

# German federal court upholds whitewash of death of refugee

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*“It is error alone which needs the support of government, Truth can stand by itself.” — Benjamin Franklin*

The German judiciary is seeking to ensure that the truth does not come to light in the case of asylum seeker Oury Jalloh, who burnt to death in a police cell in the East German city of Dessau on January 7, 2005.

Two weeks ago, Germany’s federal court (BGH) upheld the earlier ruling of the Magdeburg district court against the police officer Andreas S., who received a fine of €10,800 for his role in what was adjudged to be involuntary manslaughter.

The decision by the federal court also precludes any further judicial investigation into the circumstances of Oury Jalloh’s death.

Throughout the court proceedings, police officers responded with pre-planned phrases or stated they could no longer remember. A policewoman, who had previously sharply criticised her colleague in an initial statement, suddenly changed her position in court.

Both parties in the proceedings have lodged an appeal. The defence sought to have all charges dismissed, alleging that the death of the Guinean-born Jalloh was due to a lack of police officers and inadequate technical equipment at the police station.

The lawyers representing the family of Jalloh argue that the court judgment is a grave miscarriage of justice. First, new information undercutting the claim that the victim had set fire to himself and suggesting that the fire was in fact started by a third party, was not taken into account.

Secondly, the detention of Oury Jalloh in the first place was itself illegal. In detaining Jalloh, Andreas S. had not called for a judge’s order as is mandatory under law. The Magdeburg district court dismissed this failure merely as an “unavoidable error” by the

defendant, who was supposedly not aware of the law.

This justification for the ruling is highly dubious. It clears the way for police abuse, since it implies that even a senior policeman is not expected to be familiar with elementary laws governing his actions.

In the latest judgement, Federal Court Chairwoman Beate Sost-Scheible explicitly praised the reasoning of the Magdeburg district court, stating there had been no miscarriage of justice, either in the form of the verdict that Jalloh had set himself alight, or in the conviction of involuntary manslaughter.

According to Sost-Scheible, the failure to call for a judge during the detention was not causally linked to the death of Jalloh, because it was to be assumed that Jalloh’s behaviour posed a danger to life and limb. Jalloh was inebriated at the time of his arrest.

The lawyer for Jalloh’s brother, Gabriele Heinecke, sharply criticised the BGH’s ruling. “If a judge had seen Jalloh, he would have certainly not have seen any reason for him to remain in custody and would have ordered his transfer to a hospital.” Jalloh was not only drunk, but also exhibited serious head injuries, as was proven by a second autopsy demanded by the family. His injuries included a broken nose and a burst eardrum, injuries that he probably suffered due to police mistreatment during his detention.

There was also absolutely no reason to detain Jalloh. He was not accused of any crime, and the Dessau police only picked him up because two women felt threatened by him at their work. He was then brought to the police station in order to confirm his identity. But after this had been done, he ought to have been let go.

The upholding of the ruling by the BGH is thus very significant. Put simply, it means that at any time the police can take someone into custody without judicial sanction. If the person taken into custody then suffers a

violent death, police officers involved in the affair need not fear any significant punishment. This is a typical feature of a police state.

Such incidents are not new in Dessau. Three years earlier, a homeless man, Mario Bichtermann, died in the same cell as Jalloh under circumstances yet to be clarified.

In addition, supporters of Jalloh have been bullied by the Dessau police, which violently dispersed a demonstration on Jalloh's behalf.

Mouchtar Bah from the Initiative in Memory of Oury Jalloh remarked on the judicial proceedings, "This is one big stitch-up. They are all working together." In fact, the case of Jalloh has revealed much more than the "extreme sloppiness" of the police involved. A crime against an asylum seeker is being suppressed by the judiciary and the police—a crime possibly committed by the security forces themselves.



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