German Supreme Court overturns acquittal of officer implicated in asylum seeker's death

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Exactly six years after the death of asylum seeker Oury Jalloh at the hands of the police, an appeals court has ordered a new trial against former officer Andreas S, who is implicated in the man's death.

A native of Sierra Leone, the 23-year-old died on January 7, 2005 while in custody at the Dessau-Rosslau police station. He burned to death, his hands and legs handcuffed to a plastic mattress. Andreas S., the duty officer, is accused of ignoring the fire alarm and thus being indirectly responsible for what happened.

In a scandalous first trial before the Dessau District Court, Andreas S. was acquitted of all charges, as was his co-defendant Hans-Ullrich M. The latter had searched Jalloh at the time of his detention and allegedly overlooked the fact he had a cigarette lighter in his possession.

The trial was a farce. During questioning, the police officers gave identical statements, clearly agreed upon beforehand. In addition, key evidence had disappeared. After 59 trial days and 20 months of proceedings, Judge Manfred Steinhoff announced an acquittal, capitulating before the wall of silence put up by the police force. It is also possible that he was pressured by the judiciary and the state interior ministry of Saxony-Anhalt to come to this verdict.

After announcing an acquittal, disorder broke out in the court. Judge Steinhoff, trying to calm the situation, admitted, "What was presented here was not the rule of law, and police officials, who are especially committed to the rule of law, have made clarification [of the case] impossible."

Three months later, however, Steinhoff presented a written verdict in which he no longer expressed any doubts about the fairness of the proceedings. Rather, he concluded that the police officers had acted "dutifully". He maintained that they had no intent to cause bodily harm and ruled out manslaughter, claiming that the death of Jalloh had been "objectively unavoidable".

The prosecutor and the co-plaintiff subsequently lodged an appeal. On January 7, six years after Jalloh's death, the Criminal Chamber of the Supreme Court, chaired by Judge Inge Tepperwien, scrapped the acquittal handed down by the Dessau District Court. According to Trepperwien, the judgement had been incomplete, the evidence was not consistent and the conduct of the accused police officer Andrew S. was anything but dutiful. She ordered that the trial be staged again from the beginning, including the re-examination of witnesses and the submission of new reports.

It is doubtful, however, that the truth will come out in the new trial being held before the Magdeburg District Court, which will consider whether Jalloh himself ignited the mattress on which he was tied down. The courts continue to exclude the possibility that the police officers might have been actively involved in the incineration of the asylum seeker, despite the fact that there is evidence that points in this direction.

What is known so far?

After visiting a disco, Jalloh asked four women working for the city street cleaning department if he could use one of their mobile phones. Jalloh was quite drunk; the women felt harassed and called the police. When they arrived, the situation had already calmed down, but the police officers still took Jalloh to the police station for identification. He was well known there as an asylum seeker, having to report regularly to the authorities. He had often faced harassment from the police.

Police claim that they got into a scuffle with Jalloh. An emergency doctor called to the station confirmed Jalloh could be arrested, although he had a blood alcohol content of almost 3 parts per thousand. Jalloh was searched, his pockets emptied and he was placed in a detention cell in the basement of the police station, shackled by his hands and feet to a fireproof mattress. There were no incidents during the next two hours, but towards midnight the fire alarm went off. The duty officer on the first floor turned off the alarm

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several times. Previously, he had turned down the volume on the intercom system used by police officers to communicate with the prisoners.

Only when the smoke detector in the ventilation shaft sounded an alarm did Andreas S. go down into the cellblock. He took a colleague with him, but had forgotten the keys to the handcuffs used to immobilize Jalloh. When the police officers finally arrived in the basement, the smoke was so thick and the heat so intense that they claim it was impossible to rescue Jalloh.

The case is full of inconsistencies, many of which were overlooked in the original trial in Dessau. How was it possible for an almost completely drunken man to use a lighter, which he supposedly managed to retain after being searched, to set ablaze a fire-resistant mattress in a tiled room when he was tied by his hands and feet to the very same mattress?

Fire experts have confirmed that only the filling of the mattress was combustible. If this is the case, then how was Jalloh able to open the seams to pull out the filling? In his ruling, Judge Steinhoff concluded that Jalloh conjured the lighter out of his pocket acrobatically, so as to char the seams of the mattress in order to pull out the stuffing. He then could have ignited the filling.

Lawyer Gabriele Heinecke, representing Jalloh's mother as a co-plaintiff, stated in the radio documentary produced by Margot Overath, "Burned in police cell number five. The death of the asylum seeker Oury Jalloh in Dessau", "If a judge had told me he believed that was the way he [Jalloh] had done things, you would have to ask after the facts. It's not a question in court or in sentencing, to elaborate such a fantasy that you can then come up with an idea of how it could have been done. It needs facts. Where the facts are missing, it remains a fantasy and is not suited to reaching a verdict. And certainly not an exculpatory verdict."

But there are still more unanswered questions:

Where is the lighter with which Jalloh is said to have started the fire? A lighter was not mentioned on the initial list of evidence gathered at the scene. Three days later, a lighter was found in the fire debris. However, it was only scorched, despite the enormous heat that the blaze generated in the cell.

In the afternoon after the fire, officers from the Stendal Police Department arrived in Dessau to conduct an investigation. They exhibited such sloppiness that serious questions are raised about their professionalism, if not intentions. Entering the burned-out cell with a video camera, an officer can be heard speaking into the microphone saying that the prisoner had set himself on fire. How did he know that? Had the police from the beginning agreed that self-ignition was the only cause that could be considered?

The camera then recorded the fire debris in the cell. However, the tape only shows the first four minutes of the recording; the rest was deleted. In addition, one of the two pairs of handcuffs used to immobilize Jalloh has disappeared. A list of the 70 names of people who had been at the police station on the morning in question has also disappeared. Likewise, the CCTV recording of the corridor in the cellblock is gone.

This missing tape would have recorded any visitors to Jalloh's cell around 11:30pm. Police Officer Beatrice H. initially told the investigators from Stendal that she heard the rattle of a key chain and voices, but could not identify them, around that time. This visit was not entered in the custody log. Initially, the same officer also indicated having seen a puddle of clear liquid on the floor in Jalloh's cell, which she and her colleagues believed was not urine. It is possible this could have been lighter fluid.

However, when questioned in court, none of the officers could remember anything further about this incident. They frequently sought to explain contradictions in their previous statements by insisting things had been "written down wrong" or "not verified".

Officer H., who retracted her original statements in court, was transferred to another department soon after the trial and shortly thereafter sent home on sick leave due to mental health problems. She is said to have been crying every day.

In addition, a second autopsy, performed only at the insistence of the co-plaintiff, discovered that Jalloh's nose had been freshly broken. The police claimed that he had struck his head against the wall. This does not explain the fracture of his nose, which was more likely caused by a blow to the face.

The police in Dessau are known for their racist abuse of asylum seekers, in particular those from Africa.

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