

Freedom vs. Security:  
Guaranteeing Civil Liberties in a World of Terrorist Threats

Speech  
by the Federal Minister of the Interior  
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Few things are more motivating than the hope of freedom and the ability to live as one chooses. This hope encourages us to try new things, to overcome obstacles. But if freedom exists only on paper, it isn't worth much. Nor should freedom be unrestrained. We must be able to put it into practice, and this requires rules and a system of order. Some may view the total absence of rules, of an ordering authority, as absolute freedom. But that is not a democratic view. Without rules, only the strongest, the ones who are able to get their own way, would be free. For everyone to enjoy it, individual freedom requires protection. Freedom without rules is always in danger of self-destruction, as the international financial crisis has once again reminded us.

Protecting the freedom also of the weak is the core task of the state and the main reason for its monopoly on authority. Already in the 17th century, Thomas Hobbes argued that individuals voluntarily hand over some of their freedom to a state authority, because only the state's monopoly on authority can guarantee peace and with it the freedom of its citizens. This is obvious in failed states: No one would seriously argue that it is possible to live in freedom e.g. in Somalia.

In Germany, our bitter experience with the criminal Nazi regime led us to put the guarantees of fundamental, individual liberties at the very beginning of our constitution. We understand these fundamental rights not only as the right of defence against state intervention, but also as the state's duty to protect the rights guaranteed by the constitution. People can take advantage of the opportunities offered by an open soci-

ety only when the state ensures enough security. So freedom and security are not mutually exclusive, but two sides of the same coin.

When protecting personal freedom, the state must deal with constantly changing conditions. We live in a highly globalized, interconnected world. To mention just a few keywords: information available round the clock from the Internet; open markets; global communication and international mobility.

With these developments comes an unbelievable expansion in possibilities for action and thus more personal freedom. Also the state has played a role here: Simplifying the cross-border movement of persons and goods and abolishing checks of persons at the internal Schengen borders requires legal, usually international solutions. And the Internet grew out of a government project in the United States.

When living conditions change, so do the threats we face: Criminals also take advantage of easier communication and open borders. Until the Cold War ended, an attack by a foreign country represented the greatest threat to national security. Today we face terrorist threats and asymmetric warfare as new challenges.

According to the EU Terrorism Situation and Trend Report 2009, which Europol presented earlier this year, 187 suspected Islamist terrorists were arrested last year in the European Union alone. Terrorists have also set their sights on Germany. In July 2006 we were lucky when two suitcase bombs placed on trains failed to detonate. And last year, the security authorities foiled plans by the so-called "Sauerland group" which had collected twelve 60-litre vats of hydrogen peroxide to carry out attacks on Americans in Germany. The group is currently on trial. Their extensive confessions yield deep insights into the organization and methods of Islamist terrorism.

The goal of terrorist violence is far more than concretely measurable damage. Terrorists don't care about the people who become their victims; victims are only a means to an end. The victims' suffering, their obvious helplessness is intended to strike at the state, to depict it as powerless, to destabilize it and create a climate of fear. This is why it doesn't help to compare the number of victims with the number of traffic fa-

talities or of those killed by smoking. Terrorism represents an entirely different kind of risk due to its enormous potential to harm our liberal order.

The terrorist threat has a direct impact on the public's freedom of movement and action through what we call a "chilling effect". In the debate on video surveillance of public areas, for example, when people argue that such surveillance restricts civil liberties, we should remember that threats to personal safety also restrict civil liberties. Who is less free: the person who avoids certain areas because of security cameras, or the person who avoids certain areas due to fear of crime or attacks?

Islamist terrorism wants to weaken liberal democracies and the rule of law, and to limit the freedoms they guarantee. The Islamist worldview sharply rejects the open society, with its liberal values and rule-of-law principles which are the mark of Western-oriented democracies today.

In order to preserve the achievements of the open society, whose members are free to live as they choose, we must prevent a climate of fear. In such a climate, diversity would be seen not as enriching society, but as threatening it. This is why the state must respond appropriately to the new threats, in line with the tasks and in line with the technological and social changes of our time.

We have to realize that the threat of punishment will not deter suicide bombers. But when deterrence doesn't work, then prevention becomes even more important. To be successful, prevention requires information above all. Only if we have the right information can we prevent harm before it occurs.

Above all, we need the work of effective intelligence services to prevent terrorist attacks. Their help is essential to deliver the information we need in time. We were able to prevent the attacks planned by the just mentioned Sauerland group only because we received early intelligence information from the United States.

Of course the security authorities need a legal basis for their work and their gathering of information. This means that the state must create the necessary legal framework, in line with the latest technological developments of our time. If criminals and terror-

ists increasingly use electronic media, instead of letters or phone calls, to plan their crimes, then the security authorities must have the means to monitor this form of communication too, just as they already have for other forms of communication.

