

Germany: Victims of the Kunduz massacre sue for compensation

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The regional court in Bonn recently opened proceedings in the first major civil case pursued by two survivors of the NATO air strike on two fuel tankers near the city of Kunduz in Afghanistan. Abdul Hannan, who lost two children aged 8 and 12, and Qureisha Rauf, whose husband was killed in the bombing in September 2009 and must now raise their six children alone, are suing the Federal Republic of Germany for a combined sum of €90,000 (\$115,400) as compensation for their pain and suffering.

Both plaintiffs, neither of whom has received a visa to attend the proceedings, will be represented by attorney Karim Popal and the Bremen University emeritus professor of law, Peter Derleder. Popal is managing the suits of a further 79 survivors of the civilian victims of the massacre that was directed by the German army's Colonel Georg Klein; the sum of all the claims amounts to approximately €3.3 million (\$4.2 million).

The deaths of dozens of civilians had been clearly foreseen as a possibility. This raises the question of whether the army, and thus the Federal Republic of Germany, violated international law. There is also the question of whether German soldiers carrying out similar operations in the future will be allowed to go unpunished.

Colonel Klein's order to bomb two hijacked tankers near the city of Kunduz on the night of September 4, 2009, led to the bloodiest attack the Federal German Army has perpetrated since its inception. According to NATO data, up to 142 mostly innocent civilian victims were mourned by their survivors. Independent agencies estimate as many as 179 victims.

Although the first reports of civilian casualties began to spread on September 4, 2009, Germany's leading government and military circles tried to cover up the massacre. However, press reports and investigations by US agencies soon revealed the true extent of the carnage.

The then incumbent defence minister, Franz-Josef Jung

(Christian Democratic Union, CDU), had to resign because he had for days denied there were any civilian casualties, despite knowing otherwise. His successor, Karl Theodor zu Guttenberg (Christian Social Union, CSU), dismissed Peter Wichert, his undersecretary, and Inspector General Wolfgang Schneiderhahn, the highest-ranking military officer, because they had allegedly withheld documents.

Guttenberg later had to revoke his earlier opinion that the attack was "militarily appropriate" despite the civilian casualties. However, Colonel Klein's conduct was always defended; he was even promoted to general by the new defence minister, Thomas de Maiziere, in August 2012.

The legal handling of the massacre has been a farce. Disciplinary proceedings against Klein were waived. The army refused to provide a parliamentary investigative committee with essential information. A preliminary investigation of the role of Colonel Klein, the person directly responsible for the massacre, was abandoned by the office of the federal prosecutor in April 2010, on the dubious grounds that he had no "subjective intention" of killing any civilians. An application by the bereaved to enforce criminal prosecution was dismissed by the Dusseldorf regional appeals court in February 2011. According to the chamber at that time, the plaintiffs had presented insufficient proof of their claims, although they had effectively been denied the right to review relevant files and thus to ascertain crucial evidence.

Defence ministry lawyers are now trying to challenge the authority of the court, because Colonel Klein had not operated under German national jurisdiction, but was involved in NATO's ISAF (International Security Assistance Force) mandate. But the chamber, chaired by Judge Heinz Sonnenberger, refused to accept this line of argument and allowed the lawsuit of the bereaved to proceed.

A settlement, proposed by Judge Sonnenberger, was

also rejected by the government representative, Mark Zimmer. Zimmer has said he is confident of victory, because the plaintiffs must first thoroughly prove that their family members were actually killed in the bombing. “We’ve already experienced a lot of cheating in Afghanistan,” he declared.

Deception and cover-ups are part of the German government's repertoire. Government spokesmen still insist that the bombing claimed only 50 to 60 victims, a figure held up as proof that the attack was not disproportionate. Moreover, the ministry of defence continues to obscure the facts of the massacre, claiming that the destruction of the tankers eliminated a threat to a nearby German army camp.

In fact, the tankers had been firmly stuck in a riverbed for hours by the time of the bombing. Moreover, Colonel Klein had repeatedly rejected the proposal of the US bomber pilots to warn any civilians on the scene by low-level flights—the so-called “show of force” procedure. That Klein quite deliberately intended to unleash a hellish inferno by having the bombs dropped exactly between the two tankers also strengthens the suspicion that the German army command in Kunduz was specifically trying to kill off Taliban leaders, suspected of being near the tankers. This is also indicated by the extensive build-up of members of the elite Special Forces Command (KSK) unit in the military camp in Kunduz, whose job was essentially to track down leaders of the Taliban insurgency. The KSK forces were themselves also ultimately involved in the attack.

Before and immediately after the Kunduz massacre, the German chancellor's office, Inspector General Schneiderhahn, and the then defence minister, Josef Jung, as well as KSK commanders and intelligence coordinators had agreed—in consultation with American CIA intelligence forces—to escalate the military mission in Afghanistan. This was reported by the *Süddeutsche Zeitung* newspaper in December 2009. The report particularly noted that the targeted “liquidation of the Taliban's command structure” was said to have been arranged, and Colonel Klein “would really have felt encouraged to launch an immediate crackdown.”

So far, no one has been held accountable for the brutal crime. This state of affairs reinforces the position of the army, which wants to proceed more ruthlessly against insurgents and civilians in Afghanistan and beyond. This requires the lifting of restrictions imposed on the German military since the perpetration of its crimes during World War II, however. The Kunduz massacre thus was

exploited to launch a policy of targeted killings, i.e., of executions without trial or judicial sentencing.

Therefore, the government and army have so far done everything possible to thwart proper legal procedures. Where international law was invoked, as in the case of the federal prosecutor's closure of the judicial inquiry into the conduct of Colonel Klein, it was interpreted so broadly as to lose all meaning.

Government spokesman Zimmer also expressly claimed before the Bonn court that military operations should be regarded as beyond normal administrative jurisdiction. He argued that government liability, which could lead to claims for damages, should not apply to cases of military conflict. He went on to say that NATO partners would otherwise no longer be able to rely on Germany.

“Such operations should not be actionable. That would create an extremely burdensome situation for the soldiers,” said Zimmer.

It remains to be seen whether the court will take the adjudication of war crimes seriously. Judge Sonnenberger has already made it clear he would prefer a settlement; a total of €3.3 million (\$4.2 million) would indeed not be “such a huge sum” for the defence department. Moreover, the army continues to block the court's interrogation of the important witnesses—witnesses such as a certain “Captain X,” who is said to have reported to Colonel Klein during the attack on the tankers that, according to an informant who was present, only Taliban insurgents were on the scene at the time.



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