

# German police, judges argue for admissibility of torture

Elizabeth Zimmermann  
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At a time when war is once again being declared a legitimate means of political policy—albeit in Germany as the “last resort”—politicians, journalists and judges are also beginning a campaign to rehabilitate torture.

The occasion is the trial of the man alleged to be responsible for the murder and abduction of 11-year old Jakob von Metzler, a banker’s son. The Frankfurt public prosecutor’s office has charged 27-year-old law student Magnus G. with homicide and kidnapping.

In the course of the trial, it was revealed that the defendant’s confession had been extracted using the threat of torture. According to his own account, Frankfurt’s deputy chief of police, Wolfgang Daschner, responsible for the investigation, gave the order on October 1 last year to put considerable pressure and force on Magnus G., who had been arrested three days earlier.

Daschner ordered officers to question the accused “after prior menaces, by inflicting pain under medical supervision”. The threat of torture was enough; Magnus G. confessed to the act and led the police to the scene of the crime. However, the boy had died several days earlier.

It is not an isolated instance that verbal threats and physical violence are used in interrogations in German police stations, during arrests or police raids. There is the case of 31-year-old Stephan Neisius, who died in May last year after spending two weeks in a coma as a result of the serious injuries he sustained when arrested by police officers from the Eigelstein station in Cologne.

Over the preceding year there were 37 preliminary investigations against police officers from this station alone, all of which were discontinued because the victims could not provide sufficient evidence or witnesses for their abuse, or because the accused police officers were protected by colleagues or superiors.

The brutal treatment of refugees and foreigners by the German police and state authorities is already the subject of numerous investigations by Amnesty International, the special correspondent of the UN Human Rights Commission or the European Commission against Racism and Intolerance

(ECRI).

Even a 1996 study conducted on behalf of Germany’s State Interior Ministers, entitled “The police and foreigners”, concludes that torture in German police stations is not a matter of “unfortunate isolated cases”.

What is new is that those ordering the use of torture or carrying it out openly admit to doing so, thereby forcing a public debate about the use of torture. Under existing legislation, the use of force by the police or even the threat of its use during investigations is expressly prohibited. According to the criminal code, this amounts to gaining statements through extortion, and is punishable.

Deputy Chief of Police Daschner personally acknowledged the order to use force in the record of the investigation, and informed the public prosecutor’s office about his action. He defended his behaviour with reference to a “justifiable emergency”. In several interviews, he stressed that in a comparable situation he would do the same again. Moreover, in an interview with the magazine *Focus* he called for a change in the law. “The use of force as a last means, in order to save lives, must also be permitted during interrogation,” Daschner said. “For some time, many criminal investigators have been calling for an appropriate change in the law.”

He received backing from Geert Mackenroth, the chairman of the German Federation of Judges. Mackenroth recently told the Berlin newspaper *Tagesspiegel* that in his opinion, “Torture or the threat of torture by the investigating authorities” should be permitted “under certain circumstances”. Its use is conceivable, according to Mackenroth, if thereby a highly valuable legally protected right can be preserved. As an example, he cited the September 11 attacks. Mackenroth defended both the actions of the Frankfurt police and their threats of torture.

The prime minister of Hesse, Roland Koch (Christian Democratic Union), has since also entered the debate. In the *Bild am Sonntag* newspaper, he expressed his sympathetic regards for the Frankfurt deputy chief of police: “I personally regard Daschner’s conduct in this terrible conflict situation, in which he sought to save lives, as humanly very

understandable.”

The same argument was repeated by the deputy chairman of the Federation of German Detectives, Holger Bernsee, who demanded the law be concretised with regard to what constitutes a “justifiable emergency”. According to a report in the *Wetzlarer Neue Zeitung*, Bernsee said it was disputed among lawyers whether state officials could point to a supra-legal emergency. “In this situation, police officers should not be exposed to longwinded legal discussions.”

These attempts to make torture acceptable have unleashed a stormy debate. Amnesty International, the German Bar Association and the Human Rights Forum have strongly opposed the proponents of torture.

Dawid Danilo Bartelt, Amnesty International spokesman in Germany, told *Spiegel Online*, “We are very anxious and concerned. It is shocking that representatives of a constitutional state resort to such methods. Germany is a contracting party of the UN Convention against Torture and the European Human Rights Convention. The prohibition of torture, as laid down in these international conventions, and in the German constitution, applies absolutely. Naturally also for criminal offenders.”

Article 5 of the general declaration of human rights, which Germany has signed, reads: “Nobody may be subjected to torture or cruel, inhuman or degrading treatment or punishment.” This applies without exception.

Many of these declarations, like the Geneva Convention and some articles in the German constitution, arose specifically as a consequence of the tragic and brutal experiences of the Second World War and in particular the ruthless and criminal methods of the Nazi dictatorship against its domestic and foreign enemies. The Nazis routinely employed torture as well as cruel, inhuman and degrading treatment on a scale that was hitherto inconceivable.

The argument that torture can be justified in an emergency and if a highly valuable legal right, like the life of an innocent person, is at stake, opens all the sluice gates. There are numerous justifiable emergencies. A prisoner of war could then be tortured legally if he (perhaps) possesses important information with which the life of one’s own soldiers can be saved.

The nature of legal maxims and human rights, like the prohibition of torture or the principle “in dubio pro reo” (the assumption of innocence) consists of the fact that they apply *as a matter of principle* to all, i.e., also for offenders or serious criminals. Otherwise, they are not principles or human rights. If one allows torture as the “ultima ratio”, as the final sanction, then despite all restrictions it is *generally* permitted. Because who will be able to contradict a specialist interrogator when they assert that a confession

extorted by torture was necessary in order to put a thief behind bars, so preventing them committing more serious crimes in the future?

Here the constitutional state differs from the police state, in which fundamental rights apply not as a matter of principle, but at the discretion of the state authorities.

It is no coincidence that right-wing politicians and judicial officers are now unleashing a debate about the admissibility of torture. The reason lies in the tense international and social situation.

In America, public debate over the use of torture against terrorism suspects began shortly after the September 11 attacks and a series of newspapers began a discussion over the value of torture.

The Bush administration has for months detained some 1,200 people of Arab origin under special laws without any charge being made and without any possibility of legal challenge. Hundreds of prisoners of war from Afghanistan are being held at the base in Guantanamo Bay, without being granted the status and rights of prisoners of war. Other suspects have been sent to states where torture is an everyday occurrence, and cross-examined with the participation of CIA agents. The democratic rights of the population as a whole have to a large measure been curtailed or negated, all under the pretext of the “fight against the terrorism.”

This development has to be seen in connection with the increasing social crisis, which is not limited to America. In Germany, too, the government has no viable answers to mass unemployment and the increasing social misery many face. In view of mounting popular opposition, the call is growing amongst layers of the ruling elite for more authoritarian forms of political rule. This is what ultimately lies behind the current demand for the prohibition of torture to be abolished.



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