Suspect Subjects: Muslim Migrants and the Security Agencies in Germany

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Ever since 9/11, security political questions have increasingly been dominating the discussion about the integration of Muslim immigrants into German society. This is a result of the new security policy, which is characterized by an expansion of 'repressive' measures and their supplementation and extension through 'preventive' measures. In the jargon of the security agencies, 'repressive' measures are those which – as did the laws enacted in the first security package issued shortly after 9/11 to increase air travel security – target direct prevention of crimes and/or improvement of criminal prosecution. To the extent that measures are adopted in advance of an incident, they are to deflect immediate danger. 'Preventive' measures, on the other hand, are concerned with abstract danger situations. In this context, matters preliminary to, and associated with, possible crimes are interpreted in a significantly broader manner. The emphasis placed on such measures recently is the expression of a 'comprehensive approach to domestic security which is not limited to repressive intervention' or of an 'all-encompassing' concept of security.[1] Preventive measures are not concerned with criminals or crimes, but with 'extremists' assumed to be capable of becoming potential criminals, with 'milieus' producing or providing escape for criminals, and with 'discourses' which could incite crimes. The need for a new concept of security, as Julia Eckert has shown, is based on two figures of thought: the supposed unpredictability and

1 Volker Homuth, Director of the Lower Saxony Agency for Internal SecurityAgency, during a conference of the Evangelische Akademie Loccum, 15-17 April 2005.

irrationality of the new terrorism, which can apparently hit anywhere and anytime; and the extent of the danger,[2] which made new measures necessary (Eckert 2005).

In this paper, I will turn to the consequences preventive measures have on integration policy. At the same time, it is of particular importance to me to show that the results do not merely consist in a new legal situation. Of far greater consequence is the fact that a new atmosphere has been promoted, which has an extensive influence on the application of laws in practice. This atmosphere leads to a new and close cooperation among various agencies – especially the *Verfassungsschutz* [the internal security agency for the protection of constitutional order], the immigration authorities, and the courts. As Didier Bigo puts it, a security field with a high degree of internal coordination develops (Bigo 2000). This coordination is only in part consciously created; rather, it seems to develop almost on its own as various partners agree on a common threat scenario, which can be summarized as follows: The central danger facing our state comes from Islamistic terrorism which is penetrating Germany through immigrants from Muslim countries. The acceptance of this scenario has two consequences. The first is that, as far as Muslim immigrants are concerned, the usual checks and balances of various state authorities – vital for the functioning of the rule of law – are reduced. This increases the danger of false decisions, and thus of injustice. The second consequence consists of Muslim residents being increasingly stigmatized, accelerating the dynamics of the isolation by others and self-isolation. Both together lead to unintended consequences which give rise to new dangers.

In the first section, I will deal with the significance of the *Verfassungsschutz* (Internal Security Agency) in the context of prevention and discuss the specific ways it constructs knowledge with regard to the supporting milieus of terrorism. In the sections to follow I will show how this information directs and structures practices of state agencies, with regard to naturalisation, to expulsions, and to the surveillance and disciplining of Islamic organisations. At the same time I will devote particular attention to the cooperation among various state agencies. In a concluding section I will go into the unintended results of new security policies on the integration of Muslims.

2 The mathematical definition of risk refers to probability times extent of danger. If the danger is considered extremely high, such a risk estimate is required, even to take measures for a situation whose probability of occurrence is considered relatively unlikely. The problem with this calculation lies in the fact that quite far-reaching measures can be legitimized by it.

The Knowledge of the *Verfassungsschutz*

The German Internal Security Agency plays a key role in the implementation of the security policy inasmuch as it provides the information on whose basis other state instances act.

In accordance with its assigned duties, the agency is obliged to observe not only groups and efforts which – such as the prohibited organisations 'Hizb ut Tahrir' and 'Caliphate State' – are in open opposition to the German constitution, but also those who profess allegiance to the constitution in their public statements, obey the laws, and distance themselves from acts of violence, if there is a justified suspicion of anticonstitutional efforts. Among Islamic communities, this applies to the Islamic Community of Germany (IGD), and especially to the Islamic Community Milli Görüs (IGMG). For them, the 'suspicion' of anticonstitutional efforts is based primarily on their Islamistic past and on the transnational relations both organisations maintain, the IGD with the Muslim Brotherhood in Egypt and Syria, and the IGMG with the Saadet Party of Necmettin Erbakan in Turkey. Both of these organisations are pursuing the goal of Islamisation of their respective homelands and societies. IGD and IGMG admit to these connections, raise the point, however, that meanwhile they are pursuing a different agenda *in Europe*. The change of generations, they say, has led to a shift in perspectives in the European divisions of the organisations. They are committed to Europe with the long-term goal of establishing Islam as a minority religion in the framework of the legal systems of European states. Both organisations claim to have changed and/or to be in the midst of a process of change.

Now, there is a significant interest of society on the whole in an unbiased examination of this claim. For if that should indeed be true, this would mean that in these two organisations' positions have been developed, which attempt to overcome Islamism from within. Such a process would promise a certain sustainability and provide intellectual answers to radical and terrorist Islam. This would signify the chance of preventing young people from drifting off into the sectarian and violent scene.

An independent examination, however, is hindered by the *Verfassungsschutz*'s claim to be 'the Federal Republic's institutionalized distrust of itself' (Claudia Schmid, Director of the Berlin Bureau of the *Verfassungsschutz*). Reading the federal and state Internal Security Agencies' reports, one gets the impression that the agencies' assignment of duties does not result in an unbiased examination of the positions of the organisations observed, but rather in a systematical attempt to counter the public claims made by these organisations – which amounts to showing that 'actually', a secret agenda is indeed being pursued despite constitutional rhetoric. A precise reading of the reports highlights the fact that the Internal Security Agency is very selective with the

information it provides. Whatever fits the picture is quoted (anti-Semitic statements in sermons, for instance); what doesn't fit the image (for example, active contacts with the Jewish Community or engagement in inter-religious dialogue), however, is sorted out. The fact that the youth work in these communities attempts to promote Islamic self-confidence is criticized as anti-integrationist; the fact that the communities at the same time encourage sending children, both sons and daughters, to German upper schools, all are not mentioned in any report. When interpreting quotes, the reading most unfavorable for the IGMG is chosen. If contradictory statements from the organisation appear, the agencies only in exceptional cases examine whether this is a result of factional struggles;[3] rather, they are quite simply explained by the image of speaking with a forked tongue (to the outside world, they speak in accordance with the accepted German public opinion, while maintaining other positions internally). Occasionally, statements are turned into their exact opposite.[4] Under the distrusting gaze of the *Verfassungsschutz*, communities are stylized and are portrayed as significantly more extremist and closed off than an unbiased examination of them would indicate.