In this era of globalization, the security authorities have to build international networks. They must be able to keep up with terrorists' and criminals' expanded range of activity. As long as attacks are planned and carried out in the same country, then only the authorities in that country need the relevant information. But when terrorist networks or organized crime extend across international borders, then a country has little chance of effectively fighting terrorism and crime on its own.

The Sauerland group now on trial in Düsseldorf is an excellent example of international terrorist activity: with the group members coming from Germany and having been trained in Pakistan to fight the U.S. in Afghanistan. It was only in Pakistan that they decided they would rather carry out attacks against Americans in Germany.

So we need close international cooperation between our police and intelligence services, precisely to share information - not because governments are obsessed with collecting data, but because they are responsible for protecting their citizens in a highly mobile world.

In such a world, problems in faraway places can have direct or indirect effects at our very doorstep. Globalization and open borders mean we must seek a joint and integrated solution. This also means fighting terror networks where they run training camps and where threats to other countries originate. To do so, we are dependent on multilateral decisions and engagement. We cannot have multilateral discussions about what we expect the United States to carry out unilaterally.

So a strong and well-organized country like Germany must also be willing to help in crisis regions abroad - with humanitarian aid, but also with law enforcement and even military intervention, if necessary, in order to provide a minimum level of security as the basis for stability and the rule of law. Certainly, we must also prevent radicalization in our own country. The integration of Muslims is a key task. We must convince

people of the value and the advantages of an open society in order to permanently cut off support and sympathy for violent extremists.

We need to talk about the right ways to fight terrorism. In this debate, I believe it is important that we do not lose sight of the real threat: The real threat to freedom is not the government, but internationally active terrorists who are prepared to use violence.

In the current discussion, some people suggest that new powers and closer cooperation of the security authorities necessarily entail the loss of civil liberties, as though we were heading towards a police state. I think this argument is false. Our long-standing freedoms are not gradually being restricted. On the contrary, the state must adapt to new freedoms in order to continue to fulfil its core responsibility of ensuring the security of its citizens and thus indirectly guaranteeing civil liberties.

In doing this, the values of our liberal constitution, which need to be protected and defended, must continue to guide government action. In precisely defined cases, the state has always had to limit individual liberties in order to fulfil its duty to protect.

Taking the necessary threat prevention measures while intervening in civil liberties as little as possible, is a great task for state agencies. This task is neither new nor impossible to fulfil. Over the years, a set of graduated measures has been developed to maintain the balance between security and freedom.

Under the rule of law, all state action is based on law. In Germany, any intervention in constitutionally guaranteed fundamental rights must be explicitly allowed by law passed by the parliament. This applies for example to the secrecy of the post and telecommunications. Only the elected parliament can define the conditions under which telecommunications surveillance may be permitted.

In sensitive cases, an independent authority, e.g. a judge, must decide whether intervention in civil liberties is allowed by law. For example, the German constitution requires a court order to search a home, and telecommunications surveillance by an intelligence service requires approval from an independent commission. In addition to these formal criteria for intervention into fundamental rights, our constitution states

that the law allowing such intervention and the intervention itself must be proportionate. In plain English, that means not taking a sledgehammer to crack a nut.

Using this set of measures, even when it comes to protection against terrorist threats it is possible to find the appropriate balance between the state's duty to protect its citizens and the rule of not intervening except where necessary.

Practical experience shows that the security authorities use their powers in moderation. In 2007, for example, there were a total of five million criminal investigations in Germany. In only ten cases of those did the security authorities conduct acoustic surveillance of homes. And in only five cases did the authorities request information from financial institutions to investigate the flow of money in international terrorism. Such requests provided important intelligence for example for our effort to ban the Al Qqsa organization. We should be careful not to defame reasonable and responsible action taken by the state or regard everything it does with suspicion. It will undermine our confidence in government actions to view the state as the enemy of freedom rather than its protector.

In our liberal constitutional system, there is no contradiction between the state which respects the freedom and autonomy of its citizens and the state which guarantees security; under the rule of law, they are one and the same. So I don't find it very helpful when, in the discussions we need to have, one side sees itself as the exclusive defender of freedom while implicitly assuming that the state will somehow take care of security.

It can be extremely difficult to find the right solutions for dealing with new threats. There is now a broad consensus that Guantanamo must be closed. But what should be done with the remaining detainees? We are certainly still responsible for ensuring the safety of our citizens, which rules out the hasty acceptance of possibly dangerous prisoners. At the same time, however, we want to help the United States solve this problem. The important thing is to face these questions and not to turn them into taboos. This is the only way we will be able to keep up with the challenges of our time. This is the only way we will be able to preserve the conditions our open society needs to survive.