BALANCING ACT BETWEEN SECURITY AND FREEDOM: STRATEGIES OF THE GERMAN JUDICIARY AND LEGISLATION TO COMBAT TERRORISM

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ABSTRACT

This study analyses how German courts and legislators can maintain a balance between security and civil rights in the fight against terrorism. A scoping literature review was used to analyse current legal and political developments, particularly in the context of extended criminal law and the powers of the security authorities. The results show the importance of judicial independence and the need for a balanced consideration between security measures and fundamental rights. It becomes clear that a deep understanding of the multifactorial nature of terrorism, including psychological and media aspects, is essential for an effective fight against terrorism. The study highlights the importance of transparency and public dialogue in legislation and suggests that these aspects be included in future research. It emphasises the need for continuous review and adaptation of laws to ensure the balance between effective counter-terrorism and the preservation of the rule of law and individual freedoms.

Keywords: Anti-terrorism, Germany, legislation, pre-emption, prevention.

1. INTRODUCTION

There is a consensus in constitutional law research that crisis situations often lead to a strain on constitutional provisions. As Ginsburg et al. (2019) emphasise, constitutions are often stretched to their limits, especially in times of war, secession and emergency. Roznai and Albert (2020) support this view and emphasise that constitutions are often broken under extreme conditions. Finn (1991) emphasises that almost every modern constitution makes specific provisions for government in times of crisis, which calls into question the idea of the eternal validity of a constitution even in consolidated democracies. These insights raise fundamental questions about how crisis situations affect judicial decision-making and whether judges should neglect constitutional foundations in favour of expanded executive powers in such times. These questions are far-reaching and controversial. Global counter-terrorism measures have profound implications for human rights and constitutional protections. Scheppele (2020) points out that the threat of terrorism is rapidly eroding the human rights fabric in Europe that was carefully built up during the Second World War. This is also confirmed by Amnesty International (2017), which speaks of a rapid dismantling of the human rights framework in European countries. A standardised definition of terrorism has not yet been established, but the definition of terrorism by the Parliamentary Assembly of the Council of Europe from 1999 provides a point of reference. It defines terrorism as acts or threats of violence against a country, its institutions or its people, motivated by separatist aspirations, extremist ideologies, fanaticism or irrational and subjective factors and aimed at creating a climate of terror (Council of Europe 1999).

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Prior to the attacks of 11 September 2001, most democracies were dominated by the rights-based model, which bound state action to legal and procedural standards and made it necessary, appropriate and proportionate (Cole, 2007). Since the attacks, however, there has been a significant shift in how states view human rights and formulate the balance between legal protection and state action against terrorist threats (International Commission of Jurists, 2010). Western democracies continue to face the challenge of finding a constitutional response to terrorism. This is exacerbated by the phenomenon of "foreign fighters" travelling in large numbers from Western countries to conflict zones such as Syria and Iraq, which increases the risk of human rights violations and domestic terrorism (Scheinin, 2020). Scheinin (2020) argues that despite the tensions between national security and human rights, the two cannot be weighed against each other. Seeing security as a panacea against the threat of terrorism raises the fundamental question of whether a balance between security and freedom is possible.

Aim of the Paper

The primary aim of this research is to critically analyse the impact of terrorist violence on the quality of justice in Western democracies, particularly in Germany. Terrorist acts are considered serious criminal offences in national law according to UN Security Council Resolution 1373, paragraph 2 (c). The threat of terrorism not only causes fear to governments, citizens and organisations, but also leads to considerable psychological suffering and physical distress (Jaschke, 2020). As terrorism is considered a criminal act, the response to it should take place within the framework of criminal law and not according to the model of martial law. The criminal justice system therefore plays a key role in the fight against terrorism. Davis and De Londras (2014) observe that in recent years there has been an increase in 'Counter-Terrorism Judicial Review', i.e. the use of judicial processes to challenge state behaviour in the area of counter-terrorism.

In this context, the central question of this study is: "How can German courts and legislators maintain the balance between security and civil rights in the fight against terrorism?" This question is of crucial importance as it sheds light on the complex challenges and balancing processes that Germany faces in the context of counter-terrorism. It requires an in-depth analysis of the existing legal framework and the practical implementation of security measures, always taking into account the protection of fundamental civil rights.