A specific problem area is to be found in those sections of Internal Security Agency reports dealing with the IGD and the IGMG, in that they quite simply equate the accusation of behaving in an anti-integrational manner, of carrying out 'identity policies', and/or of creating 'parallel society structures' with anticonstitutionalism. Here, the points of view dominating the examination have nothing to do with the constitution. One may indeed have political objections to parallel societies, but no constitutional qualms can be deduced from them. Thus, the line between constitutional and anticonstitutional is completely blurred and the door to arbitrariness is opened wide. For example, Internal Security Agency reports portray activities which are in complete conformity with the constitution, such as the creation of a legal department,[5] as problematic.[6]

Indeed (and this has so far been taken into consideration far too little), the far-reaching assessments of the Internal Security Agency rely on a limited data basis. Analysis is based primarily on the evaluation of written material, but not on systematic interviews, field research, or questioning. 'For legal reasons, Internal Security Agencies are not authorized to conduct broad studies

3 The single exception is the Berlin Internal Security Agency report from 2004.

4 Cf. Schiffauer (2004). I have indeed had the personal experience of witnessing the complete perversion of my text. An appraisal I wrote, which was very critical of the Internal Security Agency, was evaluated by that same agency in public as a confirmation of its own position.

5 This assessment of a legal department is particularly touchy considering the serious legal consequences membership in the IGMG entails.

6 I have published a summary listing of these in Die Zeit. To date they have not been contradicted.

on the "Islamic milieu"; these are and remain primarily the tasks of academic research', claims the Cologne staff member of the Internal Security Agency, Tania Puschnerat (2006).

Another limitation must be stressed. The *Verfassungsschutz* creates the impression of being an independent authority charged with investigation on 'enemies of the constitution'. This impression is deceiving. The reports are prepared, according to the official explanation, 'on the basis of the results of the Internal Security Agencies after subjection to a political evaluation by the Ministry of the Interior'. Political considerations thus influence which organisations are mentioned in the report and which are not, and what the extent of the coverage is.[7] Political intervention also appears to penetrate through to the content of what is said. Agency staff members have reported to me that a supervisor's expectations may indeed have an influence of the reports drafted.

There is no mention of these limitations in the reports of the Internal Security Agencies, nor in agency decisions. Instead of providing a differentiated picture listing arguments for and against anticonstitutionalism and pointing out the limitations related to the narrow data basis, authoritative judgments on the constitutionality of an organisation are passed.

In recent years, apparently in connection with security political considerations, Internal Security Agency evaluations have been placed in a new context. Connected with radicalisation scenarios and a broader notion of security, communities such as the IGMG and the IGD are increasingly being portrayed as supporting milieus of radical and terrorist Islamism. What was depicted as anticonstitutional, but not dangerous in any real sense, before 9/11 is now considered a first step towards a security risk. Since then, it was stressed again and again that, in terms of a broader concept of security, investigations of Islamism must not be limited to radical and/or violent organisations.[8]

The link between (inferred) 'anticonstitutionalism' and (vaguely defined) 'security risks', produced in radicalisation scenarios, has a very strong impact because a demand for concrete measures is connected to it. It may lead to a situation in which other agencies are ever less willing to critically examine the statements contained in *Verfassungsschutz* reports, because the fear of making a political mistake is growing. In case of imminent danger, it is better to act overcautiously.

7 According to Heribert Landolin Müller, Director of the section responsible for Islam at the State Agency for Political Education in Berlin: 'Islamism – a journalistic challenge' (2/3 February 2006)

8 According to the director of the Lower Saxony agency, Volker Homuth, at the conference of the Evangelische Akademie Loccum from 15-17 April 2005.

Naturalisation

This new dominance of security policy has led to a U-turn in the area of naturalisation policy. This shift in the practice of the naturalisation authorities required no change of legislation. Its legal basis instead rests on a new interpretation of the new law on national citizenship passed in 1999. One component of the law was the introduction of new requirements for obtaining citizenship in addition to the ones already in existence (i.e. long residency, no criminal record, etc.). These consisted of the ability to provide economic support for oneself and one's family. Additionally, linguistic competence and loyalty to the constitution were included as prerequisites. Concerning the latter, the law states: 'No claim for naturalisation exists if […] actual indications justify the assumption that the naturalisation candidate is pursuing or supporting efforts […] which are directed against the free and democratic basic order of the state or against the continued existence or security of the federal state or any of its component states […]' (Bundesgesetzblatt, Jg. 1999 Teil I Nr. 38; 23 July 1999, p.1620).

Interestingly enough, the debate at the time focused on insufficient linguistic competence as grounds for an exclusion from naturalisation. There was an intense discussion of the question as to whether older immigrants can be compelled to learn German. However, what hardly anyone paid any attention to is the stipulation that 'actual indications' for the assumption that someone pursues efforts directed against the free and democratic basic order of the state are sufficient; this clause introduced a very elastic formulation in the text of the law. In order 'to affirm "actual indications for the assumption", no specific factual situation must be proved; rather, the mere possibility that a given situation might exist and that certain evidence provides indications for this indeed suffices' (Bender 2003: 135).

By means of a microanalysis of administrative practice I shall demonstrate in the following how this formulation was turned into a sharp sword with which the original intent of the law was transformed into its very opposite.

