German justice minister proposes internet censorship legislation

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Under the pretext of combatting “fake news” and “hate speech” on the internet, Justice Minister Heiko Maas (Social Democratic Party, SPD) is planning a massive attack on free speech.

On March 14, Maas presented a draft of a so-called network enforcement law (NetzDG), which imposes extensive surveillance and censorship responsibilities on commercial social networking sites such as Facebook and Twitter. If the draft becomes law, such sites will be required to react immediately to complaints and block “obviously illegal content” within 24 hours. Other illegal content must be erased within seven days.

The corporations will have to decide on their own what is “illegal” and, to this end, they will have to set up a contact office in Germany. The law would turn them into “investigators, judges and executioners over free speech,” as the platform Netzpolitik.org writes.

If they do not live up to their duty to delete content, they are threatened with draconian fines of up to €50 million. These fines are left to the discretion of the Federal Office of Justice and can be imposed even in the case of a single offense, regardless of whether it is intentional or the result of negligence.

The law would apply to social networks that have at least 2 million users registered in Germany. However, the definition of a social network is so broadly formulated that, in addition to Facebook, Twitter and YouTube, other services such as Whatsapp and Skype, and even larger email providers and file hosting sites, could fall under its purview.

The providers would be required not only to delete content, but also all copies of it, and would have to prevent it from being uploaded once again. At the same time, the content would have to be saved, possibly indefinitely, “for evidentiary purposes.”

The provider would be required to inform the user about the deletion and would be required to justify the decision, but a “multiple choice justification form” would suffice. If the user does not agree with the deletion, he would have to spend months, or even years, on costly legal proceedings. During this time, the deletion would remain in force.

The draft legislation includes more than a dozen clauses whose violation would lead to deletion. In addition to “open calls to commit crimes” and related offenses, it lists libel, defamation, slander, disparagement of the German president, and insults to religious communities.

As the Berlin law professor Niko Härting remarked, the law is about “unlawful” and not “punishable” content. He insists that this is an important difference. Härting fears that the law will lead to a situation in which the “scope of criminal prohibitions” will be “expanded considerably,” and that the new law will make it much easier to forbid certain statements.

Whether a statement is insulting, disparaging or defamatory has often been the object of a lengthy process of legal dispute. Not infrequently, charges and court actions have been employed in an effort to criminalize and silence personal and political opponents. The Federal Constitutional Court in Karlsruhe has repeatedly, though not always consistently, come to decisions that emphasized the value of free speech.

A well-known example is a decision of the Federal Constitutional Court in 1995. It decided that the statement by the German-Jewish journalist, satirist and writer that “soldiers are murderers” does not constitute libel, and it authored a decision to this effect. The legal dispute over the poem by the satirist Jan Böhmermann about Turkish President Erdogan is ongoing.

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The extremely short inspection period combined with the threat of draconian fines makes it likely that corporations like Facebook or Google will react to reports of supposedly criminal content by erring on the side of caution and deleting it. Every sharp, critical, polemic, ironic or satirical post on a social network would "vanish" in no time.

The internet and the social networks on which people publicly voice and exchange views independently of the official political institutions, parties and media, have long been a thorn in the side of the ruling elite, which views the right to freedom of speech as a threat.

The draft legislation addresses this quite openly. "Hate criminality"—according to this law almost everything—"that cannot be combatted and pursued effectively, threatens peaceful coexistence in a free, open and democratic society," it says. Then the American election is openly invoked as an example: "After the experience in the US election, the combatting of punishable false reports ('fake news') has also won high priority in Germany."

To this end, corporations valued in the billions will be tasked with suppressing disagreeable statements and opinions. A lengthy court process, in which a decision in favour of free speech might be reached once again, will be replaced with a short process: a report, followed by deletion and justification by multiple choice.

Several critical journalists have also noted that the real concern of the Justice Minister is the suppression of free speech and criticism. Harald Martenstein wrote an article for *Tagesspiegel*, "Where the government decides what is 'truth' and what is 'fake', we are in despotism. But precisely now, while we are still excited about Erdogan, Erdogan methods are being prepared here in this country. Justice Minister Heiko Maas has presented draft legislation that reads as though it came from the novel *1984.* "

On the other hand, representatives of the two ruling parties, the SPD and the Christian Democratic Union (CDU), welcomed the planned legislation. Moreover, in the view of the Green Party, which is an opposition party to the government, the law does not go far enough.

Green Party parliamentary representative, Renate Künast, who is the president of the Parliamentary Committee for Law and Consumer Protection, told the German radio station Deutschlandfunk that it is a problem that the draft legislation "only covers punishable content"! She also wants to suppress free speech that is explicitly not punishable.

Künast left no room for doubt that for her the point of the law is to silence oppositional voices in the population: "With 30 million Facebook users in Germany, all of this vulgar behaviour, even when it is not punishable, has an impact on real and virtual life. It has an influence. Even mayors are resigning because they are being molested."

In addition, she advocated viewing social media providers like newspapers and radio stations, which are made directly responsible for the content they bring to the public. This would lead in effect to a comprehensive review of all content and self-censorship in advance of publication rather than afterwards.

The legislation proposed by Justice Minister Maas and the criticism of it by former Green Party Minister of the Environment Künast are indicative of the attitude to basic democratic rights of a future red-red-green federal coalition government. Such a government would not have the slightest interest in defending democratic principles.

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