

Acquittal of police vacated

Germany: New trial in death of asylum seeker

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The trial in the death of asylum seeker Oury Jalloh, who burned to death in his cell while in police custody in Dessau, is to be reopened.

The Bundesgerichtshof (Federal Court of Justice—BGH) has lifted the acquittal of the police officers charged in connection with Jalloh's death and returned the case to the Magdeburg District Court for retrial. Judge Ingeborg Tepperwien vacated a verdict widely seen as a travesty of justice, but it is probable that the official lies and cover-ups in the first trial will be repeated in the second.

Five years ago, on January 7, 2005, Oury Jalloh was taken by Dessau officers to the police station for the purpose of establishing his identity. When the asylum seeker, who was intoxicated, protested against his treatment, he was placed in a cell in the basement of the police station, where his hands and legs were strapped to a fire-resistant mattress. Three hours later, Jalloh burned to death in his cell.

To this day the cause of the fire remains unclear. The only course of events considered by the Dessau District Court was the most improbable—that despite being restrained, Jalloh himself ignited the mattress, using a hidden lighter.

On this basis, the two police officers indicted in connection with the death were charged only with involuntary manslaughter resulting from negligence. Hans-Ulrich M. was accused of overlooking a lighter in Jalloh's pocket, and the presiding officer, Andreas S., was charged with turning down the volume on the intercom to the cell and ignoring the smoke alarm when it went off.

From the beginning, the prosecutor, Christian Preissner, fixed on the premise that Jalloh had committed suicide, ignoring glaring contradictions, omissions and errors in the official investigation. The trial in Dessau served to shield the police and suppress suspicions of racism, violence and even murder. The trial did not begin until more than two years after the incident, and dragged on for more than 59 days, ending in an acquittal.

The presiding judge at the time, Manfred Steinhoff, declared that the trial had "failed" and admitted that his acquittal had "nothing to do with the rule of law." Judge Steinhoff said he had "seldom and so consistently and brazenly been lied to" by police officers. He declared that the police had so bent the truth that solving the case had become impossible.

The judge based his acquittal on the assumption that Jalloh's death had occurred due to the intense heat and rapid development of the fire, and that any help would have come too late.

The acquittal was met with angry outbursts and protests in the courtroom.

In vacating the acquittals, Chief Judge Tepperwein of the Criminal Division of the Bundesgerichtshof described the findings of the District Court as "difficult to understand." Judge Tepperwien raised four main omissions and inconsistencies that had to be clarified in a new trial.

First, it was necessary to ascertain whether the smoke detector in the cell had triggered the alarm after the fire broke out, as had been accepted by the Dessau court, or whether the alarm had been set off much earlier, when the mattress had only been scorched.

Second, it was necessary to take into account a report, ignored by the court in the original trial, that Jalloh must have cried out in pain when the fire broke out, and that his cries could not have gone unheard, even if the intercom volume had been turned down.

Third, contradictions in the testimony of police officer Beatrice H. had to be investigated. She had initially indicated that the presiding officer, Andreas S., had twice stopped the fire alarm and had completed a phone call before checking the cell block in the basement of the police station. However, in court, Beatrice H. testified that at most ten seconds had elapsed between the time of the first alarm signal and the time Andreas S. went to check on the cell.

Fourth, the Criminal Division judge complained that the "essential link was missing—whether and how it would have been possible for Jalloh to start the fire." Testimony from experts and reconstructions of the incident had ostensibly shown that a restrained person could somehow pull out a lighter from his pocket. Even the gradual ignition of the fire-resistant mattress—by picking apart the seam of the fire-resistant casing and igniting the flammable foam inner lining—was deemed possible. But, Judge Tepperwein maintained, the explanation of suicide still left unclear whether a drunken man, whose hands were fixed to a cell wall, would actually be able to carry out all these actions.

Jörg Schindler, writing in the *Frankfurter* interpreted the ruling by the Bundesgerichtshof as a “victory for the rule of law,” and Heribert Prantl, writing in the *Süddeutsche Zeitung*, said the judiciary had “pulled away the rug” under which the scandal was to be swept.