The main objective of this thesis is to evaluate legal and political approaches to combating terrorism in Germany and to suggest possible optimisations. Through this analysis, insights are to be gained that enable a balance to be struck between the need for state security measures and the protection of individual liberties. The study aims to offer both practical and theoretical perspectives in order to provide a comprehensive overview of the tension between security and freedom in the context of terrorism.

Based on the research question, the hypothesis of this study is that a balance between security measures and the protection of civil rights in the fight against terrorism can be achieved through a careful and differentiated application of German constitutional and criminal law. It is assumed that a critical review of existing laws and their application to new security challenges can provide important insights for strengthening the rule of law in times of the threat of terrorism.

2. METHODS

The methodology of this study is based on a scoping review of the academic literature to gain an in-depth understanding of the impact of terrorism on jurisprudence and legislation in Western democracies, particularly Germany. The choice of a scoping literature review as the methodological approach for this study is justified by several considerations based on the specific indications and characteristics of scoping reviews as described by Munn et al. (2018). First, a scoping literature review enables the identification of the breadth of existing evidence in a particular area, as required for the topic at hand - the impact of terrorism on jurisprudence and legislation in Western democracies. As Munn et al. (2018) emphasise, scoping reviews are particularly useful for examining emerging evidence in a research field that is still developing and where more specific questions are still unclear. Second, this approach helps to clarify key concepts and definitions in the field of terrorism and constitutional responses. As definitions and concepts in this area are diverse and sometimes contradictory, a scoping literature review offers the opportunity to provide a comprehensive overview of the different understandings and interpretations, thereby contributing to theoretical clarity. Thirdly, a scoping literature review allows us to examine the way in which research on this topic is conducted. This is particularly relevant as it allows to understand and evaluate the methodological approaches used in the existing literature. Another important aspect is the identification and analysis of knowledge gaps. By comprehensively analysing the existing literature, areas where further research is needed can be identified. This is crucial for developing future research directions and formulating more precise research questions. Finally, the scoping approach is a suitable precursor to a systematic review. As the current study aims to develop a broad understanding of the research topic, the scoping literature review lays a solid foundation for potential future systematic investigations in this area (Munn et al. 2018).

In summary, the decision to conduct a scoping literature review in this study is well justified by its suitability for capturing a broad overview of an evolving field of research, clarifying key concepts and identifying gaps in knowledge, as outlined by Munn et al. (2018). For the research, renowned academic databases such as Springer, Google Scholar and HeinOnline were systematically searched. The sources were selected taking into account their relevance to the topic, their scientific quality and their topicality. Both English-language and German-language literature were included to ensure a broad and diverse perspective. ncluded in the analysis were articles from academic journals, book chapters, working papers and relevant legal and political documents. The selected sources cover a wide range of topics, including the legal and political responses to terrorism, the role of the judiciary in times of crisis, and the balance between security and human rights.

3. RESULTS

The rule of law in Western democracies is at the core of their response to terrorist threats. As Sullivan and Massaro (2013) point out, courts are often used to judge whether state action unduly interferes with basic principles of justice and individual liberty. While many democracies respond to terrorism through the means of criminal law, some have chosen the path of war as a response. These differing responses raise the question of whether terrorism should be considered a criminal act or an act of war. For example, President George W. Bush referred to the Al-Qaeda attacks in the US on 11 September 2001 as an "act of war", implying a military rather than a legal response to the terrorist threat (Garrison, 2011; Cole, 2007). If the

events of 11 September are to be considered an act of war, this would mean that President Bush was able to exercise his powers as commander-in-chief without legal restrictions. As a result, the government could claim the authority to detain terrorist suspects without legal recourse and detain them indefinitely with very limited access to courts. In this scenario, the rule of law, constitutional structures and limitations on executive power would be subordinated to the goal of military victory and national security (Garrison, 2011). A legal response to terrorism finds legitimacy in the criminal justice system, which provides rights for defendants and witnesses, such as access to counsel, as well as judicial oversight of state actions. In contrast, the military response involves the exercise of executive power rather than the criminal justice process.

