

AEROCONTROL SWITZERLAND

p.o. box 2107, 8060 Zurich Airport
www.swissatca.org

“You are accused...”

Almost five years after the tragic mid-air collision near Überlingen, the case was brought before the Swiss penal court in charge: The District Court of Bülach scheduled the proceedings between May 15 and 31, 2007. Eight employees of the Swiss air navigation service provider Skyguide were accused of homicide by negligence in 71 cases. In the end, the two air traffic controllers involved were acquitted of all criminal charges. Aerocontrol, the Zurich branch of SwissATCA, had a task force present in court, following the proceedings closely.

On July 1st, 2002, the mid-air collision over the German town of Überlingen (Lake of Constance) caused the death of 71 people, among them 49 children and youngsters on their way to Spain for vacation. The Public Attorney's Office Winterthur/Unterland held eight employees of Skyguide responsible for contributing to the collision of the Boeing 757 cargo plane and the Bashkirian Airlines Tupolev 154. Four operational and technical managers, two line engineers, one ATCO supervisor and one air traffic controller were accused of homicide by negligence and of unlawful interference in public transport. The Public Attorney called for jail terms of 6 to 15 months, suspended on probation.

The criminal investigation was based mainly on the investigation report of the German Federal Bureau of Aircraft Accidents Investigation. The report particularly criticized the single-manned operation of the Zurich area control center at night. As was common practice at that time, the second ATCO on duty had left his colleague alone at the control sector (with his consent) to go on a break. Another fatal deficiency found was the insufficient information available to the ATCO's about ongoing maintenance work on ATM equipment and its operational consequences. On the night of the accident, the visualized conflict detection was not available and also the telephone system was partially out of service. Because of this telephone degradation, the vigilant Rhein Radar controllers were unable to reach their colleague in Zurich and warn him of the imminent conflict.

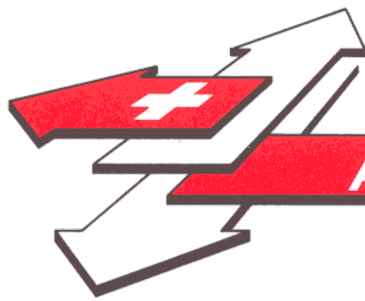
ATCO in charge killed

Peter, our dear colleague, who was the ATCO in charge at the moment of the accident, fell victim to a Russian citizen, who lost his family in the accident. Peter was stabbed to death on February 24, 2004, just in front of his house in Kloten, near Zurich airport. This cruel act had an impact on the course of the legal proceedings. Peter would have been able to respond to numerous significant questions that in the end were left to speculation or simply remained unanswered.

The Russian killer was convicted of murder and initially sentenced to eight years of prison. After intervention by a Court of Appeal, which attested him diminished responsibility, the sentence was commuted to 5 ¼ years. This verdict was again challenged by the public prosecutor. The case is currently pending a final decision by the Swiss Federal Court.

Aerocontrol Task Force

When the names of the accused were made public, we became aware once more that we air traffic controllers are indeed doing a risky job. Until then, we largely feared the interviews with our boss or with the investigators of the Aircraft Accident Investigation Bureau. Of course, we knew that the public attorney was on the Überlingen case, but when our workmates were summoned to the legal proceedings, we were confronted with a new dimension of our profession. We decided to focus all our power on supporting our colleagues and to safeguard the ATCO's interests as best as possible. We set up a task force that was exclusively dedicated to the trial and all aspects related to it. In talks with Skyguide management we realized that we were sitting in the same boat, had common ideas, and that any public action against our employer would be counterproductive for all of us. This tragic setting was not to be abused by any demands from our side! In addition, we wanted to refrain from influencing the legal proceedings by injudicious statements towards the media, which might have had negative consequences for our colleagues in court. Led by these principles, we drafted a media strategy, which



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highlighted the systemic approach to understanding the Überlingen accident. During that time, we also had a close co-operation with the Skyguide management task force, thereby being able to communicate our ideas and to shape their opinion. Furthermore, we were well informed about Skyguide's intentions, but also management knew that they didn't have to be afraid of us. We were even invited to the daily meetings of the crisis management group, providing us with a good overview on the issue from the perspective of all kinds of legal experts. Of course, we also worked closely together with the Geneva branches of SwissATCA.

Our association in the courtroom

The Board of Aerocontrol has no full-time executives, but consists of six elected ATCO's, who run the association in addition to their controller duties. At first, we were of the opinion that it would suffice to sporadically attend the proceedings and do normal sector work alongside. This proved quickly to be impossible. Our media relations officer was literally overrun by media requests already one day before the trial started. It therefore seemed very important to us to be present in the courtroom, get all the information first-hand and to be able to react to media inquiries on the spot. Our good relationship with the Skyguide management was very helpful in getting the necessary days-off to proceed.

