



Universität Augsburg
Juristische Fakultät

Prof. Dr. Johannes Kaspar

Lehrstuhl für Strafrecht, Strafprozessrecht, Kriminologie und
Sanktionenrecht

Sentencing Guidelines – the German discussion

Sentencing Forum, 4.3.2026

Agenda

- 1 Status quo of sentencing in Germany
- 2 Discussion in Leipzig 2018 and later developments
- 3 Reasons for reluctance against sentencing guidelines in Germany
- 4 Conclusion and future prospects



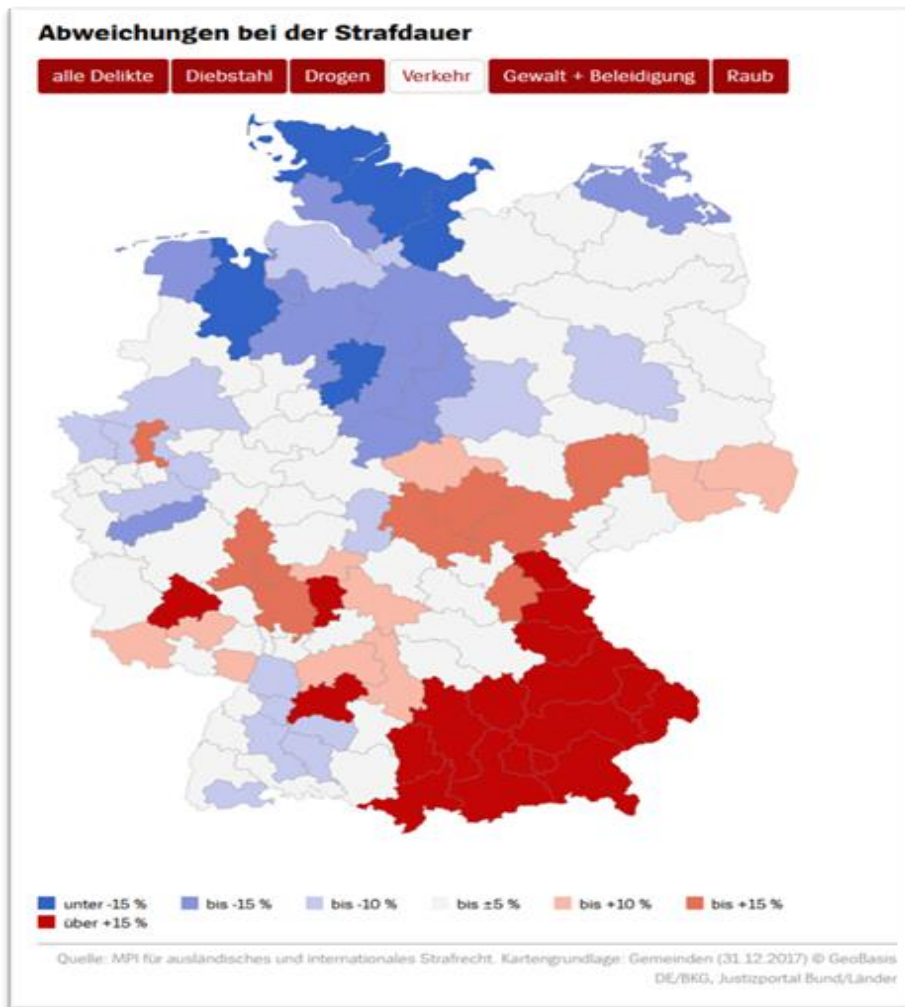
1. Status quo of sentencing in Germany

- Wide statutory **ranges of punishment**, e.g. homicide (including minor and severe cases, §§ 212, 213 GCC): 1 year up to lifelong imprisonment
- **Little guidance for judges** in § 46 GCC:
 - Guilt or blameworthiness (**Schuld**) as the „**basis**“ for sentencing (§ 46 I 1 GCC)
 - **Special and general preventive aspects** are also mentioned in the law
 - Concrete steps on the way to the final sentence are not regulated
 - Only hints concerning the punishment for „regular cases“ (BGHSt 27, 2): lower third of the sentencing range
 - **§ 46 II GCC** contains a **non-exhaustive list** of sentencing factors

1. Status quo of sentencing in Germany

- Sentencing decisions are hard to predict and **vary in comparable cases** (current example: road blocks by climate activists as punishable coercion, § 240 GCC)
 - Influence of **anchor effects**, e.g. sentencing proposal by the Public Prosecutor (*Englich/Mussweiler 2001*)
 - Influence of **personal (e.g. political) preferences**
 - Possibly even stronger influence of **local and regional sentencing traditions**
- Remarkable regional disparities in comparable cases (“**sentencing geography**”)

1. Status quo of sentencing in Germany



Sentencing for traffic offences

- **Deep red regions:** deviation from average amount of punishment of more than +15 %
- **Deep blue regions:** deviation from average amount of punishment of more than -15 %

2. Discussions in Leipzig 2018 and later developments

- 72nd Convention of German legal scholars and practitioners (**Deutscher Juristentag**) in **Leipzig 2018**
- My expert opinion on sentencing reform was published beforehand
- Several reform proposals were discussed; in the end there was a vote among all participants (mostly practitioners)
- Narrower and lower **sentencing ranges: rejected**
- **Sentencing guidelines** like Federal Sentencing Guidelines in the U.S.: **rejected**
- **Sentencing commission** making recommendations based on empirical research: **rejected**
- **Sentencing database** as a (non-binding) source of additional information: **supported**



2. Discussions in Leipzig 2018 and later developments

Treaty of the former government coalition in Germany (2021, S. 85):

- “Anonymized sentencing decisions should generally be accessible for the public in a database that can be read by machines“
- But: no visible action was taken before the end of the coalition in 2025

Conference organized by the Federal Department of Justice in December 2024 on problems and reform of sentencing

- Controversial discussion on the relevance of public opinion in sentencing and the role of databases and „artificial intelligence“
- Sentencing Guidelines were not in the focus of the discussion

3. Reasons for reluctance against sentencing guidelines in Germany

- Focus on infamous **U.S. “Federal Sentencing Guidelines”**
- Danger of a **too narrow and schematic approach** (with a possible violation of equality rights by treating different cases in a similar way)
- Danger of a **too harsh sentencing system** with a focus on **aggravating factors** (including criminal history) and **prison as the main punishment**
- Emphasis on **individual assessment of “guilt”** (Schuld), following an idealistic “absolute” penal theory
- Restriction of **independency of judges** (Art. 97 para. 1 of the German Constitution)
- Problem of **unwanted transparency?**: Written sentencing guidelines based on actual sentencing practice would clearly show the comparably lenient approach German courts have used in the past – maybe politicians fear public outrage?

4. Conclusion and future prospects

- **Ongoing reluctance** against sentencing guidelines in Germany for various reasons
- Guideline system of England and Wales has not been properly discussed
- New publication by Armbrecht might give new impulses
- But: except for the introduction of hate motives, sentencing is **not on the political agenda** at the moment



Thank you for your attention

Prof. Dr. Johannes Kaspar
Lehrstuhl für Strafrecht, Strafprozessrecht,
Kriminologie und Sanktionenrecht
Universität Augsburg
Johannes.kaspar@jura.uni-augsburg.de
www.uni-augsburg.de