However, democratic governments typically not only respect the rule of law, but also tend to abide by international law during internal armed conflicts and have higher rates of judicial independence (Loyle and Binningsbø, 2018). It seems clear that an effective state response to terrorist threats is imperative, but that this response should not be used to undermine freedom, human rights and the rule of law. Walker (2007) offers a slightly different perspective, arguing that democratic governments can employ two possible legal responses to terrorist threats: 'criminalisation' and 'control'. While criminalisation aims to implement legal measures to achieve criminal justice objectives, such as increased police powers to gather evidence, control aims to prevent and combat terrorism through executive risk management measures such as interdiction, detention without trial, control orders and seizures (Walker, 2007). Walker (2007) emphasises that control techniques are often seen as detrimental to constitutionalism as they can diminish or even eliminate individual rights without public confirmation of the evidence against them and established rules such as proof beyond a reasonable doubt (Walker, 2007). It is therefore clear that responding to terrorist threats requires a complex balancing of interests between security needs and upholding the rule of law and human rights. The challenge is to find a middle ground that both enables effective action against terrorism and protects the basic principles of democracy and the rights of citizens.

Legal and political challenges

A common concern among scholars and civil libertarians is that the longer a security threat lasts, the greater the risk to democracy and civil liberties. Gross (2002) warns of the danger that arises when emergencies become entrenched and prolonged, and points out that crises could become the norm. He complains that emergency regimes are self-perpetuating, regardless of the intentions of those who originally introduced them. Gross (2002) refers to the ongoing state of emergency in Israel and to emergency laws in Great Britain and Northern Ireland that have lasted far beyond their intended duration. Moreover, he notes that by the mid-1970s, the United States had experienced four declared states of emergency over a period of more than forty years, resulting in the passage of more than 470 laws that would be sufficient to "run the country entirely without reference to constitutional processes" (Gross, 2002). This phenomenon is often described as the "ratchet theory" (Posner and Vermeule, 2005), whereby as threats persist, rights protections weaken and executive power increases. When the ratchet rule applies, judicial vigilance decreases, while growing security apparatuses have a strong interest in maintaining the emergency regime. A case in point is the creation of the Department of Homeland Security, which has created an extensive bureaucracy invested in perpetuating a terrorist threat (Gross, 2002). Similarly, Israeli Chief Justice Barak (2002) expressed his concern that the "mistakes of the judiciary remain with democracy when the threat of terrorism passes, and become entrenched in the court's case law as a magnet for the development of new and problematic laws". From this perspective, every violation of the law lays the foundation for a worse one.

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Another view, sometimes referred to as the "crisis thesis," holds that law "falls silent" (Rehnquist, 2000) when security threats loom, allowing violations to rise and fall with threat levels. In contrast to the ratchet thesis, the assumption here is not necessarily that violations worsen over time. Courts and other decision-makers leave decision-making power to the executives in times of threat, but return to normal operations in times of peace. This leaves the level of law in roughly the same place for the next threat, with similar abuses as before. Like the ratchet thesis, the crisis thesis is also popular among scholars. Epstein et al. (2005) claim that it is "strongly endorsed by a large proportion of analysts who have studied the relationship between [US] court decisions and threats to national security". According to these accounts, a state's civil liberties record should improve during periods of reduced violence, but return to similar levels of abuse when threats resurface.

The ratchet and crisis theses are intuitively appealing because there are numerous reasons for leaders to disregard civil liberties in the face of security threats. Terrorism presents both practical and political challenges that provide fertile ground for rights violations. As a practical matter, it is impossible to confine the fight - and the associated encroachments on liberty - to clearly designated forces, as is possible in conventional warfare. Therefore, the fight against terrorism inevitably affects the civilian population. Since terrorists hide among civilians, identifying suspects is difficult. Intelligence gains importance and puts pressure on officials to maximise the effectiveness of interrogations. Terrorism also invites prolonged detention because, unlike in a conventional war, there is no "safe" time for the release of suspects. These problems are exacerbated by the fact that officers often have less experience in counter-terrorism than in conventional warfare. This can lead to panic and overreaction. The political challenges are perhaps even more daunting. With terrorist threats targeting civilian targets, policymakers are under immense pressure to take action. High levels of terrorism can cause political instability, which can lead to officials taking strong measures to consolidate their positions. At the same time, decision-makers who favour restraint run the risk of being seen as too lenient towards terrorism. After all, the rules for conducting conventional warfare have evolved over centuries, while international terrorism is a comparatively new problem. So far, human rights, legal and military organisations, together with politicians, have sought to fit counter-terrorism into the conventional paradigms of war or law enforcement. This can lead to conceptual overstretch and questionable interpretations of rules or legal loopholes that do not provide answers on how to deal with terror suspects. This makes it easier for the authorities to find legal and rhetorical justifications for strict measures.

