

Germany: leniency for deputy police chief who threatened torture

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A deputy police chief who admitted using threats of torture to extract information from a suspect in a child kidnapping case was recently let off with a caution and a suspended sentence.

Wolfgang Daschner, Frankfurt deputy police chief, was found guilty of aggravated coercion on December 20. However, the court merely issued a caution and a suspended sentence; Daschner must pay 10,800 euros if he comes before the court again within a probationary period of one year. There are no conditions for the probation period. He thus escapes being given a criminal conviction, as stressed by the chair of the judges.

Usually, those found guilty of aggravated coercion can expect a sentence of between six months' and five years' imprisonment. However, the accused and the public prosecutor accepted the judgement, which now has the force of law.

The sentence was far more lenient than that requested by the public prosecutor, who had filed the charge of aggravated coercion but had called for a fine of 27,000 euros, with two years' probation, conditional to the payment of 10,000 euros. This demand was still far below the minimum punishment of six months for such offences.

In October 2002, Daschner had threatened to inflict severe pain on Magnus Gaefgen, the kidnapper of 11-year-old banker's son, Jakob von Metzler, if Gaefgen did not reveal where he had hidden the child. Gaefgen promptly admitted that the boy was already dead. Gaefgen was later sentenced to life imprisonment for murder.

As the final speech by the public prosecutor had already made clear, the scale of the punishment did not tally with what had been revealed in the case. None of the grounds cited by the defence to justify and excuse Daschner's actions were applicable—that it was an emergency situation or that emergency assistance was required, or that it was the last means to prevent a danger. Neither were there any gaps in the regulations that might cover

such a case.

According to the judge, legislators had foreseen the constraints of such cases and had reached their consideration. It was thus inadmissible to "weigh" the human dignity of an accused or suspect against that of a victim, as the defence had demanded. No person may be made an object, a "bundle of fear."

In this regard, the judge spoke about the history of the German constitution. Article 1, paragraph I reads: "Human dignity is inviolable. All state powers must respect and protect this." This article was developed to consciously demarcate post-war Germany from the previous Nazi regime, the judge explained.

The court made clear that it was very aware of the fundamental significance of the case. It affirmed that the kidnapping had not been "a singular individual case, and was unfortunately not untypical." "This is about the ability of the constitutional state to function, not simply about Gaefgen."

Based on these remarks, a particularly harsh punishment should have followed. Instead, the court did the opposite, and cited a section of the law according to which, in exceptional cases, a caution with suspended sentence is sufficient if "the defence of the legal order does not require punishment."

Why shouldn't the "the ability of the constitutional state to function" be so important?

The court obviously regarded Daschner and his co-defendant as tragic heroes. It attested to their "honourable convictions" and explained, "They were both concerned exclusively with saving the life of the child." The court stressed that both men were under enormous pressure to succeed and Gaefgen had persistently denied any involvement.

The claim by the court that Daschner had "confessed" at the earliest possible time is false. The court was referring to a memorandum by Daschner, in which he

wrote, “To rescue the kidnapped child, I ordered that Gaefgen be questioned again after previously threatening to inflict pain under medical supervision (without causing injuries).”

In a newspaper interview, Daschner had described in detail how this was to have happened. A police combat sport expert, “someone with a training licence issued by the German sport federation,” was to be flown in by helicopter.

Daschner went on: “It is possible to cause pain through simple physical actions, for example by overstretching the wrist. There are certain places on the ear—as everybody practicing martial arts knows—where it is painful, very painful, if one applies pressure, without any injury developing.... At some point he would no longer have been silent. Within a very short time.”

The judge also stated that the police officers had exhibited “regret and insight,” without providing any proof for this. From the outset, Daschner regarded any criticism of his actions as a “campaign.” He insisted to the end that he had done the only correct thing in an “emergency situation” and was even obligated to act as he had. His legal representative then explained after the court case that Daschner had a “different legal opinion” than the court.

Daschner is supported in his views by several law professors, the Federation of German Criminal Detectives and various politicians, including Wolfgang Bosbach, spokesperson on legal affairs and deputy chairman of the Christian Democrat parliamentary group, and Oskar Lafontaine, the former Social Democratic Party chairman and finance minister.

Any expressions of “regret and insight” by Daschner were solely aimed at justifying the lack of any genuine punishment. The message contained in the judgement is clear: Those who torture out of “honourable convictions” are liable to punishment. In practice, however, they will not be punished.



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