On 28 June 2002, the city of G. decided to reject Ayhan Celik's (name changed) application for naturalisation. In its presentation of grounds, the city of R. quotes the above cited paragraph 85 of the law and makes this decisive point:

'Though you indeed professed allegiance to the free and democratic basic order of the Constitution of the Federal Republic of Germany in writing on 12 January, 2002, you actually pursue and/or support activities which are directed against that free and democratic basic order. […] According to information from the Interior Ministry of the State of North Rhine Westphalia of 13 May, 2002, you have been on the board

of the local IGMG organisation since the year 1998. […] According to the current Internal Security Agency report of the State of North Rhine Westphalia for the year 2001, the efforts of the IGMG are directed against the free and democratic basic order of the Federal Republic of Germany, by which you fulfil the exclusion grounds of § 86 No. 2 AusG (Foreigner Law) and thus have no claim to nationalisation into the German Federation of States under § 85 AusG (Doc.1).'[9]

Mr. Celik appealed this decision. He argued that he would never support efforts directed against the free and basic order and that the agency had no proof whatsoever to the contrary. The agency rejected the appeal on 22 October 2002. It was argued that his engagement in the Milli Görüs was an 'actual indication' for the assumption of anticonstitutional efforts. This, it went on, was determined by the Internal Security Agencies of the federal and state governments. 'It is not the task of the Naturalisation Agency to make judgments about the information collected or evaluations made by federal and state Internal Security Agencies' (Doc. 2).

There are two remarkable aspects of this correspondence.

- The naturalisation authority expressly cedes to the Internal Security Agency the right to define whether an organisation, which has not been prohibited, is anticonstitutional or not. Thus, everyday bureaucratic routine undermines the intended legal procedures which entail a prohibition pronounced by the Interior Ministries of the states or the federal government, against which legal proceedings can be initiated.
- An examination of individual cases is neglected. If you are a functionary in an organisation which an Internal Security Agency deems not to be in conformity with the constitution, then the actual indication for your support of anticonstitutional efforts is considered manifest.

In the case mentioned, a person was concerned who was actively, even if only on the local level, involved. In some federal states (for example Rhineland Palatine), however, also ordinary members are affected. Here, organisation membership and support for the local mosque are presented as grounds for denying naturalisation. Even mere contact is enough to arouse decisive suspicion. Mr. Yildirim (name changed) was denied naturalisation by injunction, again with reference to 'actual indications': His 'vehicle was observed during an event conducted by the IGMG Community of Völklingen-Luisenthal in the local culture center on 27 January 1998' (Doc. 4).

9 This document, and those which follow, can be found online under http// viadrina.euv-frankfurt-o.de/~anthro/Dokument_text_verwaltete_Sicherheit. htm.

In cases of this sort, a hearing occurs. The following document, a written rejection after conclusion of a hearing, casts a light on the character of such conversations.

'On the occasion of your personal appearance on 22 May, 2003, you made a statement to the effect that you are not a member of the IGMG. Where the Internal Security Agency obtained the information that you were a member of the above mentioned organisation in the years 1998 and 1999 is unknown to you. It was, however, known to you that the mosque you attended for prayer sympathizes with the IGMG […]'

'Through your membership in the above mentioned organisation, you declared your agreement with its goals and adopted them as your own. The profession of allegiance you made to the free and democratic order can, in view of your membership in the IGMG, only be regarded as empty talk (Doc. 3).'

Two things are important about this document. Firstly, the hearing is obviously only concerned with the question of IGMG membership. Attending the mosque infers membership, and membership infers agreement with the (supposed) goals of the organisation. This chain of inferences is problematic. There can be very different motivations for membership in a Milli Görüs mosque community. In addition to members who feel politically at home in the Milli Görüs movement, i.e. support actively or passively Necmettin Erbakan's Saadet Party or Tayyip Erdogan's AK Party (about half of all members, by my personal estimates), there is a large segment of completely apolitical members. Also, mosques are centers of social life as well, and it is indeed possible for someone to join the Milli Görüs because he wants to meet friends and acquaintances there. Many second-generation members were quite simply born into the community. And finally, not everyone who attends a Milli Görüs mosque is a member of the community. Unless you have strong reservations, you go to the mosque that is easiest to reach.[10] Even if donations are made to the local mosque community, this is not necessarily a proof of membership in the IGMG. It is a matter of decency to provide financial support for the mosque community whose services you make use of, for these communities, unlike churches, must support themselves.

Secondly, this document shows how the logic of fact-based indications shifts the burden of proof. There is no information in the text about the applicant's arguments, but apparently, the claim that he only went to the mosque to pray was considered mere denial self-defence. A similar helplessness can be deduced from the minutes of a hearing which is in my possession. The appli-

10 All observers emphasize this heterogeneous nature of motives. On the second generation, cf. Tietze (2001) or Meng (2004).

cant's statements, distancing himself from violence, anti-Semitism, and religious intolerance as well as his profession of allegiance to democracy prove to be of no use to him.

The impression that an applicant hardly stands any chance in a hearing to disprove the suspicion of being anticonstitutional can be drawn from the other minutes. Those questioned must give detailed information about cross-connections between mosques, about previous memberships, etc. They must describe their reading habits. It is not unusual for the persons questioned to be confronted with statements from *Verfassungsschutz* reports about the IGMG and to have to take a stand on them. The hearings rather resemble cross-examinations; it is very obvious that the aim is to get the persons questioned tangled up in contradictions. During questioning in Nuremberg, an applicant was asked to take a stand on the following extremely confrontational statements: 'What do you have to say about the discussion on veils? The prohibition of symbols has nothing to do with the free practice of religion.' Or: 'If state laws run counter to your understanding of free religious practice, you don't like it. You place the Koran above state laws according to your interpretation of the Koran.'