For these reasons, it is understandable that the crisis and ratchet scenarios are attractive to scholars, particularly civil libertarians concerned about the potential for abuse (Posner and Vermeule, 2005). However, some have suggested that they are not necessarily accurate. Epstein et al. (2005) point out that empirical support for the crisis thesis is weak. Posner and Vermeule (2005) question the empirical basis of the ratchet thesis, noting that "many constitutions contain explicit provisions for emergency powers ... Sometimes executive dominance has overtaken relevant policies, sometimes it has not." They conclude that "other variables" are likely more important than the ratchet effect in determining the fate of liberty in wartime.

In contrast to the theses of the ratchet and crisis model, Goldsmith and Sunstein (2002) argue in the context of the US that the threat posed by terrorism to civil liberties is actually significantly lower in the post-9/11 era than it was during the Second World War. Goldsmith and Sunstein (2002) attribute this largely to changes in American culture, which is now much more sceptical of executive power and protective of individual rights than it was some sixty

years ago. The authors also observe that, in retrospect, political elites often regret severe restrictions on freedom in the name of security. The restrictions of past emergencies thus become the basis for the next one and are not repeated. This can lead to a kind of reverse ratchet effect, where the protection of rights actually increases with each subsequent war or emergency. Goldsmith and Sunstein (2002) express optimism about democracy, claiming that while President Bush may have restricted rights in his war on terror, these restrictions were minor compared to those imposed by Lincoln, Wilson, or Roosevelt in previous conflicts. Unlike the crisis or ratchet theses, this view suggests that there is a long-term process by which civil liberties protections are integrated into a legal regime that is also capable of addressing serious security threats. From these accounts, one could conclude that the legal and political culture of a society is potentially an important variable. Although these scholars offer some compelling examples of change, much remains unexplained due to the lack of focus on specific rights, threat types or comparative studies.

The role of institutions and courts in the fight against terrorism

In the legal literature, the role of courts and state institutions in safeguarding rights and limiting executive power in emergencies is intensively discussed. Fiss (1993) argues that the judicial handling of terrorism cases could weaken the "political independence" of the judiciary. Political independence presupposes that the judiciary acts independently of political institutions and the public. The greater the independence from political control, the more likely it is that judges will do what is just and not what is politically opportune (Fiss, 1993). The moral authority of the judiciary must be upheld through freedom from political control, as political independence is one of the foundations of judicial authority and is also conducive to justice in Western democracies. This makes it clear that maintaining judicial independence is essential for the integrity of the legal system. In the context of the fight against terrorism, Ignatieff (2004) emphasises that strong democratic institutions can necessarily implement tough measures in the fight against terrorism while preventing a "slippery slope" towards unchecked abuse of the law. Democratic features such as separation of powers, supported by government transparency and a free press, institutionalise a thorough deliberative process. This helps to ensure that decisions that violate "basic commitments to dignity" are not made lightly (Ignatieff, 2004). This perspective suggests that a domestic environment with these characteristics can help to protect fundamental values and enable the spread of international human rights norms even in the face of persistent national security threats. This emphasises that institutional strength and deliberative processes are crucial for the preservation of human rights and democracy.

Maintaining the balance between national security and human rights is a central task of the judiciary, both in times of peace and in times of war. Mersel (2013) of the Israeli Supreme Court emphasises that judges must do everything in their power to strike an appropriate balance between human rights and security. He explains that human rights cannot be fully protected in a terror threat, nor can state security, as if human rights did not exist. A sensitive and delicate balance is required, and that is the price of democracy (Mersel, 2013). This statement emphasises that maintaining an appropriate balance is a key challenge for the judiciary in times of threat.

