

# German government attacks fundamental democratic rights

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The Social Democratic Party-Green Party coalition government in Berlin has agreed a second series of laws strengthening internal security. In the run up to last weekend's decision, the catalogue of measures presented by Interior Minister Otto Schily (SPD) had unleashed fierce criticism. For the first time, the German federation of judges and several lawyers' associations protested against the planned legal changes in a joint statement.

In order to avoid a serious crisis in the coalition, Schily abandoned some of the more contentious points during negotiations. The Greens celebrated this as a great success, showing how cheaply their support could be purchased and how little the party, which likes to describe itself as a citizens' movement, is able to defend fundamental civil liberties.

The second "anti-terrorism package" represents the most comprehensive attack on fundamental democratic rights since the establishment of post-war Germany. Moreover, Interior Minister Schily believes that most of his concessions can be negotiated away in the course of the parliamentary consultation with the Christian Democrats (CDU).

The 110-page draft he has submitted includes changes to 14 laws and a series of regulations, which are to be adopted on November 7 by the Cabinet. In particular, the powers of the security authorities—such as the secret service, Federal Criminal Investigation Office, Federal Intelligence Service and police—are to be extended and strengthened to an extent not seen since the end of the Nazi dictatorship.

Schily's original draft planned to grant the Federal Criminal Investigation Office (BKA) a so-called "investigative initiative jurisdiction" In contrast to previous legal practice, the BKA could then launch investigations against anyone they choose. This measure had been discussed since 1993, but previously encountered fierce resistance. If investigations can be undertaken into anyone, whether they are suspected of having committed a crime or not, then the fundamental distinction between an accused and a non-accused is removed.

The interior minister was unable to push these plans through in the coalition negotiations, but the jurisdiction of the BKA was still expanded. In future, it will be able to gather data and information without needing to approach the various state police bodies. In addition, the BKA will also become responsible for pursuing the supporters of foreign terrorist organisations and will be able to investigate serious crimes involving data network crime.

The storage of biometric data is to be centralised at the BKA.

The "Automated Fingerprint Identification System" (AFIS) installed in 1992 already stores the fingerprints of 2.9 million people. As well as data relating to offenders and those suspected of committing a criminal offence, the fingerprints of all asylum seekers are also kept, thus personal data concerning a whole section of the population is being arbitrarily stored centrally for the authorities to research.

According to Schily's plans, this system could be used to store the fingerprints or other personal information of all German citizens. This was also not accepted in such a form in the coalition negotiations. But the SPD and the Greens did agree to abolish all existing legal formulations that prevented the use of biometric information such as fingerprints, handprints or iris patterns from being recorded in identity cards and passports. This represents a clear step towards a centralised monitoring index. Only the practical implementation of such a scheme, i.e., which biometric characteristics are actually to be included in identification documents, was not yet decided. This will be done when a new passport law is debated in parliament.

In answer to the question, whether the recording of finger, hand or eye prints in the form of electronic code in a passport necessarily amounts to a centralised data file, the chairman of the German federation of judges, Geert Mackenroth, answered: "Otherwise the collection of biometric data would probably make no sense. The interior minister certainly wasn't thinking of creating a data graveyard. Of course, the next step would be to make the data centrally retrievable so that it was available at every airport terminal or police station. The central register will come, it does not require much imagination to see that."

Apart from the BKA, Schily's draft bill also envisages furnishing the domestic secret service, the Federal Office for the Protection of the Constitution (BfV), with greater powers. The proposed legal changes give the secret service far greater powers to act against the general population than even existed in the 1970s, when the law banned those advocating leftwing ideas from working in the public sector.

In future, the BfV will have almost unrestricted access to the records of the telecommunications companies, covering telephones, mobile phones, email and Internet use. Monitoring the mail of those classified as a suspect will be made easier, and the secret service will be granted access to data from airlines. The BfV is to be given access to bank accounts and payments' records. In this way, information about a suspect will be made accessible to

the secret service covering all forms of communication. With the help of mobile phone data, a “suspect’s movement patterns” can be built up. Previously, secret service and police investigators needed a judge’s ruling in order to access telephone and mail data. “The fundamental right to mail, post office and communications privacy... is restricted to this extent,” is how the draft bill tersely puts it.