The developments described up to now concern the executive branch. Within this domain, it is hardly surprising that the interplay among the agencies becomes ever more coordinated. It is, however, remarkable, and can ultimately only be explained by the dominance of security policy, that the judicial branch also increasingly bows to this logic. For example, on 2 June 2003, the Bavarian Administrative Court in Munich (AZ M 25 K 00.5269) dismissed the suit of a Munich IGMG member who had argued that the material presented by the Internal Security Agency provided no support for the charge that he himself had participated in violent activities or called for them to be supported, nor for the claim that the IGMG views the use or approval of violence as a legitimate means for the advancement of its goals. The member claimed that he is highly integrated into his local German community. The court contested none of this, but declared it irrelevant. The plaintiff's argumentation, according to the court, was based on the 'old legal situation'. The new legal situation excludes nationalisation when 'actual indications' are at hand. Proof of anticonstitutional activity is no longer necessary, 'instead, fact-based suspicion of crime suffices' (p. 11). And as far as that was concerned, the court was of the opinion 'that the information presented in the *Verfassungsschutz* reports can in and of themselves be deemed actual indications in the terms of § 86 No. 2 AusG n.F. The *Verfassungsschutz* assessment and evaluation in the annual reports are admissible evidence and are to be accepted by an organisation as long as they are not obviously based on improper considerations' (p. 16). The court did indeed concede that the 'interests of the younger generation today dominating the IGMG are predominantly directed

at improving the social, political, and legal conditions of residents of Turkish origin and, in that regard, are oriented along the guidelines of Islamic law concerning Muslims in the diaspora, calling for obedience to the local legal system of the host society and affirmation of the values delineated in its constitution' (p. 20). However, the fact that the activities are only predominantly and not totally constitutional provided sufficient 'actual indications' for the denial of naturalisation.

With this argumentation, the court confirmed the naturalisation authorities' practice of neglecting to examine individual cases. Instead, the concept of fact-based indications is used to treat two in fact loose connections based on suspicion as firm fact-based linkages.

- If the Internal Security Agency suspects an organisation of being anticonstitutional, it is, in the opinion of the court, permissible to treat it as an anticonstitutional organisation.
- If someone is a member of a suspected organisation, he, too, is to be treated as someone who 'pursues or supports efforts […] directed against the free and democratic basic order or against the continued existence or security of the federal state or any of its component states […]' § 86 No. 2 AusG.

Admittedly, court judgments are, for the time being, not unanimous. In its decision of 28 February 2003, the Administrative Court of Karlsruhe followed a different assessment. The court argued that the Islamic community of Milli Görüs could not unequivocally be classified as extremist or anticonstitutional on the basis of the information sources provided. Therefore, an evaluation of the individual case was mandatory. The Administrative Court of Hamburg argued along similar lines in its decision of 1 October 2003. This decision was also remarkable because it was not dealing with a simple IGMG member, but with a functionary, the deputy chairman of a mosque community. In its written opinion, the Hamburg court set down more stringent conditions for a 'suspicion based on actual indications'. 'General incriminating factors not supported by demonstrable concrete facts' were insufficient in the eyes of this court.

These verdicts show that other interpretations of the law are possible, differing from the Munich judgment. Though the legal situation still remains unsettled on the whole, there does seem to be a tendency to follow the Munich neglect of strict examination of individual cases. For example, the Superior Administrative Court of Rhineland Palatine may not have explicitly cited the Munich opinion, but it did adopt its contents. In essential passages of their opinion, the judges adopted the arguments of the *Verfassungsschutz* reports.

Judicial opinion took another step when the Administrative Court of Wiesbaden, on 19 May 2005, upheld a decision of the Governing Committee

of Gießen to revoke the citizenship of three men, a novelty in the history of the German Federal Republic. In the written opinion (6 E 2225/04(2)), the state of Hessia was declared correct in arguing that the men had deceitfully acquired citizenship because in their application for naturalisation they had declared never to have supported efforts 'which are directed against the free and democratic basic order of the state or against the continued existence or security of the federal state or any of its component states'. They should have mentioned their membership in the IGMG. In the proceedings, the IGMG members argued that in their opinion the IGMG did not pursue any anticonstitutional goals and that no one had informed them that the IGMG was considered an anticonstitutional organisation by any state authorities. The plaintiffs also pointed out that they had actively participated in integration efforts, namely in 'informational events for school students, German courses for women, the coordination of training programmes among students', and 'under the aegis of Caritas (the Catholic charity organisation in Germany), in information sessions on youth crime and so on' (17). The court did not contest their personal engagement, but declared it irrelevant as the *Verfassungsschutz* report had evaluated the IGMG's youth work in toto as disintegrative (17).

Here, too, we can again witness the development of a special logic. In this case, the double linkage upheld by the Munich Administrative Court (i.e. that any organisation the Internal Security agency suspects of being anticonstitutional indeed is anticonstitutional; and that any member of such an organisation is to be treated as someone acting or expressing himself anticonstitutionally) is consistently applied in reverse. Anyone who does not apply this logic to himself has thus 'fraudulently' obtained citizenship.

The dominance of security policy may well explain why courts increasingly tend to accede to the *Verfassungsschutz*, rather than to the Federal Supreme Court for Constitutional Matters, the authority actually responsible for declaring organisations in conformity with the constitution or anticonstitutional. The observation of an attorney who was involved in asylum proceedings for many years is significant: 'In quiet times, judges tend to ask the *Verfassungsschutz* to simply present the facts it has. In tense times, there is, on the contrary, a tendency to simply take over the assessments of the security agencies. The worry about making political mistakes becomes dominant.'[11] An IGMG trial observer formulated another point of view: 'You get the impression that the people on the judge's bench are trembling with fear of being tricked by particularly clever Islamists and later appearing naïve. Those involved in the trial can talk about their inner social commitment as much as they want, it will be viewed with distrust simply on principle.' Aggravating the situation is the fact that the law text is not unequivocal and permits a vari-

11 Gottfried Plagemann in a personal communication with me.

ety of interpretations. In making decisions in this wide area, ideas about values and preconceived opinions play a major role. The atmosphere in the society on the whole, as it currently exists with regard to Islam, indeed has a decisive influence on the judgments, according to former Supreme Court Justice, Bertold Sommer.[12]

This agreement on a definition of security shows quite clearly how a far-reaching coordination of the independent executive and judicial branches takes place through a security definition and the constitution of a concept of the enemy, namely the Islamist. Each on their own, the different agencies start to go down the same path without any directive needed. 'We see that the security realm is not so much defined by a power of coercion, as Weber and Hobbes suggest, as by the ability to produce images of the Other who can then be controlled […]' (Bigo 2000: 93).

