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01.06.2010

Press release issued by the Registrar

Grand Chamber judgment<sup>1</sup>

*[Gäfgen v. Germany](#)* (application no. 22978/05)

**POLICE THREAT TO USE VIOLENCE AGAINST CHILD ABDUCTION SUSPECT  
AMOUNTED TO ILL-TREATMENT BUT DID NOT AFFECT HIS RIGHT TO A FAIR TRIAL**

*By eleven votes to six*

*Violation of Article 3 (prohibition of torture and inhuman treatment)  
No violation of Article 6 (right to a fair trial)  
of the European Convention on Human Rights*

#### Principal facts

The applicant, Magnus Gäfgen, is a German national who was born in 1975. He is currently in prison in Schwalmstadt (Germany).

The case concerned his complaint that he was threatened with ill-treatment by the police in order to make him confess to the whereabouts of J., the youngest son of a well-known banking family in Frankfurt am Main, and that the ensuing trial against him was not fair. In July 2003, Mr Gäfgen was sentenced to life imprisonment for the abduction and murder of J. The court found that his guilt was of a particular gravity, meaning that the remainder of his prison sentence cannot be suspended on probation after 15 years of detention.

The child, aged 11, had got to know the applicant, a law student at the time, through his sister. On 27 September 2002, the applicant lured J. into his flat by pretending that J.'s sister had left a jacket there. He then suffocated the child.

Subsequently, the applicant deposited a ransom demand at J.'s parents' home, requiring them to pay one million euros (EUR) to see their child again. He abandoned J.'s corpse under the jetty of a pond one hour's drive away from Frankfurt. On 30 September 2002 at around 1 a.m., Mr Gäfgen collected the ransom at a tram station. He was placed under police surveillance and was arrested several hours later.

On 1 October 2002 one of the police officers responsible for questioning Mr Gäfgen, on the instructions of the Deputy Chief of Frankfurt Police, warned the applicant that he would face considerable suffering if he persisted in refusing to disclose the child's whereabouts. They considered that threat necessary as they assumed J.'s life to be in great danger from lack of food and the cold. As a result of those threats, the applicant disclosed where he had hidden the child's body. Following that confession, the police drove to the pond together with the

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<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

applicant and secured further evidence, notably the tyre tracks of the applicant's car at the pond and the corpse.

At the outset of the criminal proceedings against the applicant, the Frankfurt am Main Regional Court decided that all his confessions made throughout the investigation could not be used as evidence at trial as they had been obtained under duress, in breach of Article 136a of the Code of Criminal Procedure and Article 3 of the European Convention. However, the court did allow the use in the criminal proceedings of evidence obtained as a result of the statements extracted from the applicant under duress.

On 28 July 2003, the applicant was found guilty of abduction and murder and was sentenced to life imprisonment. Despite the fact that he had been informed at the beginning of the trial of his right to remain silent and that all his earlier statements could not be used as evidence against him, the applicant nevertheless again confessed that he had kidnapped and killed J. The court's findings of fact concerning the crime were essentially based on that confession. They were also supported by the evidence secured as a result of the first extracted confession, namely the autopsy report and the tyre tracks at the pond, and by other evidence obtained as a result of the applicant being observed after he had collected the ransom money.

The applicant lodged an appeal on points of law which was dismissed by the Federal Court of Justice in May 2004. He subsequently lodged a complaint with the Federal Constitutional Court, which refused to examine it by decision of 14 December 2004. That court confirmed the regional court's finding, however, that threatening the applicant with pain in order to extract a confession constituted a prohibited method of interrogation under domestic law and violated Article 3 of the Convention.

In December 2004 the two police officers involved in threatening the applicant were convicted of coercion and incitement to coercion while on duty and were given suspended fines of 60 and 90 daily payments of EUR 60 and EUR 120, respectively.

In December 2005 the applicant applied to the regional court for legal aid in order to bring official liability proceedings against the *Land* of Hesse to obtain compensation for being traumatised by the investigative methods of the police. The court dismissed the application, and, in February 2007, the court of appeal dismissed the applicant's appeal against this decision, holding in particular that the applicant would face difficulties establishing a causal link between the threats of torture and the alleged mental damage necessitating psychological treatment. On 19 January 2008, the Federal Constitutional Court quashed the court of appeal's decision and remitted the case. It found in particular that the refusal to grant the applicant legal aid had violated the principle of equal access to court and that whether the violation of his human dignity necessitated the payment of damages was a difficult legal question, which should not be determined in an application for legal-aid proceedings. The remitted proceedings are still pending before the regional court.

### **Complaints, procedure and composition of the Court**

The applicant complained that he had been subjected to torture when questioned by the police, in violation of Article 3. Relying on Article 6, he further submitted that his right to a fair trial had been violated in particular by the use of evidence secured as a result of his confession obtained under duress.

The application was lodged with the European Court of Human Rights on 15 June 2005. The parents of J., and the Redress Trust, an international non-governmental organisation, were granted leave to intervene in the proceedings as third parties.

In a judgment of 30 June 2008, the Court held, by six votes to one, that the applicant could no longer claim to be the victim of a violation of Article 3 of the Convention and that there had been no violation of Article 6 of the Convention.