On day one of the trial, a queasy feeling accompanied us to Bülach, a small town north of Zurich airport, where an improvised courtroom was prepared in a community center in order to accommodate for the number of people that were expected to attend. Media presence was high, but since our association was not very well known at the time, all the journalists passed by us and layed siege on the Skyguide spokesman. Tight security measures were in place, indicating that another attack on air traffic control personnel could not be excluded. The courtroom slowly became crowded and we took our seats somewhere in the middle of the room.

Competent Judges

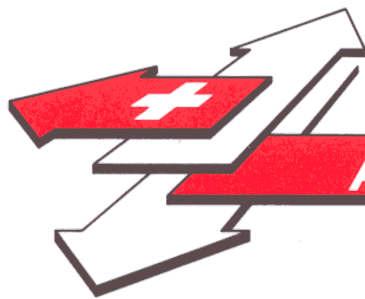
The eight defendants, together with their lawyers, were brought in through the back entrance. It was very unfamiliar and sad to see our workmates in the dock. The chief judge opened the trial and introduced the two other members of the court. Normally, two hearings were held on one day and besides the defendants and the public attorney, an expert was invited to speak. The defendants appeared calm, but after the chief judge's question: "You are accused of homicide by negligence in 71 cases, how do you plead?", all of them broke into tears. By now, everyone understood under what kind of pressure they were.

The chief judge was very well prepared and asked critical questions. He based himself on the accident investigation report, but also on the relevant Skyguide manuals and regulations as well as on the disputed report of Dr. Peter Grössenbrunner, an Austrian aviation expert. The contents of this report were challenged by the lawyers and neither appear entirely factual from an ATCO perspective. In any case, it was demonstrated quite impressively, how the many rules and directives we are trying to apply in our day-to-day work can become a legal trap very quickly.

In the media there were reports of accusations against our late colleague Peter, allegedly made by some of the defendants. From our point of view, apart from a few exceptions, there were no such accusations. The ATCO's involved rather tried to elucidate Peter's working method and thereby partially even put blame on themselves. It is inevitable in this context that some statements may have seemed accusatory, albeit not meant to be that way.

Tough pleadings

The lawyers however, pleaded somewhat differently. Most of them attacked Peter directly, trying to focus on his reputed errors. Unfortunately, we had to put up with this course of action, always reminding ourselves that the lawyers only had one goal in mind, to get their clients acquitted. Neither Skyguide, nor Aerocontrol, nor the defendants themselves were able to control the pleadings. We had



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to realize that the “justice culture”, founded on guilt and penalty, does not correspond to the “just culture” we are currently striving for in aviation. Even if it hurt, we had to let the legal professionals do their job.

After the pleadings, the trial ended. The defendants were not allowed to work in their original function until rendition of the judgement. This was decided in order to protect the individuals, but also to protect Skyguide. It would have been unimaginable had one of them meanwhile been involved in another incident. Although the ATCO workforce did not react very positively to it, we did not fight the decision. Our objective was to bring our colleagues back to the radar scope when the proceedings were over.

ATCOs acquitted

We planned our activities well in advance in order to be ready for the rendition of the judgement. Every possible scenario was discussed and the media strategy adapted. We were anticipating the worst. We knew our statements by heart, able to provide every journalist with an identical message. One executive board member was sitting in front of a computer, ready to send off a previously drafted press release. Crisis meetings were scheduled with our board and with management and the entire day was organized in detail. Under considerable strain, we took our seats in the courtroom at Bülach, hopefully for the last time.

The well-known voice of the chief judge resounded, while he was reading the sentences. High penalties for the managers and ... acquittal of the ATCO's. What we hoped for, did occur: Our colleagues are rehabilitated! The chief judge stated the reasons for the court's verdicts, using phrases like:

“Safety must be measured against the emergency, not against the standard situation;”

“Safety must be first priority, everything else needs to be subordinate;”

“Single-manned operation does not correspond to a safe operation;”

“One cannot assume that an ATCO always chooses the best and correct working method.”

The judge's words were music in our ears. Had we not been preaching all this for a long time? Only a few days before rendition of judgment, we had talks with management about single-manned tower operation during nighttime. For economical reasons, the unit manager wanted to hold on to it. Now it seems that our concerns are taken more seriously. The verdict also raises questions with regard to responsibility. Of course, our responsibility at ATCO level remains unchanged. However, management needs to more strongly observe their responsibility when it comes to designing air traffic control processes: The core business of ATC, the provision of safety, must be in focus; political and economical interests are secondary. It is the job of our managers to make sure that the correct priorities are chosen.

Albeit not everyone responsible for air traffic control in the era before Überlingen was under prosecution, the District Court of Bülach came to a comprehensible conclusion. The judges have clearly demonstrated to the Swiss air navigation service provider, what the public expectations are. We are anxious to see how these expectations will be lived up to in today's environment.

Zurich Airport, October 2007

Aerocontrol Switzerland

Mario Winiger, Head of Task Force Überlingen (text)

Sigi Ladenbauer, President (translation)