

Germany Interior Minister Schily seeks introduction of preventive detention

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In a recent newspaper interview Federal Interior Minister Otto Schily (SPD-Social Democratic Party) urged new laws along the lines of those already in force in Great Britain allowing the preventive detention of persons for months at a time even if there is no proof that they have committed, or intend to commit, a criminal offence. Prominent politicians from the conservative opposition in Germany supported Schily's proposals and announced they would put them into effect should they emerged as victors in federal elections planned for this September.

In an interview with the *Süddeutschen Zeitung* on August 3 Schily declared those persons to be “dangerous, who one cannot deport because of the threat of the death penalty or torture in their homeland, or because they are German citizens.” His concern applies to cases where there is “no concrete evidence of a criminal offence” and therefore no basis for instigating a preliminary investigation. The state should be allowed to imprison such persons “to ward off danger and for the security of the population.”

Such a measure represents a major step towards a police state. How can someone be so dangerous that he can be locked up, even if there is “no concrete evidence” that he or she intends to commit a criminal offence?

The interior minister then gave the example of a person whom the state knows to have attended a training camp in Afghanistan and has connections to bin Laden. This is usually insufficient for a preliminary investigation, but in future—according to Schily—it must be enough, nevertheless, to lock up such a person.

Critics of Schily's initiative pointed out that according to existing German law (introduced in 2002) it is already possible to proceed against someone declared to be a member or supporter of a terrorist

group. Whoever is regarded as “strongly suspected” of such a criminal offence can be currently remanded by the police.

Strong suspicion means that based on the concrete facts of the case there is a large probability that the suspected act will really be committed. A preliminary investigation can be instigated according to present statutes when “sufficient actual evidence is present”, i.e., that the facts indicate that the committal or participation in a criminal offence *appears to be possible*. In addition, German state police regulations also allow for preventive detention to prevent an imminent criminal offence.

Schily therefore is attempting to legalize the arrest and detention of persons for whom there is no evidence to indicate that they have committed, or will commit, a crime. Vague suspicions on the part of the police and secret services are to be sufficient for imprisonment.

In line with the example given by Schily, a terror suspect could be locked up if he was acquainted with the “wrong people” and thus had “suspicious” connections or undertakes journeys to countries which have fallen into disfavor with the intelligence services. Even the most harmless of activities can be construed as the basis for detention, and the state only has to claim that a person is “dangerous” and could possibly commit crimes of terror at some time. In flagrant violation of all existing legal principles, the detainee must then prove his innocence.

This latest initiative has to be seen in connection with further projects put forward by Schily. Already in existence is the exchange of information by the criminal police, the German intelligence services and foreign intelligence services via a central information center. If the plans for preventive detention were brought into force then the police would be able to

arrest and detain persons regarded as “dangerous” to the state—merely on the basis of information (which need include no grounds or evidence) provided by the intelligence services.

Schily’s assertion that cases of preventive detention should be subject to judicial examination has little value. If the proposed law comes into force then virtually every detention could be justified. No court would be able to overturn such a law.

The right-wing Bavarian Interior Minister Günter Beckstein welcomed Schily’s initiative, as did the vice chair and interior spokesman of the CDU (Christian Democratic Union) parliamentary faction, Wolfgang Bosbach. Both men announced their intention to implement such a regulation in the event their party wins the election. At present, the free-market FDP (Free Democratic Party) and the Greens reject Schily’s proposal.

The Green parliamentary deputy Hans-Christian Stroebele even compared “preventive detention” with the “protective custody” widely used by the Nazis. Throughout the Third Reich the arrest and detention of political dissidents in prison and concentration camps by Gestapo (secret state police) was commonplace—in order to “protect” the population.

Despite their qualms over this latest piece of proposed legislations, the Greens—together with the FDP and the newly formed “Left Party/Party of Democratic Socialism”—have repeatedly supported undemocratic laws when acting as coalition partners—usually after one or two minor and cosmetic alterations to the laws had been made.

Even if Schily acknowledges that currently he has no majority for his plans, that can quickly change. And no one should be deluded that the legislation will “only” apply to foreign Islamists. Schily has already made clear that he is also seeking preventive detention for German citizens. Today “Islamic extremists” are judged to be “dangerous,” tomorrow it could be socialist opponents of the government.



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