The Law on Foreigners as a Weapon: Expulsion

One consequence of the more restrictive naturalisation policy was indeed intentional, keeping Muslim immigrants under the control of the law on foreigners. For example, Representative Grindel, in a Federal Parliament hearing, referred to the initiatives for naturalisation started by the IGMG as early as 1999, 'which limit our possibilities to get rid of some of the ringleaders and thus to stop activities directed against integration' (Representative Grindel, CDU. Deutscher Bundestag, Bandabschrift. Public Hearing on 20 September 2004, p. 66). The Bavarian Interior Minister, Günther Beckstein, according to the *Süddeutsche Zeitung* of 3 February 2006, declared, 'he is "firmly convinced" that the security interests of the citizens of Germany can better be served by a strict application of the foreigner law than by the enforcement of criminal law' (p. 6).

The severity of this weapon becomes particularly clear in connection with expulsions and denials of stay permits. Both methods hit the affected hard and permanently in their personal sphere and are often 'worse than criminal sanctions' (Bender 2003: 132). Here, the foreigner law operates as a pseudo-criminal law punishing with banishment. This is especially precarious, given that foreigner law, as an administrative law, does not recognize the liberal protection of the accused, which is so highly developed in criminal law (e.g. with regard to presumption of guilt or rules on evidence). Also, the principle of official investigation valid in administrative law is limited and/or suspended inasmuch as the foreigner himself is obliged to provide verifiable evi-

12 On the occasion of a professional talk on 8 March 2006, at the German Institute for Human Rights, 'Recognition and revocation of legal titles'.

dence for what is most favorable for him (oral information from Heiko Habbe). In short, the burden of proof is reversed.

It is interesting that the debates conducted in 2001 on the second package of security laws took the far-reaching consequences of expulsions and denials of stay permits into account (Bender 2003). The government's proposal for expulsion merely on the grounds of 'actual indications' of anticonstitutionalism was therefore voted down and a proof of actual anticonstitutional activity required. It is then interesting that administrative practice has, in this respect, not followed the intentions of the lawmakers. As I will show in the following, authorities have also deemed fact-supported indications for a lack of loyalty to the constitution as sufficient for decisions to expel. As applies to naturalisation, you don't even have to be a member of an organisation which is considered dangerous, it's enough to be a member of an organisation which is under suspicion of being anticonstitutional to prompt an expulsion, and this is so, even though the two legal matters are not at all on the same scale.

For example, the expulsion order of the city of Frankfurt against Mr. Özturgut (name changed) on 16 June 2005, was served on the grounds that there was knowledge of activities of his indicating he was an active member and functionary of the IGMG. (There was said to be verifiable evidence that he had provided his mobile phone for a Saturday meeting of the youth organisation of the IGMG district Frankfurt am Main-West, that he was cashier for the umbrella organisation of Hessian IGMG associations, that he had moderated a competition for oral Koran readings, etc.) Since there were indications that efforts against the free and democratic basic order of the Federal Republic of Germany originated from the IGMG, an expulsion had to be ordered (Doc. 7). The fact that at that time a proof of anticonstitutional activity was required for expulsions, unlike the requirements for naturalisation, was simply ignored by the authorities.

As with the naturalisation proceedings, here, too, the impression arises that the system is becoming ever more consistent. The County of Schaumburg, for example, argued on 16 September 2005, that the denial of a stay permit to a woman who, at the time of the decision, had been living in the Federal Republic for 12 years, was 'urgently' necessary because of her activity in the Board of Directors of the IGMG. The foreigners' office claimed that it had to act in accordance with the security authorities and had no 'manoeuvring room'. With this decision, they not only neglected to examine the individual case; the alleged lack of manoeuvring room also categorically dismisses any possibility of weighing legal alternatives and rights. According to the County of Schaumburg, obviously an activity as a functionary in an organisation that has not been forbidden necessarily requires the destruction of the framework of a person's life whose focal point of life has been in Germany for the past 12 years.

In this context, again increasing use is being made of the weapon of *retroactive* cancellation of a stay permit. Mr. Akkaya (name changed), for example, was notified by the County Administration of Germersheim on 8 February 2006, that his stay permit granted on 16 August 2005, was being rescinded because it had been an 'illegal administrative act'. His activity as chairman of the local IGMG community gave rise to 'security concerns' (Doc. 9). Inasmuch as the foreigners' office here clearly goes beyond the terms of the *Verfassungsschutz* report, this means an intensification, since constitutional concerns with regard to the IGMG are mentioned in the report, but no security concerns. Aggravating Mr. Akkaya's situation is the fact that he is affected by the rescission of his stay permit despite belonging to the second generation, born and raised in Germany.

With this argumentation, the radicalisation scenario developed by the Internal Security Agencies is put into practice. A further turning of the screw occurred on 20 July 2005, with an expulsion decree of the Mayor of the City of Wiesbaden. During a so-called security interview, the affected party had failed to mention membership in the IGMG when asked about connections with organisations suspected of supporting international terrorism.

'Thus, in the course of questioning serving to clarify concerns about entry or further residency, you made false or incomplete statements to my agency on major points. Thus, you have fulfilled the grounds for expulsion under § 54 Nr. 6 AufenthG, and it is my intention to expel you from the territory of the Federal Republic.'

Here, the criminalisation inherent in the logic of the radicalisation scenario is carried out once and for all. The chain of associations leads from suspicion of anticonstitutionality through accusation of anticonstitutionality, through the supposition of security concerns, all the way to the suspicion of a support of international terrorism. At the same time, anyone who doesn't bow to this logic is accused of making false statements.

