

# Second package of anti-terror laws rushed through German parliament

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With unparalleled haste and without any great discussion, numerous changes to German law were rushed through both chambers of the German parliament just before Christmas. On December 14, the second package of laws for the “struggle against terrorism” passed by an overwhelming majority of votes from all parties in parliament—SPD (German Social-Democratic Party), the Green Party and the CDU/CSU opposition (Christian Democratic Union-Christian Social Union).

Less than a week later, on December 20, the package was also passed by the Bundesrat, the second chamber of the German parliament consisting of the various German state governments, including many led by the CDU/CSU opposition. As a consequence of the parliamentary vote the most extensive package of laws directed at undermining democratic rights in the history of the German Republic comes into effect at the beginning of this year.

The package of laws, worked out under the central control of German Interior Minister Otto Schily (SPD) under the pretext of fighting terrorism, involves extensive changes to 17 existing laws and five regulations. In total, security stipulations have been changed in approximately 100 laws. Passport and expulsion procedures have been tightened up and the new measures strengthen the hand of immigration authorities, police, national law enforcement agencies, the German border police and secret services to an extent unknown since the times of Nazi dictatorship in Germany.

The first consultation for these wide-ranging and radical changes to the law took place in parliament at the end of November. At the same time a panel of expert advisors met in parliamentary committee. The overwhelming majority of experts consulted warned both orally and in written reports of the dangers for personal privacy for all citizens arising from new supervisory powers and the virtually unlimited access made in the draft law for access

by the intelligence services and national law enforcement agencies to data from telephones, e-mails and bank accounts, as well as travel details.

In particular the panel of experts especially criticised the extension of powers made to the intelligence services as well as the inter-linking of data between various secret services. These considerations were barely taken into account by the government and in effect swept aside.

The original and widely criticised stipulation in the bill to deport foreign nationals or prevent them from entering the country in the first place, on the mere basis of “suspicion” that they supported a terrorist organisation, was altered slightly with the insertion of the words “when facts demonstrate”. Under conditions where these “facts” are to be established by the appropriate police or immigration departments the new law grants the state arbitrary repressive powers.

In a further concession to the opposition CDU and CSU parties, and in order to secure support in the parliamentary council (Bundesrat), the extension of powers to national law enforcement agencies was also extended to state police authorities.

The haste with which the law was rushed through parliament meant that any sort of effective public debate on the measures was stifled and most deputies were not even clear about the entirety of the package on which they were voting.

A number of periodicals, such as the weekly news magazine *Der Spiegel*, pointed out that even leading SPD legal experts had only very limited information on the details of the new laws. Dieter Wiefelspütz, the SPD speaker on interior affairs, presented his 30-page document of proposed amendments to the package just a few hours before the final committee meeting on the changes. In addition, *Der Spiegel* commented “at most just four of the total of seventeen social democratic members of the committee” took part in the final

consultations. It was only after the final vote had taken place that deputies received by e-mail Wiefelspütz' proposed amendments to the laws which they had just passed.

This entire procedure—and the readiness of most deputies to vote in favour of laws involving the most wide-ranging offensive against democratic rights in the history of the German Republic under conditions where they were not informed of the concrete details—did not prevent representatives of the SPD and Green Party from describing the new laws as epochal and “constitutionally correct in every point,” according to the speaker on domestic affairs of the SPD.

Volker Beck, the speaker on legal issues for the Greens, stated that the passing of the laws represented a “show of strength” that struck a balance between combating terror and constitutionality. He also conceded, however, that the imposition of such a package of laws would have been impossible prior to the terror attacks of September 11.

This revealing comment points to the real reason for the haste in pushing through the new laws. The ruling SPD and Green Party coalition is using the widespread climate of insecurity since September 11 to implement the most extensive legal measures in the sphere of domestic security. For some time now, against a background of growing economic and social crisis and in anticipation of widespread protest, the government has been undertaking a drastic and systematic empowering of the state. Many of the laws now being enacted have been lying in the drawers of the German Interior Minister for some time, but they could not have been passed without the “terror threat”.

The haste with which the new laws against civil rights were implemented expresses two basic tendencies. First, the government fears that the argument of “combating terror” could quickly lose its relevance. Second, it fears that measures aimed at containing potential domestic protest to mass redundancies and attacks on the country's social network could prove to be increasingly difficult to impose.

Virtually unnoticed, the government has managed to speed through parliament measures which will enable the state and police to manipulate journalists for their own purposes—without, according to some press reports, the latter's knowledge. The new “law governing changes in the legal process” stipulates that communication companies such as Germany's main telephone company *Telekom* can retain for a period of up to six months all details of telephone calls, faxes and e-mails. Police

investigators will also be allowed access to this information.

The possibility of accessing such information has already been extensively exploited. The appropriate regulation was hidden in paragraph 12 of Germany's Telecommunications Law and was due to expire at the end of last year. Prosecuting agencies were urgently seeking a replacement regulation.

Measures for large-scale supervision are provided for within the scope of the law allowing extensive bugging of telephones introduced by the previous Kohl government with the support of the opposition SPD. Certain professions entailing privacy issues—such as priests, lawyers and parliamentary deputies—were excluded from the provisions of the law. Journalists, however, were not on this list.

There have already been a number of cases where journalists have been unwittingly exploited by investigating authorities. One example is the case of Edith Kohn, reporter for *Stern* magazine, who established contact in 1998 with a former member of the Red Army Faction (RAF) terror group, Hans-Joachim Klein. Klein had lived a secluded life in a small village in France for 20 years and wanted to give himself up. The German national criminal investigation authority managed to find out about the contact between Klein and *Stern* magazine, acquired the details of Kohn's private telephone and were able to trace Klein's phone number in France. He was then immediately arrested.

*Stern* took a legal case to Germany's highest court to protest the illegal violation of the privacy of journalists. Three years later the case is still awaiting final judgement. In 1984 Germany's constitutional court ruled that the “privacy of editorial work” was part of “the necessary conditions for a free press”. The latest changes to the legal process now mean that this fundamental protection of press freedom has been rendered invalid.



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