

Frankfurt, Germany: police chief justifies torture

Justus Leicht
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At the end of June, the Frankfurt regional criminal court upheld the charges against police chief superintendent Wolfgang Daschner. One and a half years have passed since proceedings were first launched against the officer, and a trial is expected by November this year at the earliest.

In October 2002, Daschner had threatened to inflict serious pain upon the kidnapper of 11-year-old banker's son Jakob von Metzler if he did not reveal where he had hidden the child. The threat worked, however; the child was already dead. As Daschner proudly explained later, he was prepared to carry out his threat. He had even written a memorandum in the files and called for a police martial arts expert.

What is remarkable is that Daschner is not being charged for threatening torture.

Paragraph 343 of the Criminal Code is entitled "the extortion of statements" and reads: "Those who, as an officeholder involved in criminal proceedings ... physically abuse another, otherwise use violence, threaten violence or employ mental torment in order to obtain a statement from him or to ensure he desists from making a statement, are punishable with imprisonment from one to ten years."

Daschner, however, is merely accused of coercion in a serious abuse of office.

The public prosecutor's office justified this charge by claiming Daschner had not been trying to elicit a confession, but rather was merely concerned with "saving the life of the child." Although such sophistry is neither reflected in the appropriate section of the criminal code, which makes no such differentiation, nor in legal commentary, the prosecutor's statement was uncritically accepted throughout the German media.

The essential differences between the offences are twofold: Firstly, the offence of coercion contains the so-

called "reprehensibility clause," i.e., using violence or threats to force someone to behave in a specific manner is not automatically illegal, but only when the court expressly determines the "reprehensibility" of the coercive actions. In cases of the extortion of statements, this reprehensible action is taken as given, in that the police have used illegal means in attempting to make someone talk.

The extortion of statements is punishable by at least one year's imprisonment and is thus a criminal offence; cases of aggravated coercion are punishable by at least six months imprisonment and are therefore a misdemeanour. Those found guilty of committing a criminal offence automatically lose their status as a state official. But if Daschner were condemned for aggravated coercion this would be at the discretion of the court.

The grounds cited in the charges leave doubts, however, whether the public prosecutor's office even regards Daschner's behaviour as at all reprehensible.

His superior, the Frankfurt chief of police, insists that Daschner acted in an "emergency situation." Legally this is untenable, since Daschner did not find himself in an exceptional situation, but in one covered explicitly by police regulations and the law. A police officer is not permitted to act in the same way as might a desperate family member, who by chance ended up in a life-threatening situation and could not expect assistance from the state.

Nevertheless, most of Daschner's defenders argue as if preliminary investigations in serious criminal offences where human lives are at stake were a completely new phenomenon, in which legislators had never considered the prohibition of torture and arbitrary action. Everyone knows that murder and manslaughter, kidnapping and terrorism, treason and high treason

existed long before today's penal codes. The same applies to torture and the death penalty.

On the other hand, what is relatively new from a historical standpoint is the limitation of the state's recourse to violence against alleged or actual criminals—a product of the Enlightenment, democratic revolutions and the workers movement. The widespread acceptance of this concept was assisted by the experiences of the fascist dictatorships in the Second World War, especially in Western Europe and the US.

Today, under conditions where the world is being re-colonised in a series of brutal wars of conquest and divided up by the Western powers, achievements such as the ban on torture, democracy and the rule of law are increasingly regarded as outdated within ruling circles.

This was clearly expressed by Michael Wolffsohn, a professor at the German Federal Armed Forces Academy. In a television interview in May, Wolffsohn said he condemned the torture carried out at the Abu Ghraib prison in Iraq, while adding: "I consider torture or the menace of torture legitimate as one of the means employed against terrorists, yes indeed!" And further, "We are in a completely new world-historical situation; we must completely rethink things and then come to conclusions that perhaps may not please us. I do not say that thinking about this gives me any pleasure, but I must consider the new situation."

When the interviewing journalist reminded Wolffsohn that, in Iraq or elsewhere, hostile fighters could always be classified as "terrorists" rather than enemy soldiers, he said that strictly speaking, each civilian could not be differentiated from resistance fighters and these could not be differentiated from terrorists: "After the official end of fighting in Iraq, there was a mixture of normal resistance, urban guerrilla warfare and terrorism and one had to proceed differently in combating the different acts of violence. If, for example, a pregnant woman were clearly embarked upon an act of terrorism, then exploits her position as a pregnant woman and blows herself up along with many others, one cannot behave as if dealing with normal civilians."

In other words, it is legitimate in an occupied country for occupying armies even to torture pregnant women since they may be embarked upon acts of "terrorism," i.e., an assassination attempt against the occupiers!

After Wolffsohn encountered substantial opposition to his stance by sections of the media and the public, Defence Secretary Peter Struck (Social Democratic Party—SPD) called the professor for talks at his ministry—but that was all. Wolffsohn commented afterwards they had held a "clarifying discussion" in a "pleasant atmosphere." He said he had not apologised nor taken anything back. In a press statement, he stressed, "Considerations whether torture is permissible" remain for him "legitimate."

Moreover, he pointed out that he is not alone and referred to a number of other intellectuals, legal experts and German politicians who have recently argued in favour of curtailing democratic rights in the "war on terror": "The discussion regarding the legitimacy of possible preventive measures against terrorists has long been under way among lawyers and politicians nationally and internationally. For example, I can recall Harvard professors Dershowitz and Ignatieff, Heidelberg lawyer Brugger, the latest edition of the legal commentary on the constitution by Maunz-Duerig-Herzog, also former prime minister Ernst Albrecht in 1976 as well as [former SPD chairman] Oskar Lafontaine."



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