



Statewatch Analysis

Germany: Berlin police chief sentenced: Eight shots were not self-defence

It is not often that police officers face serious charges in court. The investigation into the police shooting that took the life of Dennis J. was repeatedly delayed, but did result in a trial that saw police officers sentenced for their actions. The judgement was right in principle, but disappointing in its sentence

By the Campaign for Victims of Racist Police Violence (*Kampagne für Opfer rassistisch motivierter Polizeigewalt*). This article first appeared in *Bürgerrechte & Polizei/CILIP* 96 (2/2010)

Dennis J. was buried on 16 January 2009. Around 300 people attended his funeral at the cemetery near Hermannplatz in Berlin-Neukölln, to bid farewell to the 26-year old. Around 150 family and friends then walked in procession, holding pictures of Dennis, to the head office of the Berlin chief of police, demanding justice.

"We demand equal treatment for everyone, irrespective of which side of the law they are on", Dennis's brother-in-law said when he addressed the mourners. "Why did Dennis have to die? Why is the accused still free? Why do police officers refuse to make statements if they have nothing to hide?" Other speakers pledged not rest until these questions were answered. Then the rally ended. It was an unexpected action by people who would not previously have described themselves as politically active. [1]

When the death of a 26-year-old can mobilise 300 people - many of whom were black - to attend his funeral, people notice. This included the media, which had been covering the case since 1 January 2009. The day after the funeral, the headline of the daily newspaper *taz* read "Multiculturalism on the streets", *Tagesspiegel* read "Anger at the grave" and *Morgenpost* "Funeral march for Dennis J."

The fatal shooting of Dennis J.

Dennis J. was shot by a Berlin police officer on New Year's Eve 2008 in Schönfließ, Brandenburg, in unresolved circumstances. Officer R. fired eight rounds, the first of which was lethal. The shooter remains silent, while his colleagues B. and S., who were part of the operation, claim that they did not hear the shots because of the sound of fireworks. The family and grieving friends are not the only ones to find this claim implausible.

Berlin police had received a tip off that Dennis J., who had an outstanding arrest warrant, was at his girlfriend's home in Schönfließ. The officers found him in front of her house, where he was waiting in a parked car. Initially, police stated Dennis had tried to flee in the car, injuring a police officer in the process; only then were the deadly shots fired. [2] The well-rehearsed argument of "self-defence" which police officers usually claim with success, was difficult to maintain in this case, because, unlike the Tennessee Eisenberg case,[3] there were three independent witnesses at the crime scene.

Contradictions arose early on. Shots were aimed at the moving car on an open street with bystanders. This was extremely unprofessional behaviour because the situation was not an emergency. In the RBB-TV programme *Klartext* on 28 January 2009, Professor Oesten Baller of the police faculty of the Berlin Polytechnic for the Administration of Justice (*Fachhochschule für Verwaltung und Rechtspflege*) demonstrated that the three officers knowingly entered the situation and then made every possible mistake. The media speculated that the police might have had other motives, such as an unprofessional ardour for the chase.

Furthermore, the police knew that Dennis J. was unarmed, a fact that was confirmed by Berlin police chief, Dieter Glietsch, in the same RBB-TV programme: “[Dennis J.] was not known as an armed violent offender but a criminal. Although he had committed a lot of crimes, there were no indications that he had ever been armed.”

An investigation begins and solidarity grows

Almost two weeks after the shots were fired, the public prosecutor’s office in Neuruppin (Brandenburg) launched an investigation into officer R. on the grounds of manslaughter and his colleagues for the attempted obstruction of justice. The prosecution had considerable doubts about the police officer’s statements. The shooter was arrested but soon released on bail. He received police protection, which may have been an attempt to portray the perpetrator as a potential victim. Dennis J. on the other hand was portrayed in the media as a “repeated criminal” (*Tagesspiegel*), a “small time criminal” (*B.Z.*) or a “wanted criminal” (*SpiegelOnline*). [4] However, the press coverage advocating the self-defence argument could not be maintained: alongside Dennis J.’s family and friends, political campaigners against police violence focused in on the case to ensure that the self-defence claim was scrutinised.

On 11 July 2009, a demonstration took place in Neukölln/Kreuzberg, Berlin. The same day, the media reported that according to an independent report there was no justification for the police officer opening fire. The public prosecutor, however, refrained from commenting about whether this fact would lead to charges being brought. The family and friends campaign therefore stepped up the pressure and publicised not only the death of Dennis J., but also remembered others who died as a result of police violence. They displayed their portraits at demonstrations and recounted the circumstances in which they died (Oury Jalloh and Tennessee Eisenberg, and later Halim Dener and Carlo Giuliani).

