

More restrictive laws target refugees after Berlin attack

Martin Kreickenbaum**14 January 2017**

Less than three weeks after the terrorist attack on a Christmas market in Berlin, Justice Minister Heiko Maas (Social Democrats, SPD) and Interior Minister Thomas de Maizière (Christian Democrats, CDU) have agreed on a number of more restrictive laws targeting, above all, refugees and migrants. A dramatic expansion of deportation detention is planned, as well as a tightening of residency regulations for asylum seekers and the introduction of electronic tags for so-called “potential threats.”

“The protective rule of law is the best answer to the hatred of the terrorists,” Maas stated at the press conference following consultations with de Maizière. Both ministers also got backing from Chancellor Angela Merkel (CDU), who announced on Monday that the government would rapidly draw the appropriate conclusions and “really [show] its true colours” on questions of internal security. In fact, the current tightening of regulations represents an assault on basic democratic principles and clears the way for the creation of thought crimes and the concept developed by Nazi jurist Carl Schmitt of enemy criminal law.

In total, Maas and de Maizière have agreed on nine measures.

The restriction on detention pending deportation for those obliged to leave the country, among those who cannot be deported within three months, is to be lifted. As a result, any rejected asylum seeker could end up behind bars for up to 18 months even if they have committed no crime.

In addition, custody prior to departure, a form of internment ordered by a court to ensure the deportation of a refugee, is to be lengthened from the current maximum of four to 10 days. This measure, which was only established in July 2015, will also be used much more frequently. According to the wishes of de Maizière, a large number of detention centres will be built close to airports. Refugees taken into custody prior to departure will be gathered there and deported.

Even more significant is the introduction of a new legal justification for detention pending deportation. Thus far, detention pending deportation, referred to legally as

“security detention,” could only be ordered if a foreigner was obliged to leave and it could be proven that he or she wanted to avoid deportation. For this, the suspicion that someone poses a “terrorist threat” or “a significant threat to security” will be sufficient, as de Maizière explained.

This refers to “potential threats,” a concept that has no legal basis. It actually refers to people whom the police or intelligence agencies suspect of representing “a danger to public security,” without any firm grounds for that suspicion existing. The Federal Criminal Agency (BKA) reportedly counts some 550 people as being “potential threats,” of whom less than half live in Germany. Only 62 of them are, in fact, obliged to leave the country.

The term “potential threat” was introduced in September 2001 under the anti-terrorism law implemented by then Interior Minister Otto Schily (SPD). In immigration law, Schily introduced the concept of a “threat to public security” as an additional reason for deportation. On the basis of a simple suspicion that someone supported a terrorist organisation and poses a threat to security, asylum applications could be automatically dismissed since this change.

Maas and de Maizière are pushing this regulation to the limit by effectively removing the presumption of innocence for foreigners. They can now be detained for up to 18 months without having been legally convicted of a criminal act or even being suspected of a specific crime.

This thus amounts to the creation of a system of enemy justice, whose traditions go back to the jurist Carl Schmitt, who used it to provide juridical cover for the crimes of the Nazis, and finds its contemporary expression in the US prison camp in Guantanamo, Cuba.

Detention pending deportation is thus returning to its historic roots. It was first introduced into German law in May 1919 in Bavaria after the suppression of the Munich Soviet Republic. Detention pending deportation served at that time as a preventive measure against the activities of foreign socialists so as to block revolutionary upsurges. In 1938, the regulation was adopted word for word by the

Hitler regime and written into the policing order on foreigners, where it survived beyond the end of the Nazi regime and remained as law in the Federal Republic until 1965.

The surveillance of “threats” by means of an electronic tag, agreed to by Maas and de Maizière, leads in the same direction. Originally, the justice minister only wanted to use tags on criminals who had been convicted of terrorist crimes and released from custody. But instead, this drastic attack on personal freedom will be expanded to include the simple suspicion that a person could pose a threat.

However, criminologists and jurists question whether this will bring any benefit to security. The former president of the Constitutional Court in North Rhine-Westphalia, Michael Bertrams, views the electronic tag and the use of detention pending deportation on “threats” as a clear violation of Germany’s Basic Law. He wrote in the *Kölner Stadtanzeiger*, “The preventive detention or internment of threats, who are seen as innocent before the law, cannot be legitimised in a state under the rule of law. I doubt whether a law regulating this would pass judgement with the Federal Constitutional Court.”

But this has not troubled the ministers for justice and the interior, whose offices are actually supposed to protect the constitution. On the contrary, Maas already signalled prior to the announcement that democratic rights ought to be jettisoned. He stated that “confirmed threats who are obliged to leave must be deported as quickly as possible. To ensure the deportation of ‘threats,’ we must take them into detention pending deportation. Detention pending deportation ought therefore to apply to ‘threats’ in the future when their state of origin fails to cooperate with repatriation.”

Additional legal changes agreed include the tightening of residency requirements for asylum seekers who make false claims about their identities. This will mainly affect civil war refugees unable to travel with identification documents or who were compelled by smugglers to dispose of them.

States refusing to accept rejected asylum seekers from Germany will face sanctions in the future, either by cutting development aid or increasing requirements for their citizens to obtain travel visas. Maas said at the press conference, “We must increase the duties placed on countries of origin. We should not exclude the cutting of financial aid. It must be clear that whoever does not cooperate will be sanctioned.”

The two ministers explicitly avoided dealing with the plans previously presented by de Maizière to radically restructure Germany’s security agencies by centralising them and to do away with the separation between the police and intelligence agencies. These demands, contained in his guidelines for a

strong state, aim to transform Germany into a police state.

But this is how legal changes are enforced which do away with basic democratic rights, particularly for refugees and immigrants. The Berlin attack is being systematically exploited to place foreigners, refugees and immigrants from North Africa in particular under a cloud of suspicion and massively strengthen the state apparatus.

The deployment of police during New Year’s Eve in Cologne, which implemented personal checks on people based on their obviously non-German appearance and issued bans on them being present in the local area, was welcomed by all parties represented in parliament as a harsh but necessary measure to deal with allegedly aggressive foreigners willing to use violence.

In the case of Anis Amri, the police and intelligence agencies had close contact with the alleged Berlin attacker over a period of many months and knew a great deal about his intention to conduct a terrorist attack. The attack, which killed 12 and injured dozens more, occurred under the noses of the security agencies and raises the question as to whether Amri was allowed to strike in order to provide a justification for the reorganisation of the security authorities and a drastic restriction of basic democratic rights.

But virtually nobody is questioning this. The reason is that all of the political parties agree on the abolition of democratic rights, the expansion of surveillance and police powers, and the centralisation of the security agencies. This not only applies to the governing parties, but also to the Left Party and Greens.

After Green chairwoman Simone Peter was publicly savaged for her criticism of the Cologne police on New Year’s Eve, all party leaders are now demanding an expansion of video surveillance and an acceleration of deportations.

Left Party leader Sahra Wagenknecht has in the meantime adopted the slogans of the far-right Alternative for Germany (AfD) and blamed the influx of refugees for the Berlin attack. As she put it, “Along with the uncontrolled opening of the borders, the police have also been cut to the breaking point, and no longer has the personnel or equipment appropriate to the threat level.”



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