

German government approves new law on sexual offenses

By Justus Leicht
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The German government approved a legislative package last week that includes a number of changes to the criminal law sharpening the punishment for sexual offenses. Minister of Justice Heiko Maas (Social Democratic Party -- SPD) led the way in making the changes.

The measures were justified mainly in terms of the protection of children and young people and bringing German law into correspondence with European Union legal precepts.

The background to these measures, however, is the witch-hunt against the SPD member of parliament Sebastian Edathy, who resigned his post as chairman of the official investigation committee in to the crimes of the NSU neo-fascist terror group. Edathy resigned after he was accused of having child and youth pornography in his possession.

Edathy has denied that the photographic and film material confiscated from him was illegal. Although there has been no legal evidence to the contrary to this day, the public prosecutor in Hannover made the charges against Edathy public, thereby ruining his career and reputation. The SPD has also publicly denounced him.

The tightening of laws by the federal government will give the state much more extensive powers to investigate and stigmatize people as sexual criminals.

It will now be possible to imprison for up to two years people “who take an unauthorized photograph of another person, which might seriously harm the reputation of the photographed person, or who produce or transmit a photograph of another person who is unclothed”.

Turning these acts into criminal offenses is deeply undemocratic and, moreover, has nothing to do with the concept of protecting of children and youth as

claimed by Maas.

“Harm to the reputation of a person” is such a malleable formulation that it can be used to criminalize the documenting of any inappropriate behavior. Compromising photographs of the corrupt or demagogic behavior of politicians or snapshots of police brutality can be criminally prosecuted under this statute.

A photograph of an unclothed person can be considered unauthorized as long as neither the person nor the legal guardians have no demonstrable proof of permission. Photographs of children on the beach or at a swimming pool bring with them the danger of police persecution and investigation whenever strangers or the children of other families are present as well.

Several legal experts have opposed the regulations, the *Legal Tribune Online* reports. Association of German Lawyers President Dr. Wolfgang Ewer, for example, spoke of a “disproportionate tightening of the law, when the threat of punishment is imposed on the activity of taking photographs in private space without any culpable intentions.”

Criminal Law Professor Dr. Monika Frommel said that Maas' plans in this regard are “inspired by American prudishness” and are on the level of the 1950s “with regard to the safeguarding of legal guarantees such as the requirement of definiteness (the responsibility to formulate encroachments on the Basic Law precisely).” She holds it as an “evident violation of the constitution” to connect neutral behavior such as taking photographs of naked people in a non-sexual context with sexual crime.

The director of the German Society for Law and Informatics in Cologne, Professor Marco Gercke, criticized the law as follows: “The chosen wording is very broad. .. one does not need a lot of imagination to

see how, for example, prominent individuals will be able to react to disadvantageous photographs whenever they think that these photographs will seriously harm their reputations. That is in general alarming when it restricts effective journalistic reporting. And it is doubly alarming to use criminal law to prevent such photographs from being taken in the first place.”

The draft law of the German federal government actually breaths fresh life into a law from the 1950s and even the nineteenth century, when laws about sexuality were used to persecute politically unpopular individuals through the legal system.

There is much to indicate is a connection between Edathy's role in the NSU Investigation Committee and his abrupt downfall. From January 2012 to the autumn of 2013, he led the Bundestag's investigation into murders carried out by the neo-Nazi group under conditions in which it was infiltrated by dozens of undercover agents. After repeatedly clashing with leading security officials, his political career and personal reputation were destroyed by leaks from the same security apparatus, even though no criminal charges have been brought against him.

Now the social democratic justice minister has a law at his disposal that reopens the door to such despotism.

With this measure, the SPD is breaking not only the liberalization of the prosecution of sexual crimes, which it defended in the 1970s. It has also produced a law that will serve the state as a precursor to deeper attacks on democratic rights.

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