There is something undeniably offensive about these decisions. The bureaucrats go beyond the letter of the existing laws, or are expected to do so by superior agencies. They apparently consider themselves in part justified by the concept of a 'democracy that can defend itself'. In addition, there is a certain passion for action in response to public pressure on politicians 'to do something'. This is, of course, directed against groups and individuals who officials, on the basis of *Verfassungsschutz* reports, personally suspect of being anticonstitutional. This selective procedure, contradicting the ideal of state neutrality, does not interfere with their sense of justice, since their decisions can ultimately be reviewed by the courts (just as those who drafted the Baden-Wurttemberg questionnaire were very aware of the fact that it might not be

kept up by the courts).[13] Precisely this extremely widespread practice, however, makes a judicial practice which cedes the power of definition to the reports of the Internal Security Agencies especially problematic. For this way, any counterbalance to measures which acquiesce in injustice for the individual on the grounds of what is good for the state, or for political reasons, disappears.

In Islamic circles there are fears that the IGMG and the IGD could be only the first victims of the bureaucratic strategies described. Newspaper reports such as the one about the expulsion of three members of the Quietist (and explicitly pacifist) organisation Tabligh-i-Jamaat by the Bavarian state in September 2004, nourish these fears.

All these cases clearly show the dangers which arise when the foreigners' law is employed as a juridical weapon in political debates. It is increasingly turning into a weapon against individuals active in disliked, but not prohibited, organisations. At least in some federal states, they must expect the destruction of their social and professional context of life through expulsion, practical banishment. Increasingly, not deeds, but convictions are being punished.

Surveillance and Control

Muslim organisations had to a remarkable extent already been the object of surveillance by the Internal Security Agencies and police even before 9/11. After 9/11, the intensity of surveillance practice increased. A new method consisted of the *Verdachts- und Ereignisunabhängige Kontrollen* ('checks unrelated to suspicion or event') and raids. There had indeed been raids before (against Caliphate State mosques, for example), but the goals had always been specific. Today, the raids seem to be mainly directed against the mosques of the Milli Görüs and the IGD, but they also include other mosques, without the selection criteria being obvious to outside observers. The majority of raids occurred in Baden-Wurttemberg. I personally know of eight larger operations. The following summary listing, produced on the basis of police reports, reveals a remarkable discrepancy between the mission conducted and the results achieved.

- On 13 December 2002, 750 police officers were involved in a mission in Baden-Wurttemberg which examined over 600 people. It was called a 'raid against criminal Islamists in Stuttgart, Mannheim, and Freiburg'.

13 'Of course nobody now knows what the courts will say. But let's just stay calm, wait, and not give up in advance.' This can be found in the 'minutes' of talks with naturalisation agencies, p. 15/16 (AZ 5-1012.4/12 Doc. 11).

They discovered 'eight crimes and/or misdemeanors against stipulations of the foreigners' law (illegal residency, violation of location restrictions), two forgeries of documents, and one offence against property' (Press release from 16 December, 2002).

- On 28 November 2003, 380 police officers on a mission in Baden-Wurttemberg checked 360 individuals. They detected 'one violation due to illegal residency, one violation of the law on asylum procedures, two insults of police officers, and two traffic violations' (Press release from 2 December 2003).
- On 6 February 2004, controls took place in Rhineland Palatine to combat international terrorism. 270 officers examined 168 individuals. They were able to find one violation of the law on narcotics, four violations due to illegal residency, and two misdemeanors (violations of the restrictions on localities for asylum seekers).
- On 23 July 2004, a mission was conducted in Rhineland Palatine for a 'combat against international terrorism', in which 230 police officers were involved. 235 individuals and 102 vehicles were examined. Five crimes (suspicion of illegal residency) were registered.
- On 23 July 2004, about 400 officers in Baden-Wurttemberg inspected 18 organisation sites and mosques. Four crimes were registered, namely one violation of immigration law, one violation of asylum law, one violation of weapons law, and one misuse of identity documents (Press release from 27 July).

The state government of Lower Saxony, in reply to a parliamentary inquiry by representative Dr. Lennartz (GRÜNE), was unable to document a single search success. To the question as to the state government's estimation of the relation between the costs of the measures and their results, the laconic reply was that the cost of the measures conducted could not be calculated (Lower Saxon State Parliament – 15th legislative period. Printed document 15/60).

Politicians like the CDU Commissioner for Integration, Bosbach,[14] occasionally try to play down the raids by comparing them to traffic checks. This is deceptive. These police actions take place in an incomparably more severe manner, as the description of one such mission by the Bochum police shows:

Bochum, 16 April 2004

'Well, no one could leave the mosque or the mosque's courtyard. The driveway is maybe 20 meters wide and three or four VW police vans were standing there

14 During a discussion with graduates of the Axel Springer Journalist School in Berlin on 16 November 2005.

bumper to bumper so nobody could climb over, and everywhere somebody might have been able to get out there were at least two police officers in full gear, with helmets, not on their heads, but attached, billy clubs, but not drawn yet, handcuffs, and of course these completely puffed-up jackets. Those weren't regular police officers; they belonged to these special troops like for riots on 1 May in Kreuzberg […] You had to line up. Then two of those troops took you to a mobile office where they checked your identity, checked whether each one was really registered at some address and if his identity papers were in order. Then they sent it out over radio and walkie-talkie, whatever, and they probably compared the data with those of the city of Bochum. Because a couple of computers were down, this took from quarter past three till nine-thirty in the evening. Then they finished up the last ones […]' (Interview with Mohammed Nabil Abdulazim, Berlin, 25 October 2004).

