German government announces far-reaching restrictions on civil liberties

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"Necessity knows no laws!" So declared *Reichskanzler* and former Prussian Interior Minister Theobald von Bethmann-Hollweg in July 1914 to an extraordinary meeting of parliament called to pass a series of emergency measures in preparation for war.

At the crisis meeting of Germany's parliament last week, the speech by Interior Minister Otto Schily (Social Democratic Party—SPD) fatefully recalled the words of his Prussian colleague and predecessor.

The federal government will act against terrorism with "absolute rigour and the necessary severity," the interior minister told the deputies. He continued: "Timidity and uncertainty will not be the watchwords." He even struck the speaker's stand with his fist—quite unusual given his otherwise factual style of arguing.

"We will have to take up and conduct this fight fearlessly," stressed Schily, who appealed several times to the "national responsibility" of all parliamentary groups. He expressly thanked Christian Democratic Union/Christian Social Union parliamentary leader Friedrich Merz (CDU) for the support of his faction. The minutes record at this point long-lasting applause, particularly from the opposition parties CDU/CSU and Free Democrats (FDP).

Schily displayed remarkable vehemence and ruthlessness in his disregard for constitutional ground rules previously considered inviolable. To improve internal security he called for future police and military operations to be coordinated and conducted jointly. In view of the situation, the police, Federal Border Police, armed forces and the security agencies were obliged to cooperate closely, he said.

Data privacy regulations should not be used to shield culprits or stand in the way of necessary security precautions, Schily insisted: "Data privacy must not handicap the fight against crime or counter-terrorism."

Under all circumstances, asylum-seekers and refugees who had links to terrorist organisations should be prevented from coming to Germany, the interior minister said. To the applause of the assembled deputies he railed against refugees who "abused" the right to asylum. Those foreigners who had links to terrorist organisations would have to feel the full force of the law.

In an interview published beforehand in the news weekly *Die Zeit*, Schily also suggested that extremist and criminal foreigners who could not be deported to their homeland for humanitarian reasons would in future be sent to a third country.

Rarely before has the slogan of the far right, "Foreigners out!", been so clearly articulated in the German parliament.

But Schily received applause not only from the parliamentary benches of the right-wing CDU/CSU. Many SPD functionaries also declared their support.

The chairman of the police trade union, Gerhard Vogler, demanded increased video surveillance and the reestablishment of profiling, a large-scale method of monitoring developed in the late 1970s against the Red Army Faction (RAF). Using a profile, large sections of the population were closely watched. Many completely innocent people were included in the state's monitoring of terrorists. Due to high costs and a lack of results, profiling was later abolished.

Vogler also called for "more laxity" in preserving data privacy, and welcomed the interior minister's suggestion that fingerprints be included on passports or other identification documents.

The SPD chairman of the parliamentary defence committee, Helmut Wieczorek, called for the formation of a National Guard, to include various sections of the military, police and security services.

The internal security measures adopted last week by the government contradict the pledge by Chancellor Gerhard Schröder (SPD), who declared, "We will not abolish the rule of law and limit democracy under any circumstances in order to fight terrorism." Like its American counterpart, the German government is using the terrorist attacks on New York and Washington to abolish fundamental democratic rights at a stroke, and is setting out on a new course in domestic policy.

The measures decided upon fall essentially into three categories:

First, there are measures aimed at strengthening the role of the armed forces. In the name of counter-terrorism, the army will in future be able to be deployed domestically. This extended role for the army and the officer corps is linked to closer cooperation between the secret services, the police and other authorities holding data about all those living in Germany.

Second, steps are being taken to tighten criminal proceedings. This includes the reintroduction of profiling and greater use of state's evidence and "super grasses". In the past, many lawyers had rejected this because it blurs the separation of the judiciary from the executive and limits the principle of equal treatment before the courts. At the same time, the police and prosecuting authorities are being given the option of deploying undercover officers as agents provocateurs, and then using them to provide state's evidence.

