

The case of Metin Kaplan

## A lesson in the functioning of the German “rule of law”

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Islamic preacher Metin Kaplan has once again hit the headlines of German newspapers. The so-called “Caliph of Cologne” is head of the organisation “Caliphate State,” which was recently dissolved by the German government. As was the case two and half years ago, the insignificant figure of Kaplan, leader of an insignificant group, is being used as part of an hysterical law-and-order campaign aimed at undermining democratic rights.

Although the media and politicians express their outrage at the fact that Kaplan is currently seeking to exercise his democratic rights, it is not this obscure preacher and his following of a few hundred who represent the real threat to democratic rights. It is, in fact, state organisations that are trampling basic rights underfoot.

In November 2000, Kaplan was sentenced to four years in jail, accused of inciting an illegal act. He was released in March 2003. In the meantime, an order for his extradition had been lodged and his right of asylum in Germany had been withdrawn. At the end of May (i.e., two months after the end of his official sentence), he was set free after a provincial high court had rejected the extradition of Kaplan called for by Turkey and lifted the warrant for his deportation.

The Turkish authorities accuse Kaplan of treason and terrorism. Until very recently, such offences in Turkey were punishable by the death sentence. Now the sentences are commuted to lifelong imprisonment. Apparently, in 1998, his organisation had planned an attack on the Atatürk Mausoleum in Ankara. According to the provincial high court of the German city of Düsseldorf, confessions obtained by so-called terrorists involved in the affair had been obtained by torture—methods used included “heavy blows, being suspended by the shoulders, abuse of the genitals by crushing or electric shock.”

A report by the Istanbul Institute of Forensic Medicine

found “indications of severe beatings” on the bodies of six supporters of Kaplan. Later, the administrative court in Cologne also decided that Kaplan could not be deported, concluding that the criminal proceedings facing him in Turkey would be illegal. It is not Kaplan, but rather the German state, that is not prepared to accept a clear legal situation and a series of judgements made by German courts.

As if to illustrate who really represents a threat to democratic and constitutional legal practice, German Interior Minister Otto Schily (SPD—German Social Democratic Party) condemned the judgements as a danger for public security: “If we are not capable of expelling a man who has been sentenced to four years in jail then we might as well just give up.” Schily denies that torture and abuse take place in Turkey. His evidence—the Turkish government has told him so.

Schily is not in the slightest bit interested in the fact that, in its last annual report, Amnesty International reported that systematic torture continues to occur in Turkey. A speaker for the organisation has specifically warned that in the case of Kaplan, psychological forms of torture could not be ruled out.

In paragraph 53, German immigration law explicitly states: “A foreigner cannot be deported to a state where there is a concrete danger that this foreigner could be subjected to torture.” In a recent interview on this issue, an executive member of the Turkish human rights organisation IHD responded to the question “Whether in the event of his deportation, could Kaplan expect fair and constitutional legal proceedings?” with the answer “In this case we envisage a risk for his life. In our estimation the probability that Metin Kaplan will be tortured and subjected to bad treatment is very high.”

Nevertheless, at the end of last month, the provincial

high court for the city of Münster decided that there were no major obstacles to prevent the deportation of Kaplan. To the surprise of the German government, however, the court left the question of appeal to the German Supreme Court. The chairman of the panel of judges also insisted that Kaplan be allowed to apply for temporary legal protection against his deportation. The background for this instruction was, as the news magazine *Focus* has reported, the fact that the German interior ministry had arranged, in collaboration with a number of local authorities, to organise Kaplan's immediate deportation on an airplane that had been made available for such an eventuality.

According to the newspaper *Frankfurter Rundschau*, Interior Minister Schily was aware of the deportation plans and that the government had been prepared to accept "a possible conflict over the legal justification for the action." In other words, the interior minister, who is himself a trained jurist, had taken responsibility for deliberately defying legal judgements and handing over for torture and possible death a man who, after serving his sentence, had done nothing other than express his opinion.

According to the *Tagesspiegel*, German authorities also employed dubious methods to ensure the arrest of Kaplan. The judge who instructed immigration authorities in Cologne to arrest Kaplan was not shown the court decision against him in its entirety. The judge said later that if he had been aware of the judgement in its totality, he would not have issued the arrest warrant.

Kaplan, who was not under house arrest and had judiciously fulfilled the conditions imposed after completing his prison sentence (i.e., reporting on a weekly basis to the police), was not in his apartment when the authorities moved to arrest him. Immediately, a Europe-wide warrant was issued for his arrest. Although he had been subjected to 24-hour intensive supervision by intelligence agents, he had slipped through the fingers of the authorities.

One day later, the Cologne administrative court agreed to an express application by Kaplan declaring that his presence in Germany should be officially "tolerated" until a final decision is made by the German Supreme Court. Accordingly, the arrest warrant against him must be lifted. A number of politicians immediately reacted with a volley of abuse against the judgement. Cornelia Sonntag-Wolgast (SPD), chairperson of the parliamentary interior committee, and Berlin's interior senator Eckhard Körting (SPD) attacked the decision. Wolgast declared she was

unable to explain the decision to the average citizen, and Körting accused the judges of displaying "misunderstood liberalism."

The German press and official political circles have undertaken an hysterical campaign against this preacher whose influence is very limited—even amongst supporters of Islamic fundamentalism—and treated him as if he were Osama bin Laden in person. The yellow press shrieked: "Increasing numbers of law-abiding citizens are asking themselves: Why does nobody arrest this criminal?" The speaker for the Green Party parliamentary fraction on interior affairs, Silke Stokar, retorted with indignation: "The constitutional state is being made to look silly."

The speaker of the SPD for interior affairs, Dieter Wiefelspütz, called for the lifting of the existing separation between the police and secret services. Police, he said, must have access to investigations carried out by the intelligence services and be more involved in preventive policing. In fact, the separation of secret services and police is anchored in the post-war German constitution and was a principal reaction to the role played by the Nazi secret police, the Gestapo, in spying on, arresting, torturing and executing political dissidents.

Conservative leader Edmund Stoiber has demanded that conditions be created to "make short work" of persons like Kaplan. In an interview, the prime minister of the State of Hessian, Roland Koch, also called for harsher laws, house arrest and preventive detention. The interior minister for the state of Lower Saxony once again raised the issue of electronic ankle-tagging.

German Interior Minister Schily and representatives of the conservative opposition parties are demanding a renewed discussion on the introduction of "protective incarceration" for so-called "terrorists and extremists" (i.e., years of imprisonment for political undesirables). In Germany, this was formerly termed "preventive detention." It is presently being practised in Guantanamo and similar detention centres.



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