



TOP STORIES / GERMANY

GERMANY

Expert: Murder conviction for illegal car racers could be overturned

The suspects in a Berlin car race, that killed another driver, were sentenced to life imprisonment for murder. Criminal law professor, Carsten Momsen, told DW he doubts the conviction will be upheld on appeal.



A 69-year-old driver died in central Berlin when his jeep was rammed by a young man racing his car against another at 160 kilometers an hour (106.5 mph). The defendants' attorneys entered pleas for negligent homicide and dangerous driving. They argued that the men did not understand the risk involved and assumed they had the situation under control. Instead, [the court sentenced them to life for murder](#).

Deutsche Welle: Mr. Momsen, were you surprised by the sentence that was handed down?

Carsten Momsen: You could sense it was coming, but it is surprising. All the more because the court assumed the suspects maintained a latent death wish.

The court presumed the defendants accepted the possibility that the race could result in death. But should it also be presumed that this means their own deaths?

By driving at speeds exceeding 100 kilometers an hour, you are intentionally causing an accident or accepting the possibility of one happening. In that case, you are also accepting the possibility of your own death. If the suspects say they did not care what happened to them, that is intent. But you still have to prove it.

In past cases of death resulting from car racing, courts have at most handed down involuntary manslaughter convictions. Why is it murder in this case?

A feature of first degree murder is having malice aforethought, which means an intent to kill. This is what distinguishes it from voluntary manslaughter. An important element here is that [the car was seen as being used as a deadly weapon](#). I would agree with this assessment. But the car was a weapon which was not able to be controlled. This means, by using the car in this way, the suspects could not foresee if one or more bystanders would be in harm's way. It's different with a gun or a knife, which you can aim. You can't do that with a speeding car.



Defendant, Hamdi H. in court with his lawyers.

So the Berlin court set a precedent with its ruling?

Not with regard to the car being used as a weapon. Cars have been viewed as a public danger in cases of targeted killing. But with regard to intent, yes. You have to prove that the suspects accepted the possibility of an accident.

Can you follow the judges' reasoning?

We will have to wait for the court's justification. According to press reports, the race was incredibly foolish and reckless, but that does not mean there was intent to murder.

The defense said it will appeal the sentence. Do you think this sentence will be upheld on appeal?

I don't think so. Assumption of intent is very difficult to substantiate and the ruling deviates from precedent. I think it's highly likely the federal court in Leipzig will strike it down.

Carsten Momsen teaches criminal law, criminal procedural law, business law and environmental criminal law at Berlin's Free University.

The interview was conducted by Jeannette Cwienk.



Life sentence in German car racing trial

DW RECOMMENDS

Ku'Damm Berlin car racers sentenced to life imprisonment in unprecedented murder case

Berlin's regional court has convicted two men of murder after killing a 69-year-old motorist in an illegal car race on the capital's Kurfürstendamm. The perpetrators, both in their 20s, will face life imprisonment. (27.02.2017)

Illegal racing: Cars as lethal weapons

Is a driver who races illegally and kills another through negligent action a murderer? A current trial in Berlin is facing this very question. A former Cologne mayor has personal reasons for closely following the trial. (23.02.2017)

AUDIOS AND VIDEOS ON THE TOPIC

Life sentence in German car racing trial

Date 27.02.2017

Author Jeannette Cwienk

Related Subjects [Berlin](#)

Keywords [Berlin](#), [Carsten Momsen](#), [murder](#), [car racers](#), [court ruling](#), [trial](#), [criminal law](#)

Share [Facebook](#) [Twitter](#) [Google+](#) [More](#)

Feedback: [Send us your feedback.](#)

Print [Print this page](#)

Permalink <http://dw.com/p/2YLw7>
