

# German Interior Minister questions the presumption of innocence—with support from the SPD

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A recent press interview, in which German Interior Minister Wolfgang Schäuble (Christian Democratic Union, CDU) questioned the legal right to the presumption of innocence and the prohibition on torture, unleashed a protest from those concerned with data protection, human rights organisations, and lawyers. On the other hand, Schäuble received the backing of some Social Democratic Party (SPD) politicians for his proposals.

Schäuble's interview with *Stern* magazine was a deliberate provocation, aimed at advancing and defending his plans to expand the state's police powers. He curtly dismissed any reference to the protection of personal privacy, to the rights of the individual to control what information is collected about them and other individual rights as hysteria and proposed a new definition of freedom: "freedom from existential threats by international terrorism."

Every despot and dictator would be satisfied with such a definition of freedom, since the claim to be protecting citizens from alleged or genuine threats is always used as a justification for massively increasing the powers of the state apparatus, which is the hallmark of such regimes. Schäuble conveniently forgets that the concept of freedom as it was developed in the period of the Enlightenment above all meant the freedom of the individual from state control, intimidation and suppression.

At the conclusion of the interview, Schäuble placed a question mark over the presumption of innocence, an elementary constitutional principle, according to which a suspect is presumed innocent until his or her guilt is proven.

This principle cannot apply in the fight against terrorism, Schäuble claimed, and justified this with the words, "The presumption of innocence essentially means that we would rather let ten guilty people go unpunished than punish a single innocent person. Such a principle cannot apply to the prevention of crime. Would it be right to say: Rather let ten attacks happen than try to prevent someone who might perhaps not commit an attack? In my view, that would be

wrong."

Beside numerous CDU politicians, Schäuble also received the support of several Social Democrats. SPD domestic affairs spokesman Dieter Wiefelspütz told the press that every lawyer learns in their second semester that the presumption of innocence only applies in criminal cases, but not for the police dealing with preventing crime.

The chairman of the Conference of State Interior Ministers, Ehrhart Körting (SPD), accused those who opposed Schäuble of "hysteria." He also claimed that Schäuble was not questioning the presumption of innocence in criminal cases, but was referring only to preventing crime.

Asked by the press, "As an SPD man are you defending your CDU colleague?," Körting answered, "Naturally I am defending him. This is an absolutely hysterical discussion that is being conducted."

If, when seeking to prevent crime, there were a presumption of innocence, Körting continued, "we could not place a single drug dealer under observation until we could prove they were dealing drugs—they would be able to point to their right to the presumption of innocence." He would not be able to refuse entrance to a stadium by a gang of hooligans, because nothing had happened yet. "Even the chimney sweep would be unable to check whether your chimney was discharging too much CO<sub>2</sub>. In brief: If there were a presumption of innocence in the preventing of crimes, then there would be no prevention."

Körting assumes that those reading his words are ignorant. It is not a matter of a presumption of innocence in crime prevention, but the fact that Schäuble has been systematically blurring the boundaries between crime prevention and the criminal law, undermining the legal safeguards protecting an innocent person from arbitrary actions by the state.

As Heribert Prantl, the lead editor of the *Süddeutsche Zeitung* and a former public prosecutor and judge, writes: "Schäuble's argumentation dissipates the boundaries of the

criminal law. Criminal law and police powers then flow together into a uniform right of internal security, in which the previous ground rules (at least within certain areas such as terrorism) no longer apply.”

“What is prohibited under the criminal law,” Prantl explains in another place, “is then simply done as a matter of police action—to search, wiretap, arrest.”

Like the Bush administration in the US, Schäuble justifies his attacks on elementary rights with reference to an all-pervasive terrorist danger. On April 25, in the Bundestag (federal parliament), he brusquely rejected any criticism of his course. The threat of terrorism is “unfortunately, no small thing,” he said, referring to recent US warnings of an increased terrorist danger. For its part, the US embassy in Berlin had issued these warnings under reference to German sources, including the Federal Criminal Investigation Office. Schäuble now explained: “We share the estimations of the Americans.” One hand shakes the other.

According to Schäuble’s conceptions, if someone is suspected of “terrorism”—a category so ill-defined that it might at some point include any political activity deemed undesirable to the German state—they automatically lose the right to the presumption of innocence and the associated legal protections. They are then no longer the subject of a preliminary investigation (during which the presumption of innocence applies), but of a crime-prevention action. According to Prantl, Schäuble is introducing a sort of special law for the enemies of the state: “The normal criminal law with its constitutional rules is there for the ‘normal’ citizen. The other one, the radical law, is for all enemies of the state.”

But who is a “normal citizen” and who is an enemy of the state? Looking at Schäuble’s plans for the comprehensive surveillance of the entire population, only one conclusion is possible: Nobody is innocent. In principle, everyone is considered a potential “danger”; only, they are “not yet” guilty.

Schäuble proceeds similarly regarding the prohibition of torture. In principle, he “strictly” rejects torture, he told *Stern* magazine. “However, if the intelligence services receive information from other services, which possibly helps us to repel a very great danger, I will not ignore this information just because it cannot be guaranteed that it was obtained completely legally. That would be absurd.”

In this question too, Schäuble has received the support of his social democratic colleagues. Ehrhart Körting (SPD), who is also interior minister in the Berlin city legislature, said if he received information from Iran that a possible terrorist was intending to unleash a poison attack in the Olympia stadium, “should I do nothing, since I know that torture is practiced in Iran?” That would be to commit

“terrorism against reason.”

A clearer signal could not be sent to those governments that engage in torture that these practices are welcome. From here, it is only a small step to kidnap suspects and send them to such states, in order to let them be tortured—as Washington has long done under the system of “special renditions.”

The erosion of democratic rights and the extending of the state’s powers have gone a long way in Germany, too. Schäuble’s social democratic predecessor Otto Schily introduced an extensive catalogue of such measures: Extensive bugging operations, police dragnets, the expansion of telephone tapping, the air security law, biometric passports, anti-terrorism data bases and an anti-terrorism centre, secret service access to private bank accounts. Even online searches of private personal computers without any clear legal basis already happened under Schily, as has now become known.

But Schäuble wants more. He wants the seamless organisation of monitoring using the newest technology, and establishing a legal basis for the entire security system and the powers of the police and the secret services along the lines of the aliens act. Since foreigners were already subject to total monitoring under Schily, for the German state, they were and are “suspicious” per se. The presumption of innocence or data protection has long since ceased to exist for them. More than 23 million files containing personal data, including fingerprints and pictures, are stored in the central aliens register, accessible by 6,000 different authorities, among them the police and secret services.

The Bundesmelderegister (a federal register of all German citizens residing in Germany) is to fulfil the same role in Schäuble’s plans. According to the planned passport law, this register should also centrally store the fingerprints and passport pictures of all German citizens, making them available online to the authorities.

For Schäuble, Körting and Wiefelspütz, the danger of a terrorist attack serves as the pretext to develop the state’s ability to monitor all its citizens. They are preparing for the inevitable resistance that must develop to the social, domestic and foreign policies of the grand coalition of the CDU and SPD in Berlin.



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