German Supreme Court rejects compensation for Kunduz bombing victims

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Seven years after the German army (Bundeswehr) ordered an air strike in Kunduz, Afghanistan, killing over 100 civilians, Germany's Supreme Court has rejected compensation claims from survivors.

The court in Karlsruhe agreed with previous legal proceedings in lower courts, ruling on Thursday that the victims' families had "no direct claim for compensation according to international law." Such a claim could only be arranged between states, it added.

The court also decided that the plaintiffs had no right to compensation under national law. German public liability law was in principle "inapplicable in cases of military actions by the German army during foreign interventions," the judges of the III civil Senate of the Supreme Court declared.

They subsequently cleared the man responsible for the massacre of civilians, at the time Army Colonel and now Brigadier General Georg Klein, of any violation of official duties. His military decision on 4 September, 2009, was not mistaken and was "permissible under international law."

The ruling has wide-ranging political significance for the German government's military planning. It strengthens the position of the military in political life and reduces inhibitions to commit future crimes during military interventions.

On the evening of 3 September, 2009, the military commander of the German provincial reconstruction team (PRT), Col. Georg Klein, ordered the bombing of two tankers captured by the Taliban from NATO after they became stuck in a river bed. At that point, several residents had gathered around the tankers to collect gasoline for free. The air strike produced a horrific bloodbath, which according to NATO figures claimed the lives of 140, including many women and children, and seriously injured many more.

The two plaintiffs in the case lost close relatives: Abdul Hannan lost his two sons aged eight and 12, and Kureiha Rauf her husband, who was survived by six children. They were representing 77 other families who also submitted claims.

Referring to the events of 4 September, the court ruled that the presence of civilian persons in the target area was "after exhausting all available reconnaissance options…not objectively recognisable." The judges thus followed the same line of argument adopted by the Attorney General's Office, which suspended its investigations a few weeks after the incident.

State and district courts had previously cleared Colonel Klein. However, they did say that attacks on civilians could provide a basis for compensation claims against Germany under international law if the soldier responsible was "guilty of a violation of official duties." In the case of Colonel Klein, notwithstanding considerable contradictory evidence, they did not find any such guilt.

The Supreme Court has now effectively excluded any possibility of proving a "violation of official duties" during foreign interventions.

In this, the court based itself on the provisions in the Civil Legal Code on public liability law which came into force on 1 January, 1900, prior to the two world wars, and which have remained on the books ever since. These are limited only to the "normal course of official operations" domestically, the court declared. The position of an administrative official taking a decision could not be compared to the "combat situation for a soldier involved in a military intervention."

The reference by the plaintiffs to Article 34 of the Basic Law was declared not applicable by the judges. The "historical lawmakers" during the drafting of the

Basic Law had “neither the establishment of German armed forces nor their participation in foreign interventions in mind,” they noted. In other words: this article in the Basic Law is only applicable in peacetime, but not in times of war.

The Supreme Court has thus abandoned the legal provisions written into the Basic Law in response to the Nazis’ crimes. In Article 34, section 1, it is stated, “If any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body that employs him. In the event of intentional wrongdoing or gross negligence, the right of recourse against the individual officer shall be preserved. The ordinary courts shall not be closed to claims for compensation or indemnity.”

These formulations are based on the principles confirmed in the Nuremberg Trials, which made it possible for the first time for representatives of a state to be held accountable for their actions abroad.

In the case of Colonel Klein, the plaintiffs’ lawyers have repeatedly referred to numerous indications that he gave the order to launch the bombing despite several warnings. Even the order by Klein to the NATO bombers was based on a false report by Colonel Klein that German troops in Kunduz had made “contact with the enemy.” Klein disregarded the suggestions of the American pilots, repeated five times, if it would not be best to conduct a “show of force” before launching an attack, because several people could be seen around the tankers. He also based his decision on a single source, who was not even at the location, but was passing on information second-hand. This would at least fulfill the “gross negligence” referred to in Article 34 of the Basic Law.

Lawyer Karim Popal announced plans for a constitutional appeal following the ruling. The applicability of public liability was a constitutional matter for which the Supreme Court was not responsible. In the case of any doubt, he planned to take the matter to the European Court of Human Rights in Strasbourg.

The Supreme Court’s ruling on the Kunduz massacre must be seen in the context of the global drive to war in which the German army is increasingly involved. The massacre of civilians in Kunduz played an important role in the revival of German militarism. Any criticism of the German army commanders was sharply rejected at the time. Colonel Klein was then demonstratively promoted to the rank of brigadier general.

A few years later, leading government representatives announced that the era of German military restraint was over. Since then, a rapid remilitarisation has taken place. Thursday’s ruling marks a further step in throwing off the legal restraints placed on the German ruling elite in response to the crimes of the Nazi dictatorship. Presiding Judge Ulrich Hermann made this unmistakably clear. The issue was, he declared, to retain Germany’s “ability to be an alliance member” and the “framework for foreign policy action.”

The warmongers in the media applauded the ruling. The *Frankfurter Allgemeine Zeitung* wrote on Thursday, “The Bundeswehr must not allow itself to be accused of anything here.” *FAZ* editor Reinhard Müller then blamed the victims for the massacre. He asserted that the Bundeswehr was “dealing increasingly with enemies, who deliberately exploited their favourable stance on human rights.” If combatants and civilians can no longer be distinguished, and “ambulances and cathedrals are no longer sacred, then the losers are known from the outset.” The soldiers had to be “as well armed as possible” and this also included legal security.

The jurist Reinhard Müller was among those in the German media who called for a military intervention in Syria last year. In a piece entitled “Order of the hour” he not only called for an “intervention” in Syria, but also for the deployment\ of the Bundeswehr domestically.