts.

The application of Section 129 StGB must also be examined particularly carefully in the light of freedom of association (Article 9 of the German Basic Law and Article 11 ECHR), freedom of expression (Article 5 of the Basic Law and Article 10 ECHR) and freedom of assembly (Article 8 of the Basic Law and Article 11 ECHR). These rights protect radical, system-critical and politically unpopular positions as well.

3. Excluding the situation in Gaza and the alleged genocide from judicial examination

One of the most disturbing aspects of these proceedings is the court's refusal to allow a meaningful examination of the situation in Gaza, including allegations of genocide and violations of international humanitarian law, and of the possible involvement of Elbit Systems in facilitating such violations.

The defence has argued that the defendants acted in response to grave violations of international law and that their actions may be assessed in the context of necessity or assistance in averting an imminent danger under Section 34 StGB.

The international law context is not merely a matter of political debate. It has already given rise to proceedings before the International Court of Justice (ICJ), including the case brought by Nicaragua against Germany (Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory, Nicaragua v. Germany).

In these proceedings, Germany is accused of failing to comply with its obligations under the Genocide Convention and international humanitarian law through its support for Israel, including arms exports. The ICJ proceedings on Germany's preliminary objections concluded in September 2026, and the Court's decision is still pending.

Furthermore, in the case brought by South Africa against Israel, the ICJ has issued binding provisional measures under the Genocide Convention, recognising the real and imminent risk of irreparable prejudice to the rights of Palestinians in Gaza.

These proceedings demonstrate that the questions raised by the defendants concerning the conduct of the war in Gaza, the alleged genocide and Germany's possible complicity in violations of international law are matters of the utmost legal significance. They cannot reasonably be dismissed as irrelevant political considerations.

The German court is not being asked to decide the international responsibility of Germany or Israel. However, it must allow the defence to address the relevant factual and legal context of its actions. Excluding this context from judicial examination risks depriving the defendants of a meaningful opportunity to present their defence and undermining the requirements of a fair trial under Article 6 ECHR.

Yet the court has reportedly dismissed the relevance of examining whether Elbit's technology enabled violations of international law in Gaza and rejected corresponding defence requests to hear expert witnesses.

This approach raises serious legal concerns. Whether the requirements of a justification under Section 34 StGB are fulfilled is a question that must be examined on the basis of the relevant facts. The court cannot simply exclude the factual circumstances on which the defence relies without properly assessing their relevance to the legal issues before it.

The court's duty to investigate the facts comprehensively under Section 244(2) StPO requires serious consideration of relevant evidence, including evidence capable of supporting the defence's arguments. The defence must also have a genuine opportunity to present its case, as guaranteed by Article 6 ECHR.

The alleged exclusion of the international law context is particularly problematic where the defence seeks to establish the connection between the activities of the company targeted by the protest and the grave violations of international law that motivated the defendants.

The question of whether genocide has occurred in Gaza, and the international legal obligations arising from the situation, cannot simply be dismissed as politically controversial or legally irrelevant. Nor should the court prejudge the legal significance of these circumstances without examining the evidence submitted.

A criminal trial must establish the relevant facts impartially. It must not exclude politically inconvenient facts merely because they concern the conduct of a powerful arms manufacturer or the actions of a state in an ongoing armed conflict.

4. Disproportionate pre-trial detention

The pre-trial detention, which has continued since September 2025, must be subjected to particularly rigorous scrutiny in view of the duration of the proceedings and the evidence still to be heard.

Under Sections 112 and 121 StPO, pre-trial detention must never become a form of punishment imposed in advance. Its continuation must be based on specific statutory grounds, remain necessary and satisfy the principle of proportionality. Detention exceeding six months is subject to the additional requirements of Section 121 StPO.

The seriousness of the charges or the political character attributed to the defendants cannot, in themselves, justify such prolonged deprivation of liberty.

5. Our demands

We therefore call upon the German judicial authorities:

1. To guarantee the defendants' unrestricted right to a fair trial, in particular by ensuring direct physical access to their defence counsel and genuinely confidential communication.
2. To review all security measures without delay and restrict them to measures demonstrably necessary and proportionate, taking into account that the defendants surrendered without resistance.
3. To conduct a full and impartial examination of the requirements of Section 129 StGB, strictly respecting the principle of individual culpability and individual criminal responsibility. The criminalisation of political opposition must not be permitted.
4. To ensure that the defence is allowed to present and substantiate its arguments concerning the situation in Gaza, the alleged genocide, possible violations of international humanitarian law and the role of Elbit Systems, and that all relevant evidence and expert testimony are duly considered.
5. To review the continuation of pre-trial detention without delay and release the defendants if the statutory requirements for detention are no longer met.

Conclusion

A democratic state governed by the rule of law must guarantee a fair trial even to those whose political convictions and forms of protest are strongly opposed by others. The prosecution of specific criminal acts must never become an instrument for intimidating or criminalising political opposition.

A court cannot fulfil its duty to administer justice by excluding the very facts and legal context on which the defence relies. The right to a fair trial includes the right to have relevant evidence and legal arguments genuinely examined.

Respect for the guarantees of the rule of law is not a matter of political sympathy. It is an absolute obligation of the judiciary – particularly in proceedings involving highly controversial political issues.

Signatories

1. American Association of Jurists (AAJ)
2. Association of Democratic Lawyers (VDJ), Germany
3. Association of Lawyers for Freedom (ÖHD), Türkiye
4. Basque Observatory of Human Rights (GEBehatokia), Basque Country
5. Center for Constitutional Rights (CCR), USA
6. Center for Research and Elaboration for Democracy (CRED), Italy
7. Committee for Fundamental Rights and Democracy (Komitee für Grundrechte und Demokratie), Germany
8. Cyprus Democratic Lawyers, Cyprus
9. Democratic Lawyers, Italy (Giuristi Democratici)
10. European Association of Lawyers for Democracy and World Human Rights (ELDH)
11. European Bureau of Judicial Resistance (BERJ)
12. European Democratic Lawyers (AED–EDL)
13. European Legal Support Centre (ELSC)
14. Forensic Architecture, Goldsmiths, University of London
15. Forensis e.V., Germany
16. Haldane Society of Socialist Lawyers, UK
17. Human Rights Association (İHD), Türkiye
18. ICJP Éire, Ireland
19. International Association of Democratic Lawyers (IADL)
20. Irish Council for Civil Liberties (ICCL)
21. Irish Lawyers for Palestine
22. Legal Centre Lesvos, Greece
23. Lawyers' Platform for Palestine (Plataforma de Juristas por Palestina)
24. National Association of Democratic Jurists (GD), Italy
25. National Association of Democratic Lawyers (NADEL), South Africa
26. National Lawyers Guild (NLG), International Committee, USA
27. National Union of Peoples' Lawyers (NUPL), Philippines
28. Progressive Lawyers' Association (ÇHD), Türkiye
29. Punjab Bar Council, Pakistan
30. Socialist Lawyers Association of Ireland
31. Swiss League for Human Rights – Geneva Section (LSDH-Ge), Switzerland