On 1 December 2008, the case was referred to the Grand Chamber at the applicant's request. On 18 March 2009, a hearing was held in public in the Human Rights Building in Strasbourg.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul Costa (France), *President*,  
Christos Rozakis (Greece),  
Nicolas Bratza (the United Kingdom),  
Françoise Tulkens (Belgium),  
Josep Casadevall (Andorra),  
Anatoly Kovler (Russia),  
Ljiljana Mijović (Bosnia and Herzegovina),  
Renate Jaeger (Germany),  
Sverre Erik Jebens (Norway),  
Danut Joškus (Lithuania),  
Ján Šikuta (Slovakia),  
Ineta Ziemele (Latvia),  
George Nicolaou (Cyprus),  
Luis López Guerra (Spain),  
Ledi Bianku (Albania),  
Ann Power (Ireland),  
Nebojša Vučinić (Montenegro), *judges*,

and also Erik Fribbergh, *Registrar*.

## Decision of the Court

### Article 3

#### *Treatment contrary to Article 3*

It had been established by the German courts that a police officer, acting on the instructions of the Deputy Chief of Frankfurt Police, had threatened the applicant with being subjected to intolerable pain in order to make him disclose J.'s whereabouts. The Court considered that these immediate threats of deliberate and imminent ill-treatment had to have caused the applicant considerable fear and mental suffering. It observed that, as established by the domestic courts, the deputy police chief had ordered his subordinates on several occasions to use force against the applicant, his order could therefore not be regarded as a spontaneous act, but had been calculated in a deliberate manner.

The Court accepted that the police officers had been motivated by the attempt to save a child's life. However, the prohibition on ill-treatment applied irrespective of the conduct of the victim or the motivation of the authorities; it allowed no exception, not even where the life of an individual was at risk. The Court considered that in the present case the immediate threats against the applicant for the purpose of extracting information from him were sufficiently serious to be qualified as inhuman treatment falling within the scope of Article 3. Having regard to its case-law and to the views taken by other international human rights

monitoring bodies, it found, however, that the method of interrogation to which the applicant had been subjected had not reached the level of cruelty to attain the threshold of torture.

*The applicant's victim status*

The Court was satisfied that the domestic courts, both in the criminal proceedings against the applicant and against the police officers, had acknowledged expressly and in an unequivocal manner that the applicant's interrogation had violated Article 3.

It observed, however, that the police officers, having been found guilty of coercion and incitement to coercion, respectively, had been sentenced only to very modest and suspended fines. The domestic courts had taken into consideration a number of mitigating circumstances, in particular the fact that the officers had aimed to save J's life. While the Court accepted that the present case was not comparable to cases concerning arbitrary acts of brutality by State agents, it nevertheless considered that the punishment of the police officers did not have the necessary deterrent effect in order to prevent further Convention violations of this kind. Moreover, the fact that one of the police officers had subsequently been appointed chief of a police agency raised serious doubts as to whether the authorities' reaction reflected adequately the seriousness involved in a breach of Article 3.

As regards compensation to remedy the Convention violation, the Court noted that the applicant's request for legal aid to bring liability proceedings, following a remittal, had been pending for more than three years and that no decision had yet been taken on the merits of his compensation claim. The domestic courts' failure to decide on the merits of the claim raised serious doubts as to the effectiveness of the official liability proceedings.

In the light of these findings, the Court considered that the German authorities did not afford the applicant sufficient redress for his treatment in breach of Article 3.

The Court concluded, by eleven votes to six, that the applicant could still claim to be the victim of a violation of Article 3 and that Germany had violated Article 3.

Article 6

As the Court had established in its case-law, the use of evidence obtained by methods in breach of Article 3 raised serious issues regarding the fairness of criminal proceedings. It therefore had to determine whether the proceedings against the applicant as a whole had been unfair because such evidence had been used.

The Court found that the effective protection of individuals from the use of investigation methods in breach of Article 3 may require, as a rule, the exclusion from use at trial of real evidence obtained as a result of a breach of that Article. It considered that this protection and a criminal trial's fairness were only at stake however if the evidence obtained in breach of Article 3 had an impact on the defendant's conviction or sentence.

In the present case, it was the applicant's new confession at the trial – after having been informed that all his earlier statements could not be used as evidence against him – which formed the basis for his conviction and his sentence. The evidence in dispute had therefore not been necessary to prove him guilty or determine his sentence.

As regards the question whether the breach of Article 3 in the investigation proceedings had a bearing on the applicant's confession during the trial, the Court observed that he had stressed in his statements at the trial that he was confessing freely out of remorse and in order to take responsibility for his offence, despite the threats uttered against him by the

police. The Court therefore had no reason to assume that the applicant would not have confessed if the courts had decided at the outset to exclude the disputed evidence.

In the light of these considerations, the Court found that, in the particular circumstances of the case, the failure of the domestic courts to exclude the impugned evidence, secured following a statement extracted by means of inhuman treatment, had not had a bearing on the applicant's conviction and sentence. As the applicant's defence rights had been respected, his trial as a whole had to be considered to have been fair.

The Court concluded, by eleven votes to six, that there had been no violation of Article 6.

#### Article 41 (just satisfaction)

The applicant did not claim any award for pecuniary or non-pecuniary damage, but stressed that the objective of his application was to obtain a retrial. As there had been no violation of Article 6, the Court considered that there was no basis for the applicant to request a retrial or the reopening of the case before the domestic courts.

#### Separate opinions

Judges Tulkens, Ziemele and Bianku expressed a partly concurring opinion; Judges Rozakis, Tulkens, Jebens, Ziemele, Bianku and Power expressed a partly dissenting opinion; Judge Casadevall expressed a partly dissenting opinion, joined by Judges Mijović, Jaeger, Jöns and López Guerra. The separate opinions are annexed to the judgment.

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The judgment is available in English and French. This press release is a document produced by the Registry. It does not bind the Court. Further information about the Court is available on its website ([www.echr.coe.int](http://www.echr.coe.int)).

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*