Waiblingen and Fellbach, 23 July 2004

'[…] Our mosque and the DITIB mosque are in an industrial area. After Friday prayers, the gates to the industrial area were blocked by about forty or fifty police officers and their police vans. They stopped everyone leaving the mosque […] The names and addresses of every Muslim leaving the mosque were taken down. Two young men who didn't have their IDs with them were taken to the police station and kept there for five hours. They were photographed. These two young men reported that another 25 Muslims were held at the police station […]'

'During the same raid, the mosque in Fellbach […] was checked. According to our information, barricades were set up at a distance of 150 to 200 meters from the mosque […] Our people panicked. Because of these procedures, they couldn't get back to their jobs on time […] The controls lasted until four o'clock in the afternoon. If you asked, different reasons were given. 1) They were looking for Islamists; 2) they were searching for criminals; 3) it was only a normal traffic check; 4) they weren't allowed to give any information; 5) it was a search for drugs' (Minutes of a conversation with Ugur Ataman, 23 July 2004).

The general problem with these 'checks unrelated to suspicion or event' is, of course, that by definition they affect innocent citizens belonging to a certain category of individuals. These measures were therefore, not surprisingly, perceived as extremely discriminatory by the faithful. 'They would never dare do that in a church', said one Muslim student. Many viewed the procedures as being specifically directed against Islam. 'They won't be satisfied until we completely give up Islam.' 'They want to scare people off so they won't go to a mosque at all.' (Interview with Mohammed Nabil Abdulazim)

Particularly in smaller cities, where they had struggled for years for recognition of their mosque community, people find it embarrassing and humiliating to be subjected to controls openly on the street for everybody to see after attending mosque services. The Waiblinger and Fellbacher Muslims viewed

themselves as being portrayed as Islamists in the public eye. The report about the action in the local newspaper, the *Rems-Murr-Rundschau* (24 July 2004) bore the headline: 'Search for Criminal Islamists'. 'Once the police are there, whether you're innocent or not, people say the police were at your place.' (Mohammed Nabil Abdulazim op.cit.) The investigations were especially traumatic for individuals who had been subject to political persecution in their homelands. 'They now feared the worst; that just has to well up inside them. And you had to get them to calm down first. There was an old man crying and he didn't want to go outside. He saw the police and turned around and went back in. One man, he is 50 or 60 years old, was just bawling because he was afraid and said, "I haven't done anything, I'm innocent, they shouldn't take me", and such things.' (Mohammed Nabil Abdulazim)

After the raid in Bochum, those attending the mosque were divided into two factions. Some said, 'They don't have anything on us.' And the others said, 'Yeah, they've got lists now of who's comes to the mosque. They organized the whole shebang to get that kind of list together.' This fear exists. The ones with a German citizenship are therefore less worried […] but everybody here who's a foreigner could be expelled tomorrow. Statements from the community after the raid in Braunschweig on 30 July 2004, are typical: 'Soon they'll give us all a crescent moon sticker like they did with the Jews and the Star of David in the old days.' (Report of an eye-witness) For the people attending mosques of the Islamic Community Milli Görüs, the situation is aggravated by the fact that they must fear substantial disadvantages, for the reasons mentioned earlier, if they are registered during such controls.

Checks without regard to individuals or grounds for suspicion are, meanwhile, not the only type of data collection. In Bavaria, for example, communities of the IGMG and the IGD are increasingly being treated as foreign political organisations and required to hand over names and addresses of members as well as information about their citizenship.

How vague the term 'political' is can be seen in the answer to an appeal from the County Administration Office of the state capital of Munich on 20 October 2004. The community was first informed that, as a member of the IGMG, it belonged to an organisation directed against the free and democratic basic order and one which is considered a political organisation. More interesting is the second argument:

'According to its bylaws, the goal of the organisation is the representation of the common interests of Muslim organisations in Bavaria, the protection of the rights of Muslims living in Bavaria, as well as the advocacy of the social, religious, legal, and cultural interests of Islam. In addition, one declared goal of the organisation is to attain state recognition as a religious community and thus to be entitled to state support […] The representation of these interests in the society as a whole, in its all-

encompassing manner, in fact represents a political activity which, in view of the close link between Islam's religious message and its concept of the state and the lawmaker and public life, can in principle not be separated from the rest' (Doc. 14).

For all practical purposes, this argument contains the claim that Islamic organisations are per se political, and that their activities are thus not protected under the right to freedom of religion.[15] In connection with the denials of naturalisation and expulsion decrees described above, the demands for membership lists appear to be a massive form of interference in the freedom to organize and assemble peaceably. They appear to be primarily motivated by the desire to pressurize unpopular groups, about which the authorities lack sufficient materials for proceedings for prohibition, for as long as it takes to destroy them.

In connection with the genesis of the security realm, then, it is interesting that not only the agencies subordinate to the Interior Ministries, but also the tax offices meanwhile tend to put pressure on Islamic organisations. I am in possession of a letter from the tax office of Rheingau-Taunus which shows that the tax-free charitable status of the local IGMG community was revoked because of the *Verfassungsschutz* reports.

The impression arises that the population does not perceive, and does not want to perceive, either, the intense feeling of insecurity such measures produce among Muslims. Muslim immigrants are confronted with the precarious status that many of them have. They are unashamedly placed under the general suspicion of being enemies of an open society and therefore subjected to special procedures for naturalisation. The foreigners' law is increasingly used as a weapon against them. They suffer restrictions on freedom of religion, of opinion, and of assembly. And finally, they are placed under an irritating extent of surveillance as well as controlled, and registered.

