

German parliament expands law on sexual crimes

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On July 7, the German parliament unanimously passed a massive expansion of the law covering sexual crimes. This legislation represents an escalation of a deliberate campaign to exploit an emotionally charged issue with the aim of strengthening the state and scapegoating refugees.

The revision of paragraph 177 of the criminal law code prescribes a punishment of up to five years in prison for sexual behaviour contrary to the “manifest wishes of another person.” The wishes of a person can be communicated through statements, but also through facial or bodily gestures.

The media has defended this change with the claim that it was previously necessary for the victim to actively defend him or herself for the legal definition of rape to be satisfied. This is false. In actuality, the legal definition of rape previously required the presence of coercion—that is, either violence had to be exercised, posing danger to life and limb, or the victim had to be in a defenceless state. So-called conclusive action could also fit the definition of coercion. That is, coercion was already considered to be present if the victim was able to tell from suggestions, gestures or glances from the perpetrator that he or she would be threatened with violence for not complying.

In fact, the change in the paragraphs on rape has a different purpose. Whereas coercion was previously defined in a way that was at least somewhat objective, its previous definition is now being replaced with the vague formulation “manifest wish.” It remains entirely unclear under what circumstances a wish is “manifest,” who determines how it is manifested and whether the perpetrator himself recognises it.

Even the president of the German Judges Association, Jens Gnisa, criticised the law in the *Osnabrücker Zeitung* for not being formulated clearly enough. As a consequence, it is “to be feared that there will be serious problems with the application of the new requirements in this sensitive area of criminal law.”

In reality, the paragraph is purposely vague. “Heiko Maas is a minister of justice, who loves very vague criminal law,” commented the left-liberal criminal lawyer Monika Frommel on *Deutschlandradio Kultur*. “Accordingly the aim is not lead to a punishment at all, but rather legal paragraphs.” The replacement of a clear definition of coercion with the violation of a “manifest wish” not only makes it easier to press charges and initiate an investigation, but opens the floodgates to whims

on the part of judges.

Along with the creation of such empty paragraphs, the new law on sexual crimes massively expands what is considered a criminal act. The criminal act of “sexual harassment” in paragraph 184 is entirely new. Someone who touches another person on the behind, breast or genitals, without sexual coercion, can now be punished with a fine or a prison term of up to two years. Previously, such behaviour was dealt with as an insult.

The character of the changes in the legislation is especially clear in two additions that have been included, at short notice, in the new law. Paragraph 184j now says: “Anyone who belongs to a group of people who throng around someone in order to commit a crime will be punished with a fine or prison sentence of up to five years, if a member of this group commits a crime according to paragraph 177, 184 I StGB.”

This is a fundamental attack on basic democratic rights. The issue here is not one of premeditated conspiracy or accessory, which are already punishable anyway. It is about, for example, a case in which a group decides to steal a smartphone. While the victim is surrounded, a member of the group commits sexual harassment without the knowledge or endorsement of the others. Although the other members of the group have nothing to do with this crime, they can all be punished for it. This cannot be reconciled with the principles of the rule of law, but instead recalls collective punishment.

The German parliament linked the redrafting of paragraph 177 to the reactionary deportation law passed in February of this year. This law, which made it easier to deport refugees, included a rule according to which certain crimes can result to a so-called serious interest in deportation, regardless of the severity of the imprisonment imposed for the crime itself. This law was applied even to youth and was applied, in particular, in cases of sexual offence.

The rule was originally used in conjunction with the old version of paragraph 177. However, the German parliament has now decided that it should be applied in conjunction with the changed law. Since the new law not only covers coercion, but also lesser offences, an unwelcome kiss from a youth could conceivably lead to deportation. On the other hand, theft can only lead to deportation in cases of repeat offence.

The deportation rule is the real motivation behind all of the changes to the law on sexual offences. The purpose was never to protect people from sexual attacks. Back in January 2015, criminal lawyer Monika Frommel argued convincingly that the criminal law in this sensitive area is also of little help to the victims in borderline cases. She pleaded instead for civil rights protections against harsher criminal punishments.

More generally, social problems such as petty crime, street violence or sexual assaults cannot be solved with more severe punishments and the strengthening of the state. Rather, the militarisation and brutalisation of society serves as the breeding ground for such problems, and growing social inequality and ever more aggressive war policies produce such perpetrators.

The extreme right has always specialised in the exploitation of these emotionally charged issues in order to portray social problems in terms of individual responsibility and to call for a strengthening of the state. The fascist NPD regularly leads campaigns under the motto “defence of victims instead of defence of perpetrators” or “maximum penalty for child abusers.” The far-right “Citizens Movement for Germany” attacks this “soft justice” and demands preventive detention for all sexual offenders.

Such initiatives have now become acceptable to broad sections of the political establishment. The new legislation represents an escalation of the campaign to combine racist propaganda against refugees with the demand for a strong state.

This campaign commenced with the so-called “events in Cologne,” which were purposely exaggerated by the media in order to create a mood hostile to refugees. As before, there is no proof that anything more took place on New Year’s Eve at the main train station in Cologne than the type of attacks, theft and vulgar behaviour that unfortunately frequently accompany such large events.

A half-year later, the Federal Criminal Police Office (BKA) has now published a report acknowledging that only 120 suspects have been charged in the entire country because of the events in Cologne and similar events in other cities. Of these 120, just 4 people have been found guilty so far. The police could find no evidence of criminal conspiracy to commit these crimes. Nevertheless, the BKA claims that an estimated 2,000 people took part in the attacks, half of whom have not lived in Germany more than a year. How the police can claim to be able to determine how long people they are unable to identify have lived in the country remains a mystery.

However, all of the large newspapers have published the BKA numbers and quoted the head of the agency, Holger Münch, who said that there was “a connection between the emergence of this phenomenon and the large immigration numbers in 2015.” Immediately following New Year’s Eve, the same newspaper published racist articles and caricatures that showed black men sexually assaulting white women.

Representatives of all of the parties in parliament have taken part in the campaign. The faction leader of the Left Party, Sahra

Wagenknecht, said with regard to Cologne: “Anyone who abuses the right to hospitality has forfeited the right to hospitality,” and demanded the deportation of criminal refugees.

The Green Party mayor of Tübingen, Boris Palmer, remarked to *Die Welt* on the BKA report that the attacks in Cologne were “something fundamentally different” from similar attacks during Oktoberfest, since the perpetrators came under the protection of a large flux of refugees to Germany. “The New Year’s Eve attacks have something to do with taking in refugees without registration and oversight,” he said. “One has to be able to say this sentence without having to hear immediately: then join the AfD [Alternative for Germany]!” said Palmer.

Given the clear unity among these parties, it is no wonder that the new law was passed without any opposition. The Greens and the Left Party abstained. Both of these parties explained that changes had been added that they did not wish to support openly. Nevertheless, they said that they fully supported the expansion of the law on sexual crimes.

In reality, both parties have played a central role in the entire campaign. They have mobilised feminist organisations to call for harsher punishments. The new law does not strengthen the rights of women, however, but rather that of the social apparatus.

The fact that all of the parties worked together on this legislation is a result of growing social tension. The political elite is reacting to the intensification of class opposition by closing ranks, strengthening the state and discarding the last remnants of its liberal sentiments.



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