

Burbach is not Guantánamo

We all know the kinds of risks involved when people are confined in institutions and left alone with their supervisors, guards, handlers or however the authorities there choose to describe themselves. We frequently hear reports of abuse or even torture of residents or inmates by state or non-state officials in psychiatric, geriatric and medical facilities, army units and detention centers around the world.

Indeed such stories would seem to be a constitutive element of these kinds of institutions. In states that aspire to respect the principles of democracy and the rule of law, precautions are put in place to try to avert these dangers. Key elements of any such measures include an independent monitoring of the facility, third party access, a degree of public interest and efficient supervision as well as a complaint mechanism and the availability of legal remedies. For years, human rights experts have been calling for the establishment of such a system for US detention centers in Iraq, Afghanistan and Guantánamo. Similar calls are now being issued in the wake of revelations of abuse and attacks in a German refugee center in Burbach, North Rhine-Westphalia.

One of the most important measures is granting lawyers access to detainees. In Germany we have the right – a right that is, in principle, undisputed – to visit and speak with detainees in police custody shortly after their arrest. Detainees in Germany must also be brought before a judge within a relatively short space of time. But problems can and do still arise, as made clear by the Federal Court of Justice in its recent judgment in the case of Oury Jalloh. Jalloh, who burnt to death in a fire in his police cell, had not been brought before a judge at the time of his death. Problems often arise also in the context of mass arrests during large protests when no measures are taken to ensure that those arrested can have a court hearing without undue delays or when protestors' rights in this regard are simply ignored.

Incommunicado detention, i.e. detention with no possibility of communication or third party access, in many countries equates to an invitation to police officers and investigators to use this time to force a confession, using varying degrees of violence. Accounts and human rights reports from lawyers who subsequently manage to gain access to detainees reveal a clear correlation between incommunicado detention and abuse. This state of affairs immediately sets off alarm bells, and not just for lawyers. It's crucially important to defiantly resist any attempts to extend the period of time detainees can be held without access to their lawyers, including in case of so-called terror suspects.

Particular caution must be exercised with detainees who for whatever reason are not aware of or cannot adequately communicate their rights, as in the case of non-nationals and refugees. Deportation detention centers should be abolished: people who have not committed any crimes, but who the German state would like to get rid of as quickly as possible, may not be deprived of their liberty. A further reason to abolish them, if one were needed, is provided by the growing numbers of reports on human rights violations in emergency accommodation and refugee centers, to say nothing of conditions in deportation detention centers. Most recently it was reports on abuse carried out by privately funded guards or 'security contractors' – when will we stop using this euphemism?

Initial, relatively swift responses in North Rhine-Westphalia from the SPD/Green state government and the CDU give reason to hope that the state prosecution will carry out a thorough investigation. Ultimately, though, it will end up being German guards pitted against non-national witnesses in the courtroom. In such cases German prosecutors and judges often

tend to see the 'guardians of law and order' as credible witnesses or at least shy away from convicting them.

The abuses in Siegen and Essen were vicious and alarming – but is this Guantánamo? Not quite. The guards' self-styled image and the racist potential of the abuse might be reminiscent of Guantánamo, but there are some structural differences. Over a period of twelve years more than a hundred people have been detained in Guantánamo for years on the mere allegation of terrorism, without a lawyer and without any charges being brought. These detainees were systematically tortured and broken. The intellectual and political architects of Guantánamo specifically aimed to establish and exploit a purported legal vacuum and the absence of lawyers and court proceedings. In Germany we're still a long way off this, and we should take efforts to ensure it never comes this far.