On 15 August 2009, the campaign organised a street party and rally, with coffee and cake and leaflets and flyers about police violence. Police attempts to ban a small information stand failed when family and friends rapidly gathered to defend it, insisting on their right to disseminate information. The threatened closure of the stand failed and the police retreated.

The trial

The trial of Officer R, who faced manslaughter charges, and his two colleagues S. and B., who were charged with attempted obstruction of justice whilst on duty, opened at Neuruppin regional court on 4 May 2010. The Campaign for Victims of Racist Police Violence (KOP) was asked to monitor the trial, the results of which are documented on the campaign’s website. [5] The proceedings began with a massive police presence and unusually strict security measures. The three accused were defended by five lawyers and the Berlin police force’s legal adviser attended throughout the trial. The three joint plaintiffs were also present, together with their lawyers, and on the fifth trial day another joint plaintiff joined with her lawyer. Throughout the trial, family, friends and supporters followed events, which also received much attention from local as well as the national media.

The accused remained silent on the charges and instead instructed their lawyers to read submissions in which they claimed that they acted in self-defence in an emergency. Then the witnesses were heard. Two girls, aged only 13 and 15 years at the time of the incident, claimed that the car in which Dennis J. was seated only started after the first shot was fired. They also said that the streets were quiet with no fireworks at the time and other witnesses confirmed their testimony during the course of the trial. The claims by Officers B. and S., that they could not hear the shots fired by

their colleague because of fireworks, were thereby contradicted as was Officer R's claim to have been acting in self-defence.

Negligence or cover up?

Several witnesses testified independently in court that passages of their police interrogation records did not correspond to their original statements. Furthermore, a significant number of interrogation records were unsigned, leading the presiding judge to become "a little suspicious about the creation of these police records." [6] Evidence gathering at the crime scene also appears to have been sub-standard. Two bullets were never found and a car parked nearby was not recorded - an important factor in the reconstruction of events. In addition, unidentified Berlin policemen secured the police officers' clothes because the Brandenburg investigation team had not thought it necessary. One police interrogator stated that directly after the event, the accused had the opportunity to discuss the situation for several hours with their chief of staff.

Biased consultant and collegial support

The crime scene expert Wanderer supported the submission of Officer R., by not ruling out the possibility of the self-defence scenario. According to his assessment, Dennis J. could have started the car before the first shot was fired. The joint plaintiffs rejected the expert's evidence, on the grounds that he had already produced a report on the case as a private consultant for the defence, before being consulted by the court. The motion to quash his expert opinion on grounds of bias was rejected. The interrogation of experts was drawn out without shedding light on the event. Finally the professional ambitions of Officer R. were examined. He had been depicted by numerous colleagues as a highly motivated officer who specialised in arrests. Officers S. and B. were also characterised as ambitious in the execution of their professional duties.

Closing speeches

On 28 June 2010, the closing speeches were made. The prosecution argued that Officer R. was guilty of "manslaughter" and that Officers B. and S. were guilty of the "attempted obstruction of justice whilst on duty". The joint plaintiffs agreed and demanded a prison term of several years for Officer R. and probationary sentences for Officers B. and S. Officers B. and S.'s loyalty to their colleague was defended by invoking the Berlin police's infamous *corps d'esprit*. The prosecutor argued that a prison term was justified because it was proven that R's "wild shooting in a residential area constituted a severe violation of the law regulating the use of firearms", because he "lost any sense of proportion due to his inflated motivation" and thereby "accepted the death of Dennis J. as a possibility". The defence argued for Officer R.'s acquittal, claiming that he responded in self-defence in an emergency. He accepted that his colleagues did not hear the fatal shots. [7]

The judgement - right in principle but disappointing in sentence

Sentence was passed on 3 July 2010. Officer R. was found guilty of manslaughter of a lesser degree, [Article 213 of the German Criminal Code defines manslaughter to a lesser degree as a situation whereby the accused has been forced into a situation by factors outside his control or which s/he is not guilty of and foresees a reduced prison sentence of 1 to 10 years for such cases], and sentenced to a two-year suspended prison term, to be served on probation. His two colleagues were found guilty, also to a lesser degree, of the attempted obstruction of justice whilst on duty and were fined. The judgement led to a commotion in court. Before the judge could give his reasoning, family and friends walked out of court in protest and shouts such as "murderer" could be heard. According to the court's oral reasoning, Officer R. was particularly sensitive to a prison sentence because he could expect considerable problems in prison due to his profession. This justified a suspended sentence and probation. Furthermore, Officer R's career was over. Other reasons for reducing his sentence included the exceptionally dangerous nature of the police profession, the confusing circumstances of the event, stress, and the lack of legal basis for an armed arrest.

