

German court rejects claims of Kunduz victims

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Over five years after the terrible massacre in the Afghan city of Kunduz, perpetrated by the German armed forces, the compensation claims of the victims' families have been rejected once again.

The higher regional court in Cologne rejected the compensation claims of two surviving relatives on April 30, 2015, following the first instance judgment by the Bonn regional court on December 11, 2013.

The complainants were farm worker Abdul Hannan, whose two sons, aged 8 and 12 years old, were killed in the bombardment, and the widow Qureisha Rauf, whose husband was also killed, leaving her with six children. All together they are seeking €90,000 compensation. Their legal representative, attorney Karim Popal from Bremen, announced that he would now go before the Federal Supreme Court.

On September 4, 2009, the armed forces commander in Kunduz, Colonel Georg Klein, ordered the bombardment of two tankers stuck in a river after they had been hijacked by the Taliban. Residents of the nearby village, including many women and children, had surrounded the tanker and were tapping it for fuel. Over a hundred people died a horrible death in the fiery inferno caused by the bombardment and many others were severely injured.

The event evoked horror worldwide. In Berlin, a frantic effort was made to absolve the military leadership of all responsibility and cover up the devastating extent of the catastrophe. Colonel Klein was not only exonerated by a parliamentary investigative committee and the federal prosecutor, but also promoted to brigadier general by Thomas De Maizière, who was defense minister at the time.

Some of the Afghan families who lost relatives in the bombardment received a lump payment of US\$5,000 (€4,470) each shortly thereafter. However, the

government has stubbornly refused to admit to the responsibility of the German military leadership for the catastrophe.

To this day, the army high command refuses to reveal how many people were killed, as Popal complained in a press release in March. The armed forces and the defense ministry both claim they do not know how many victims there were. Other sources estimate 139 victims and NATO assumes there were 140. Most of the victims were children whose ages are recorded in available lists. "The Bundeswehr disputes the number of victims with the aim of washing its bloody hands of all guilt," Popal said.

The Cologne Regional High Court justified its decision with the same arguments as the court of the first instance in Bonn. They denied that armed forces commander Klein was guilty of a "breach of duty by a public servant." According to the court, Klein made use of all available sources of information before he concluded that there were no civilians present at the targeted location. The court said that he checked with an informant multiple times.

There was also alleged intelligence indicating a possible Taliban attack. According to the court, this implied that there were no grounds for an accusation of a breach of international humanitarian law invoked by the complainants, which calls for the protection of the civilian population. They also therefore had no right to compensation, the court argued.

"It was clear to see that the proceedings anticipated the evaluation of evidence. The Regional High Court made no effort to find a solution," read the press release from Popal's office on April 27. The attorney commented on the reference of the court to an informant and to intelligence agency indications of a possible Taliban attack: "The accused ... is not in a

position to publish the name of the contact person and the actual indications [of Taliban involvement]. It is still unknown today who this contact person was and nothing was reported on this in the jurisdiction either.”

This once again poses the question to what extent the intelligence agencies, army high command and political agencies were entangled in the events in Kunduz.

The rulings in both the first and second instances are also dubious from a legal standpoint. Compensation claims call for a civil court procedure, not criminal proceedings, as the emphasis of the attorney and the other jurists would suggest. The test of a compensation claim is not connected to whether there was criminal intent or a “culpable” breach of duty by a public servant. What is relevant are the facts of the case regarding “negligent breach by a public servant of his duty,” or, as Frankfurt international criminal law expert Denis Basak wrote, an “objective breach of duty.”

According to Basak, the court in Bonn should have carried out a more careful investigation on a number of points. According to Colonel Klein’s deliberately falsified report to the US flight control center, there was “enemy contact” between German soldiers and the Taliban, which he then used to justify airstrikes. He also refused to use a low flying plane to warn civilians, as the pilots of the NATO fighter jets had repeatedly requested. And finally, there was no explanation why Klein based himself on the claims of a single informant who was never at the location.

Both courts rejected such an investigation and consideration of the evidence, as well as an examination of witnesses of ISAF commander Stanley McChrystal or Colonel Klein, as the complainants had requested.

Political factors are involved in the judgment. A judgment that the armed forces were obligated to pay compensation would set a precedent for future civilian victims of German military campaigns. From the point of view of the German government, this must be avoided as it prepares to engage in additional, even bloodier wars.

The massacre in 2009 was the baptism by fire of a reemerging German militarism. While official politics was still making an effort at that time to present Germany as a “peace power” and to portray the engagement in Afghanistan as a “peace mission,” it has since then carried out extensive preparations for its

reemergence as a war power.

One month after the first Kunduz compensation judgment at the end of 2013, Foreign Minister Frank-Walter Steinmeier and Defense Minister Ursula von der Leyen announced the “end of military restraint” at the Munich Security Conference. Germany was “too big just to comment on foreign policy from the sidelines” and had to “be prepared to intervene earlier, more decisively and more substantially in foreign and security policy.” In Ukraine, this policy has been put into practice. Washington and Berlin have supported a right-wing putsch in Kiev and have since then continued to provoke a confrontation with Russia.

With the help of war propaganda in the media, the government and the military leadership are working systematically to build up the armed forces and train them for war in Russia and other regions of the world. This makes clear that Kunduz was only the first step in preparing the population for future military crimes.



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