In the coalition negotiations, the Greens only added the sentence: “These new powers of the secret service are subject to parliamentary control.” In addition, it was agreed to limit the new regulations to five years.

Another new measure with far reaching consequences is the plan to submit all those employed in so-called “sensitive” jobs to a secret service check. The draft legislation specifically mentions: those working for telephone companies, pharmaceutical concerns, hospitals, banks, railways, the post office, radio and television. Hundreds of thousands of employees will thus be subjected to monitoring by the state. This proposal recalls the experiences of those who suffered as a result of the emergency anti-terrorist legislation in the 1970s. At that time, hundreds of thousands of innocent people ended up with secret service files. Thousands were refused jobs in the public service because they were regarded as supporters or sympathisers of so-called “anti-constitutional” organisations.

The “deportation regulations” for foreigners are also to be substantially tightened up. Refugees who should enjoy the protection of the Geneva Convention, can be thrown out of the country, if they endanger security, if they employ violence in the pursuit of political aims or belong to an association that supports international terrorism. The religious affiliation of foreigners living in Germany is also to be recorded: a proposal that evokes the darkest chapter of German history, when those of Jewish faith were forced to wear the yellow star.

If one regards the context of the legal changes, which were agreed upon under the term “anti-terrorism measures”, it becomes clear that a turning point in West German legal conceptions is being made. Previously valid legal principles, such as the presumption of innocence, are being stood on their head. All citizens are now regarded with general suspicion, even the innocent.

The previous separation of the secret services and police is further eroded, while through the interlinking of the various databases of the separate authorities and investigatory bodies, a central federal police force is being constructed. In the past, this was forbidden, at least formally, due to the experiences with the Gestapo during the Nazi dictatorship.

Even a conservative politician like the chairman of the association of democratic lawyers (VDJ), professor Martin Kutscha, has protested against the gradual establishment of a federal police authority. In a statement October 18, he points out that the military governors of the three Western powers had expressly stressed in 1949 that a future German secret service should not be allowed to exercise “police powers”. He goes on, “The background to these stipulations by the Western allies, as well as the debates on this question in the Parliamentary Council [which preceded the establishment of the *Bundestag*/parliament]

were the memories of the highly centralised powers and terror apparatus of the Nazi state: In 1939, the Gestapo, security police and SD (security agency) were combined in the ‘Principal Office for *Reich* Security’.”

In an interview with the *Frankfurter Rundschau* October 26, Herbert Mertin (Free Democratic Party), Rheinland-Palatinate Justice Minister, and presently chairman of the standing conference of state Justice Ministers, criticised the draft law. He said eliminating fundamental legal principles and restricting civil rights were questionable. Present policy was being hyped up. He thought it was going too far, when his Christian Democratic colleague in Thuringia, Andreas Birkmann, said it was unnecessary formalism to insist upon judicial control for operations involving communications privacy. In their competition over domestic security, Mertin said, Schily wants to trump the CDU, and the CDU wants to trump Schily.

Against these critics, Interior Minister Schily stressed again and again that his orientation was towards the “fundamental right to security.” He said this right to security was not contained directly but “indirectly in the constitution”. When Schily speaks about a right to security, he principally means state security. In the past, security was always closely linked to the issue of social security. Since the development of social theories during the Enlightenment, the connection between social want and rising criminality, or rather between general social well being and peaceful social relations have often been examined and explained.

Schily’s legal measures increasing state powers reflect a social development that is marked by the fact that a privileged elite has unrestrainedly enriched itself at the expense of the general population. The gulf between rich and poor has also widened in the three years of “red-green” government in Germany, and the first effects of a worldwide recession are destroying any hope of economic stability and reducing unemployment. The government has decided to shift the burden of the economic crisis onto the backs of the general populace, at a time when opposition to austerity measures and the drastic cuts in all social programmes is growing.

Here lies the reason why Schily regards the whole population with general suspicion and is centralising the state security structures. Behind the verbose declarations about defending the constitutional state against every attempt to establish a police state, authoritarian forms of political rule are becoming ever more visible.



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