

The acquittal of HSH Nordbank: Capitalist class justice in Germany

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The adage about “catching the small fry and letting the big fish go” describes a salient feature of the class character of the judicial system under capitalism. The verdict in the recent HSH Nordbank litigation is a graphic example of the German’s judiciary’s refusal to punish the criminal machinations of the financial aristocracy.

Last Wednesday, the Hamburg district court acquitted all six former board members of the bank. Former CEO Dirk Jens Nonnenmacher and former director Hans Berger had been indicted on the particularly serious charge of breach of trust. In addition, former loan market executive Jochen Friedrich and Nonnenmacher were accused of accounting fraud.

During the trial, which lasted an entire year, it was confirmed that the indicted board members of the bank had acted in a completely irresponsible manner. Ignoring specific laws and doctoring balance sheets, they were responsible for the loss of tens of millions of euros.

As principal owners of HSH, the German federal states of Hamburg and Schleswig-Holstein issued guarantees against losses amounting to €10 billion and took on a liability of €25 billion to prevent the collapse of the bank. This spring, the HSH supervisory board announced that the bank was still in crisis, and far more than the previously appropriated €1.3 billion of tax payer money would be needed.

Nevertheless, the court acquitted the accused. It justified the ruling with the curt pronouncement that while the defendants had clearly acted in breach of their duty, they had not done so in a criminally culpable way. “The gray zone mitigating a punishable offence” had not been crossed, the court declared. It was the judge’s view that not every violation of legal or administrative ordinances was punishable.

The court’s uncrossed “gray zone mitigating a punishable offence” was somehow seen to arise from the following facts:

HSH Nordbank was created from a merger of the Hamburg state bank and the Kiel regional bank in the summer of 2003. The two banks were supposedly transformed into a single bank that would operate in the international capital market to finance regional small- and medium-sized businesses. Prior to the merger, the two banks had already been heavily involved in trade in derivatives and cooperation with large corporations, as well as fund management, international bond speculation and investment banking.

By mid-2007, the HSH Nordbank AG had extensive loan and securities irregularities on its books, which threatened its liquidity in the wake of the US sub-prime crisis. Because these “problematic papers” could no longer be sold, the HSH management board bundled them together and shelved them as “unaccountable special purpose entities.” Overall, these transactions had a volume of €17.3 billion.

In the autumn of 2007, all six of the accused board members engaged in the “outsourcing” of these toxic assets in an operation code-named “Omega 55.” Following the bankruptcy of Lehman Brothers, the entire racket was exposed and liabilities approaching €158 million threatened to destroy the bank.

According to Wikipedia, HSH’s losses and write-offs amounted to around €1.1 billion in September 2008. “The bank had financial burdens (profit and loss account plus revaluation reserve) of some €2.4 billion on its books,” writes the Internet encyclopedia.

The bank was saved only through guarantees involving billions of euros and direct financial assistance from the Hamburg and Schleswig-Holstein states. As with all board members of banks invoking a

claim to bailouts from SoFFin (the German government's Special Financial Market Stabilization Funds), the salaries of directors at HSH were capped at a maximum of €500,000 a year. However, it was announced in the summer of 2009 that CEO Nonnenmacher had received a special bonus payment of €2.9 million. This "side agreement" had been approved by HSH Nordbank's presiding committee, which includes Schleswig-Holstein Finance Minister Rainer Wiegand (Christian Democratic Union—CDU).

The cost of legal defence for the bankers was met by HSH, and the judge concluded his acquittal ruling by stating: "The costs of the proceedings will be borne by the state treasury."



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