Such statements, however, are false. There is no reason to assume that a second trial will shed light on this murky case. Even the Bundesgerichtshof upholds the claim that Jalloh burned himself to death. Tepperwien said that in the court’s opinion, “the outcome of the new trial is completely open” and the “benefit of the doubt” had to be given to the accused police officers.

The case has many other inconsistencies that raise grave doubts about the police version, which were disregarded by the BGH. The police gave several accounts as to how Jalloh came to be in possession of the lighter. But there is silence about the fact that the lighter did not appear at all on the first list of evidence.

The lighter that was later presented as the object that caused the fire showed little signs of fire damage, although it would have been exposed to enormous heat in the cell. Other evidence, such as the handcuffs and key sections of the videotape of the forensic investigation, has disappeared.

The initial autopsy report was withheld, and a second autopsy, conducted on the initiative of the victim’s family, revealed a broken nose and injury to an eardrum—injuries that must have occurred before the fire and point to serious abuse by the police.

The main witness, police officer Beatrice H., changed her testimony when, during the court proceedings, a meeting was held with witnesses at the Dessau police station.

The arbitrary police actions are evident not least from the fact that Jalloh had been dragged to the police station in the first place. On the morning of the January 7, 2005, Jalloh had spoken to three women, asking to borrow a mobile phone from them. They had refused, and when Jalloh insisted, they informed the police, who took the asylum seeker away to establish his identity.

Jalloh, however, had a passport on his person, and had been taken to the same police station for identification purposes a few weeks earlier. He was accused of no crime and his identity could have been confirmed within minutes, but at the police station he was taken into custody, apparently beaten, strapped for hours to a mattress and immobilized, supposedly for his own safety.

Such abuse of refugees, addicts and homeless people by the police is not a rare occurrence. In 2002, in the same cell of the Dessau police station, a homeless man died after 15 hours in detention, including long periods when no one checked on his condition. At that time a criminal investigation against the same police officer, Andreas S., was initiated, but then promptly dropped.

In the course of the trial of neo-Nazis who, in the summer of

2000, murdered the Mozambican immigrant Alberto Adriano in Dessau, it emerged that the police had regularly “hunted down” black Africans in the Dessau city park. Citing suspicion of drug trafficking, the police publicly stripped the immigrants naked and searched them. There was an investigation at the time of three police officers who beat and kicked an 18-year-old African at the police station.

According to a study by the University of Halle, from 1993 to 2003, 128 people nationwide have died in police custody. The study’s authors concluded that one in two of these deaths could have been prevented.

However, it is extremely rare for such cases to come to trial or lead to convictions. In Berlin alone in 2008 there were 550 recorded cases of police brutality, only two of which resulted in indictments.

How the police and prosecutors thwart investigations of their own people is shown by the case of Oury Jalloh. That this case became widely known to the public is in no small part due to the commitment of Mouctar Bah, who informed Jalloh’s parents of their son’s death and ensured that they were included as joint plaintiffs in the trial. As a result, the police and authorities in Dessau regard him as a troublemaker and have tried whenever possible to throw obstacles in his way.

At the end of 2005, this native of Guinea had the business license for his telephone shop withdrawn on the most flimsy grounds. Bah was forced to become an employee in his own shop, which now faces regular police raids and checks.

Bah was also targeted on December 16, 2009 when he planned to travel with friends to Karlsruhe to attend the appeal hearing of the Jalloh case. Towards 2 PM, police officers stormed the cafe where Bah was working and conducted a search of the premises lasting four hours without a court order, and then left without leaving a warrant.

They justified the action on the grounds of the new Police Act, under which “notorious and infamous places” may be searched without a court order. The senior officer was not present. He was in his office but could not be reached by Bah.

Ostensibly responsible for the action, which was directed against supposed violations of the Narcotics Act, was the prosecutor Christian Preissner, who led the prosecution in the Jalloh case based on the premise that Jalloh’s death could only have been a suicide.

Perversions of justice, cover-ups and lies are clearly part of the system. The incidents in Dessau are reminiscent of the worst periods of arbitrary police action in Germany.



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