With all this, they are treated as enemies of an open society and lumped together with violent criminals. This leads to Muslims feeling unprotected and homeless. 'Since 9/11, many Muslims are incredibly frightened of ending up on some list or other', says Burhan Kesici to describe the atmosphere. Ever more often in discussions with Muslims, they refer to the fate of the Jews. 'Before 11 September, I had the feeling I was simply supposed to break with Turkey. What do I have to do with Turkey anymore? That country has become foreign to me. In the meantime, I no longer believe it would be a good

15 This is no single case. A letter from the Administrative Office of Miltenberg, for example, states, 'In its bylaws, in § 10, the general principles of the organisation's work is formulated. At least those principles formulated in no. 7 and no. 8 prove that the organisation is politically active by taking positions on current socially relevant questions from an Islamic point of view as well as by publishing violations of law against its members in suitable form.' (Doc. 16)

idea for us to burn our bridges to Turkey. Maybe we'll need that country one of these days.' (Minutes from memory of a conversation with Mustafa Yeneroglu)

Unintended Results of Security Policy

Because of security authorities' broadened concept of security and radicalisation scenarios, security policy is increasingly concerned with the 'preliminary stages' of revolutionary and/or violent Islam, i.e. with communities defined as 'legalistic Islam'. For it can of course be argued that, in view of the immensity of the terrorist danger, a balancing of legal interests must be undertaken. Restrictions on the freedoms of one group of the population would be acceptable, if a larger legal interest, namely prevention of bodily injury, could this way be secured. The question is whether the measures described can at least achieve what they promise in terms of security policy. Since not even the security authorities believe that communities of legalistic Islam pose any danger, the radicalisation scenarios presented must be examined especially in this context. They may be summarized as follows: In communities of legalistic Islam, socialisation takes place within an 'isolated Islamic view of the world' which, if appropriate chances and structures are present, makes a transition to more radical forms of Islam possible or even likely. Communities of legalistic Islam are, so to say, regarded as the milieu in which revolutionary, or even violent, Islam finds a protected space and can recruit. Here, common ideas are produced which permit access to more radical circles.

First of all we should note that despite having some points in common in terms of their view of the world, there are radical differences between legalistic Islamists and revolutionary Islamists, related to the overall context. On the one hand, an ethical conviction of ideological purity is to be found which regards any compromise with the West as treason (cf. Schiffauer 2000); on the other hand, a practical politics logic of compromise which insists that a Muslim can engage in the Western system as a Muslim without relinquishing his character, that basically the 'West' [democracy and the legal system] and Islam can be combined. Representatives of the first position will reject all cooperation and dialogue; representatives of the second position tend to seek them. While an 'isolated' Islamic image of the world can indeed be assumed in communities of revolutionary Islamism, the legalistic communities are characterized by a clear plurality of opinions.[16] Just as important is the fact that communities of legalistic Islamism place key terms (such as *jihad* or *Sharia*) in a new overall context and thus 'redefine' them. This way, the fas-

16 This is also confirmed by the observations of Tietze (2001) and Meng (2004).

cination with revolutionary Islamism finds a counter position, inasmuch as it is demonstrated that Islam can also be understood differently.

Even more important are the sociological differences between communities of 'legalistic Islamism' and those of 'radical-revolutionary Islamism'. While the former are characterized by an open network structure and maintain relations with other Islamic communities (for example, in umbrella organisations, by mutual assistance, or through cooperation in foreigner advisory councils), revolutionary communities close themselves off. During my study of the Caliphate State (2000), I detected a circle constitutive of a sect. Demarcation from other communities, elitism, the pronounced development of a view of the world contrary to that of other communities, inner authoritarianism, and a cult of revolutionary purity increasingly went hand in hand. Here, largely isolated '*in groups*' develop which 'get themselves worked up about something' and formulate an ever more deviant view of the world. This sectarian circle increasingly caused members of the Caliphate State to regard the communities of the Milli Görüs, which were closest to them in their ideas, as their biggest enemies, namely the ones who had deviated from the pure teachings and against whom they should therefore fight the most decidedly (Schiffauer 2000: 197). In fact, there were only violent altercations between members of these two communities (in the form of fist fights). The Caliphate State's distancing itself from the 'compromisers' was met with a response from the IGMG. They viewed the followers of the Caliphate State as deluded and dangerous nuts, who in essential points (especially in terms of their revolutionary intolerance) had deviated from Islamic teachings. This mutual resentment led to the two communities largely avoiding contact with each other. On this basis, quite distinct organisational cultures developed. While the communities of legalistic Islam confronted the world, acted with political pragmatism, and were therefore in principle ready to compromise, the communities of radical-revolutionary Islam are inimical to the world, have ethical convictions, and maintain a rhetoric of radical opposition.

All indications are that there is no continuity between the communities of 'legalistic' and 'radical-revolutionary' Islam, but rather a clear divide. Of course it can never be ruled out that conversions from conservative to revolutionary communities may occur, but this is not a 'natural' step, and it is not even a likely one. Value conservative Islam must not be considered a preliminary stage of radical Islamism, but instead as an alternative to it. The pressure the state exerts in this area affects precisely the conservative Islamic milieu which promises integration of young Muslims. The advantage of a policy that apparently aims at drying out the 'Islamistic swamp' seems to be at least doubtful.

While the advantage of this security policy is doubtful, some very clearly unintended results of the policy may be encountered which have negative

consequences for the struggle against violent and revolutionary Islam. They all tend to undermine the plausibility of the conservative answer to the revolutionary spirit and may be summarized in four points.

Increasing pressure on the communities leads to an increasing distance towards German society. There always have been voices (primarily from the faithful of the first generation) in value conservative communities who saw them as islands in a sea of infidels. For some time, the second and third generations of the communities appeared to have overcome this view of the world, but experiences with security policy have reversed this process. At the moment, the advocates of the existence an unbridgeable gap between the Christian majority and the Islamic minority are again increasing in number. In terms of security policy, this is particularly problematic, since any factional dispute increases the pressure on loyalties. Reluctance to cooperate with security forces also grows with increasing distance to society.

This is aggravated by the experience of public humiliation through police actions. It is regularly reported that in raids, older community members must make an effort to calm down younger ones, to prevent them from seeking confrontation with the police. We know that the experience of (supposed or actual) state discrimination often has a more decisive effect than discrimination from the civil society and that it can be the cause of radicalisation.[17]

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17 We know, for example, from the biography of Abd Samad Moussaoui about his brother, who was involved in the attacks of 9/11 that racist behaviour of the French police was a drastic experience for him (2002: 86 ff.). A major factor in the emergence of racial unrest during the 1980s in Great Britain were, according to the information of the investigating commission there, the 'stop and search' practices of the British police (Banton 1982). It is no accident that the ignition spark for the unrest in the French suburbs in 2005 was the tragic end of a youth's flight from police controls.

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