Germany: The false imprisonment of Gustl Mollath

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27 June 2013

The incarceration of political non-conformists in psychiatric hospitals has long been considered characteristic of authoritarian regimes. The case of Gustl Mollath shows that it is entirely possible in today's Germany.

56-year old Mollath has been confined in the secure ward of various psychiatric institutions in Bavaria for more than seven years because he repeatedly accused the Hypo-Vereinsbank (HVB) of dubious bank transactions involving his own wife at the time. Year after year psychiatric reports have certified that he is suffering from dangerous delusions.

In the meantime Mollath's allegations have largely proved to be correct. Leading German media outlets including ARD and the *Süddeutsche Zeitung* newspaper have reported extensively on his case since November last year. Along with Mollath's lawyers, the prosecutor is now also calling for a retrial and a committee of the Bavarian state parliament has been dealing with the case since April. On June 11 Mollath personally addressed the committee and appeared to be perfectly sane--and yet he remains in a psychiatric ward where he will continue to stay if his judges get their way.

Gustl Mollath graduated from university with an outstanding degree and began to study mechanical engineering. Following a period working for the industrial firm MAN he started his own business restoring vintage cars. His wife Petra worked as a property consultant for HVB.

In 2001 there were frequent clashes between the long-married couple. Mollath accused his wife and her employer, HVB, of being involved in illegal bank transactions, and demanded she stop. Petra Mollath is alleged to have, partly behind the back of the bank, transferred large sums of money to Switzerland, on occasion crossing the border in person. She continues to deny all the charges against her. She later stated that Mollath had choked and beaten her, which he denies. To back up her charges, Petra Mollath produced a medical certificate issued nine months after her alleged beating.

In May 2002 she moved out of their apartment. She claims that one month later Mollath held her against her will in the apartment for 90 minutes. She then laid charges alleging violations of her liberty and damage to property. She also demanded he be examined to certify his sanity.

In 2002 and 2003 Mollath wrote several letters to the Hypo-Vereinsbank, in which he repeated his accusations. The bank then put in motion an internal audit, which largely confirmed his allegations. The report says: "All verifiable assertions have proven to be true." The report confirmed illegal money transactions, money laundering, illegal stock trading and abetting tax evasion. Although it proved Mollath's innocence, the bank kept the report under wraps for years.

In December 2004 Mollath was sent by court order to a psychiatric ward to determine his mental status. In January 2005 he is then alleged to have punctured the tires of people he suspected. In fact none of these allegations have been proved or confirmed by witnesses. The investigation focused on assembling evidence against Mollath and ignored exonerating facts.

In 2006 the state court of Nürnberg-Fürth declared the allegations against Mollath to be correct, at the same time pronouncing him to be of unstable mind and ordering him to be confined to a psychiatric ward as a danger to the public order.

The basis for this decision was a report by the chief doctor of the forensic department of the District Hospital in Bayreuth, who based his diagnosis on notes from other doctors and nurses. He had not personally spoken to or examined Mollath. The court followed his advice, although another report declared Mollath to be of sound mind. The judge had not read a 106-page statement by the accused repeating his allegations of illegal money transactions.

Subsequently, four experts have concluded, on the basis of discussions with Mollath, that he did not suffer from delusions and there was no justification for his incarceration.

At the end of 2011 his case was taken up by the ARD television program *Report Mainz* and the *Süddeutsche Zeitung* newspaper, which detailed some of the questionable aspects of his trial. Additional witnesses came forward to

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exonerate Mollath of the charges against him.

One witness, a juror at his court hearing, testified that the presiding judge had refused to take Mollath seriously and had threatened to expel him from the courtroom if he raised his “illegal money complex.”

A criminal law professor from Regensburg uncovered numerous procedural errors in the judgment of 2006. For the first time the charges raised by Mollath in 2003 and 2004, which the prosecution had failed to pursue, became public.

For a long period the Bavarian Justice Minister Beate Merk stood behind the judiciary responsible for Mollath’s mistreatment. Merk denied that there was any connection between the illegal money allegations raised by Mollath and his confinement in a psychiatric ward.

Only on November 30, 2012, following intense public pressure, did Merk agree to reopen the case. It then took another four months before the prosecutor in Regensburg requested the reopening of the case, and no date has since been fixed for a retrial.

Mollath’s lawyer, Gerhard Strate, a specialist in such complaints, has requested the release of his client from psychiatric detention. In January, he raised charges against the magistrate who confined Mollath to the psychiatric facility in Bayreuth in 2005, as well as against the head of the clinic who had assessed Mollath. The Augsburg public prosecutor refused to undertake an investigation against the two, citing “lack of evidence.”

Further incriminating details in the case have emerged in the investigation committee of the Bavarian Landtag, which first met on April 24. The committee heard that both leading prosecutors and the presiding judge had refrained from reading reports presented by the defense, and that the bank involved, the HVB, had kept its own internal report secret. It was obviously advantageous for the bank if Mollath was declared insane.

When Mollath appeared before the parliamentary committee on June 11 he was greeted with applause. He was calm and composed as he repeated his claims of dubious financial transactions by his wife. “I knew this has to stop--to protect my wife at that time and myself,” he said. The media reported that Mollath had made a positive impression in his testimony before the committee.

Mollath also reported on the distress he suffered during his confinement. Nevertheless, a Bayreuth court decided, just a day later, to keep him in psychiatric care because he was still classified as dangerous.

The domestic political editor of the *Süddeutsche Zeitung*, Heribert Prantl, described this scandalous decision as “deprivation of liberty by omission.” Deprivation of liberty is a crime that can be punished by up to ten years in prison.

Today the many nightmarish details of the abuse of Mollath by the Bavarian judiciary recall the fate of a character from a Kafka novel. Little is known, however, about the motivations of those responsible for depriving Mollath of his liberty for seven years. There is only anecdotal evidence.

The audit report kept secret for years by the Hypo-Vereinsbank states that the HVB branch in Nuremberg had laundered dirty money for a “well-known personality.” The name of this “well-known personality” is not mentioned on the grounds of banking secrecy. But it is likely that other celebrities benefited from the network that transferred millions of dollars over the years. This is certainly a plausible explanation for the refusal of the prosecution to take up the claims made by Mollath in 2003 and 2004.

The state of Bavaria, which has been governed continuously since 1957 by the conservative Christian Social Union, is well known for its cliques and scandals. The Hypo-Vereinsbank has its roots in the Bavarian State Bank of the 18th century and is closely intertwined with local managerial and political cliques today. Its subsidiary Hypo Real Estate showed the largest losses of all German banks following the 2008 financial crisis and had to be nationalized and bailed out with 130 billion euros in public funds.

There are also suspicions surrounding the relationship between the judge Otto Brixen and the banker Martin Maske, the former lover and current husband of Mollath’s former wife, Petra. The relationship between Brixen and Maske goes back to the 1980s.

The nervousness of the Bavarian authorities regarding the case of Mollath was indicated by an incident in Munich. Medical Professor Ursula Gresser, a member of the CSU for 20 years, wrote in a Twitter message that the Bavarian Justice Minister should be asked at a forthcoming public appearance when Mollath would be set free. Gresser promptly received an intimidating visit from two police officers, who voiced their concerns about security at the event involving the Justice Minister.

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