Lawyer Beate Böhler, representing the plaintiffs in the murder trial, said that she has never come across a judge justifying a suspended prison sentence on grounds of the accused being "sensitive to prison". She also criticised the other reasons for lessening the sentence. The accused had been described as ambitious and experienced, undermining the argument that he had been under stress. Further, his ignorance of the legal basis regulating firearms use and the fact that he emptied a full round of shots proved the arrest of Dennis J. lacked a legal basis. She argued that an arrest which takes into account killing the arrestee could only be explained by an unsound motivation. The discrepancy between, on the one hand, a human life, and on the other hand, fulfilling one's professional duty by preventing escape, proves a particular contempt for the life of the victim.

The court's reasoning for lessening the sentence of Officers B. and S., namely, that it was particularly difficult for police officers to make incriminating statements against each other, was met with disbelief by the plaintiffs. After all, Böhler said, they are the ones who are supposed to solve crimes. Their silence was therefore an abuse of office that should be met with a more, rather than, less severe sentence.

The protest continues

During the course of the trial family and friends called for a demonstration - two weeks before the sentencing - under the slogan: "Not friend and helper but judge and hangman". The demonstration marched through Neukölln and Kreuzberg districts, ending with a rally in front of the head office of the Berlin chief of police. Bystanders showed a great interest in the march, as almost all of them had heard about the death of Daniel J. and sympathised with the demonstrators.

The evening after sentencing, a spontaneous rally and demonstration took place. As in court, people shouted "Murderer". On the one hand, the speakers positively assessed the fact that there was a trial at all and that the perpetrators has been found guilty. On the other hand, the sentence was criticised because Officer R. shot Dennis J. and should have gone to prison for his crime. The speakers also criticised the attempted cover-up by his two police officer colleagues, and demanded that they be suspended from duty.

Anger about Dennis' death also led to property damage caused by people in the streets of Kreuzberg, for which a group that called itself a "hitherto unknown action network" took responsibility. [8] Further, the community began organising as a result of the death: two days after sentencing a meeting was organised in Kreuzberg, entitled "Deadly police violence: nobody will be forgotten". The Campaign for Victims of Racist Police Violence also continues to expand, with more activities being planned.

What remains

The trial showed that it is essential that those affected by police violence and their relatives become joint plaintiffs and thereby gain access to court files. Thus an investigation can be assessed and if necessary more investigative measures can be demanded. Only then can those affected engage with the process. But the trial also showed that independent witnesses are crucial to test the perpetrator's narrative of events. If the narrative lies solely with the perpetrators and investigating police officers, the possibility of questioning their version of events is almost non-existent. In the Dennis J. case it was also helpful that the public prosecutor was from a different federal state than the police force. The prosecutor was therefore not a quasi-colleague, a prerequisite for a reasonably independent investigation. The media also played an important part in defining the events and issues in the run-up to the trial.

Eye-witnesses, an independent public prosecutor, critical media questioning and the determination of the joint plaintiffs and their supporters are preconditions for an open trial. If the trial in Neuruppin was not concluded to the satisfaction of the family and their supporters, it was a success in that it took place at all. The final word, after all, has not been spoken.

Footnotes

1. Pütter, N.: *Polizeiübergriffe - Polizeigewalt als Ausnahme und Regel [Police attacks - police violence as exception and rule]*, in *Bürgerrechte & Polizei/CILIP* 67 (3/2000), p. 6-19
2. *Märkische Allgemeine*, 2.1.09
3. See the contribution by Otto Diederichs in *Bürgerrechte & Polizei/CILIP* 96 (2/2010)
4. *Tagesspiegel*, 11.7. 2009; *BZ*, 11.1.2009; *SPIEGEL ONLINE*, 7.1.09
5. <http://kop-berlin.de/de/2010/07/dossier-dennis/>
6. *Transcript of KOP trial monitoring*
7. All citations are from the *Transcript of KOP trial monitoring*
8. *Berliner Morgenpost*, 12.7.10

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