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This includes the expansion of the disputed anti-terrorist Paragraph 129a of the penal code, which makes it an offence to establish, recruit for or belong to a “criminal” organisation. In 1976, at the time of the RAF attacks, this paragraph was introduced in the context of the anti-terror laws and was used to mount wide-ranging and arbitrary monitoring operations. It led to numerous false accusations and suspicions being raised against those with non-conformist political views.

Three years ago, when the SPD and Green Party agreed to form a coalition government, they approved the abolition of Paragraph 129a. Now this law is to be extended with the addition of a Paragraph 129b, which makes membership of a foreign terrorist organisation a criminal offence. Questions as to who will decide that a foreign organisation is classified as terrorist, and by what criteria, are brushed aside, as is the reproach that such a paragraph opens the door to arbitrary actions by the state.

The third aspect of the anti-terrorist measures is directly aimed at curtailing civil liberties. This includes restrictions on data privacy, intensified video surveillance, the use of fingerprints on passports, and the abolition of the so-called privilege of religion, which constitutes the first step in clamping down on freedom of association.

A brief look at Germany’s history shows the tradition in which these measures stand.

In the 1950s, the role of the armed forces was limited exclusively to defending Germany against a foreign threat, with domestic use of the army precluded, apart from cases of disaster relief. This represented a concession to widespread fears that the officer corps of the newly created army could once again play the reactionary role the armed forces played under the Kaiser and Hitler.

One of the last uses of the *Reichswehr* (army) inside Germany in peacetime had been the suppression of social protests and working class rebellions against the effects of the economic crisis in the 1920s. The *Reichswehr* acted with extreme brutality against the Red Ruhr Army.

The separation of the police and secret services, laid down in the post-war constitution, was also a concession to popular sentiment against the re-emergence of anything like the Gestapo, the Nazi secret police.

“The clear separation of police and army is not a constitutional trifle,” a comment in the *Berliner Tagesspiegel* noted, and continued: “In times of peace, the sight of soldiers bearing arms is only an everyday occurrence in states that still have a problem with democracy.”

Even such mild protests are only rarely to be found at present in the media. Not a single commentator dares to call things by their name, and point out that under the pretext of the fight against terrorism the state is drastically increasing its powers, something that has long been in preparation, but previously encountered obstacles.

For some time, the officer corps has tried to strengthen its influence on social developments and policy. With the gradual transformation of the army from a conscription-based force during the Cold War into a professional army in the reunited Germany—whose interests as a great power require military strength—a military caste has begun to crystallise that feels it has a right to a say in domestic and foreign matters.

For the whole of the summer, conservative politicians and military top brass had been calling for the resignation of the defence minister, claiming in one way or another that he was not up to the job. This was despite the fact that right-wing Social Democrat Rudolf Scharping had always strongly argued the army’s case and had ended up in the headlines over a purely private matter.

The military, however, were above all concerned with reshaping the balance of power in the state. The bringing down of the defence minister would have made clear that the control of the army by the government was no longer to be taken too literally. Moreover, the demand that is always raised by the army leadership—More cash!—would have been carried forward.

Since September 11 this argument has abated. The matter is decided. Without any previous information or discussion in parliament, the government decided on its package of measures on internal security, financing it with additional expenditure of 3 billion marks ($1.4 billion). These funds will mainly go to the armed forces, in part paying for their cooperation with other security forces.

The main reason for the drastic internal security measures is not the threat of terrorism. Lawyers and constitutional experts point out that the available internal security means are quite sufficient to protect against terrorist attacks. Rather, the government is afraid of the reaction in the general population to increasing social polarisation and an escalation of military violence.

In the short term, there are concerns within the German ruling elite over the social consequences within the country once the Bush administration begins its “war against terrorism”. Already at the 200,000-strong official demonstration in Berlin on September 14, called by the government as a show of solidarity with the US, there were many expressions within the crowd of opposition to answering the terrorist attacks by means of a war.

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