Ananian-Welsh (2016) analyses the impact of terror threats on judicial independence. She argues that anti-terrorism laws are mainly preventive in nature and therefore courts are traditionally not suited to adjudicate disputes over preventive measures. The involvement of courts in preventive counter-terrorism measures may jeopardise judicial independence as it is likely to expand the role of courts in the area of crime prevention. Ananian-Welsh (2016)

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emphasises that courts are traditionally unfamiliar with laws that are purely aimed at preventing future crimes. Although Ananian-Welsh (2016) praises judicial involvement in counter-terrorism measures to ensure that executive power is adequately checked, she fears that this involvement expands the role of the judiciary into new territory. Furthermore, Ananian-Welsh (2016) expresses concerns that certain counter-terrorism control orders could seriously affect the rights and freedoms of citizens as they expand executive power and allow security and police forces to forcibly interrogate, detain and even restrain individuals without criminal charges. Such measures do not put the judiciary in a good light if it chooses to support the executive's freedom-restricting orders. Ananian-Welsh (2016) argues that these control measures also challenge broader notions of due process and thus pose serious risks to judicial independence. However, she concludes that courts and judges can engage in counter-terrorism measures, but only if they have the necessary tools to protect not only their independence and integrity, but also the fairness of the criminal justice process (Ananian-Welsh, 2016). This analysis highlights the importance of judicial independence and the challenges it faces in times of terrorist threat.

In conclusion, Tulich (2012) notes that the preventative aim of the newly introduced anti-terrorism laws is at odds with the traditional judicial duty to determine rights in disputes by applying the law to the facts at hand. Anti-terrorism laws may force courts to focus on preventative aspects and rely on intelligence rather than evidence of past offences. This could put courts in an awkward position, as they may be inclined to make judicial decisions based on evidence presented to them ex parte by the executive branch. Garrison (2011) observes that "the judiciary and the rule of law have a role in national security policy in times of crisis". This observation emphasises the importance of the judiciary as the guardian of rights and freedoms even in times of national threats.

Judicial perspectives and challenges in the fight against terrorism in Germany

In Germany, the fight against terrorism is mainly being waged by expanding criminal law and increasing the powers of the security authorities. Puschke and Rienhoff (2018) emphasise that this focus is part of a criminal policy project that pushes back claims to freedom in favour of security. The introduction of Sections 89a, b, c and 91 of the German Criminal Code (StGB), which establish criminal law as the dominant means of dealing with terrorism, are particularly relevant here. This development reflects a deeply rooted hegemony of security that has manifested itself in political discourse in recent decades and is further reinforced by the criminal law on terrorism. The role of the state, society and the judiciary in this context is understood as a field of struggle for this hegemony. Although there are contradictions in the academic and legal debate, these do not allow the current development to be fundamentally questioned. The authors emphasise that this development is deeply rooted in the social and political landscape, which gives security a higher priority over civil liberties (Puschke and Rienhoff, 2018). This approach has far-reaching implications for legal practice and scholarship, which are increasingly grappling with terrorism in the context of these new criminal law expansions.

The work by Kortmann and Rosenow-Williams (2016) sheds light on another facet of German security policy, particularly in the context of Islam policy. The authors note that the tightening of security laws at the beginning of the 21st century was strongly focussed on combating Islamist terrorism. This focus was accompanied by increased co-operation between security authorities and political decision-makers. This development led to intensive political debates on the integration of the Muslim population in Germany, with Islamic umbrella organisations playing a central role. These associations not only represent religious interests, but are

increasingly involved in integration and security policy issues, which has a significant influence on their responses to security policy (Kortmann and Rosenow-Williams, 2016). The expansion of criminal law and the greater inclusion of security aspects in Islam policy illustrate the difficulties in maintaining a balance between security and civil liberties. The German legal system is faced with the task of responding appropriately to these challenges while maintaining its integrity and the basic principles of the rule of law.

Furthermore, the desired balanced approach should take into account the multifactorial nature of terrorism. Jaschke (2020) emphasises that the attacks of 11 September 2001 not only represented immediate destruction, but also tested the psychological and social resilience of Western societies. This realisation lends the discourse on terrorism an additional dimension that goes beyond the purely physical threat. Jaschke (2020) goes on to explain that terrorism should be understood as a strategic act that aims to bring about political change by spreading fear and terror. This perspective is crucial for the development of preventive and reactive measures against terrorist threats. It becomes clear that combating terrorism is not only a question of security, but also requires a deep understanding of the psychological and media aspects. Jaschke's (2020) analysis suggests that the terrorist acts of the 21st century take place in an increasingly networked and media-driven global environment. The way in which terrorists use modern means of communication to spread their messages and create fear poses a significant challenge for security policy. The effectiveness of terrorist attacks therefore lies not only in their immediate destruction, but also in their ability to exert influence through media presence and psychological effects (Jaschke, 2020). Understanding such factors as the role of media and technology in modern terrorism, as well as the importance of psychological warfare, must be integrated into prevention and response strategies against terrorism to ensure a comprehensive and effective response to this complex and dynamic threat.

A recently relevant aspect of German security policy is the planned introduction of a Freedom Commission, which is intended to enable a review of legislative proposals in the context of combating terrorism that protects fundamental rights. Ahmed et al. (2022) emphasise the need for this commission in order to ensure a balance between security and freedom. This project reflects a growing awareness of the potential restriction of individual freedoms through expanded security laws. The Freedom Commission should act as an independent body of experts and provide forward-looking, evidence-based advice on legislation. Such a commission is particularly important in the fight against terrorism, where legislation often leads to an expansion of the powers of the security authorities. Its task will be to pre-emptively evaluate draft legislation and ensure that it does not disproportionately curtail fundamental freedoms (Ahmed et al., 2022). In light of these developments, an important innovation in German security policy is emerging that aims to strike a balance between security and freedom and takes into account the potential impact of expanded security laws on individual freedoms.

The establishment of the Freedom Commission also takes place in the context of increasing awareness of the need for differentiated approaches in the prevention of extremism. The BICC Working Paper by Neitzert (2021) emphasises the importance of exit programmes for radicalised individuals, which represent an important building block in the fight against extremism. In North Rhine-Westphalia (NRW), there are various exit programmes that differ in their approach, risk assessment and objectives. These programmes combine aspects of security with integration and show that effective counter-terrorism must also take into account the social and psychological factors that can lead to radicalisation. Interestingly, the findings of Neitzert (2021) suggest that a stronger focus on integration and cognitive deradicalisation in

exit programmes can contribute to a more comprehensive and sustainable prevention of terrorism.

However, it is important to note that the preventive approach in criminal law is in conflict with the traditional understanding of criminal law, which is mainly geared towards sanctioning offences that have already been committed. In their study, Dessecker et al. (2020) shed light on the complex challenges and dilemmas that confront German criminal law in the context of combating terrorism. Their focus is on the question of how criminal law balances the need for preventive measures to prevent terrorist offences with upholding the principles of the rule of law. A central aspect of their analysis is the expansion of criminal law powers in the context of terrorism. Dessecker et al. (2020) note that the fight against terrorism has led to an advance shift in criminal liability by criminalising preparatory acts and support for terrorist activities. This development results from the need to nip terrorist attacks in the bud in order to ensure public safety (Dessecker et al., 2020). This preventative approach reflects a shift in criminal law from the traditional repressive response to crime to a proactive approach.

Another important topic in the work of Dessecker et al. (2020) is the concept of the "serious violent offence endangering the state" (Section 89a I 2 StGB), which is considered the core of German criminal terrorism law. This term covers a range of serious offences that could potentially compromise the security of the state. The authors point out that these offences are not aimed at actual acts of violence, but rather cover various levels of preparatory acts. This also includes acts that are more likely to be regarded as preparatory acts, such as maintaining relations with a terrorist organisation or financing terrorism. Dessecker et al. (2020) emphasise that this expansion of criminal law powers and the advance of criminal liability lead to a dilemma: On the one hand, terrorism should be effectively prevented, while on the other hand, the principles of the rule of law and the protection of individual freedoms must be upheld. They criticise the fact that this development means that everyday behaviour such as transferring money or making a phone call can become punishable under certain circumstances if they are associated with terrorist activities. This leads to a "misappropriation" of the behavioural norm, in which it is no longer the wrongfulness of the act but the meaning attributed to it in the context of terrorism that is decisive for criminal sanctioning (Dessecker et al., 2020). In conclusion, Dessecker et al. (2020) emphasise that despite the preventive orientation of criminal law and its focus on averting danger, criminal law remains structurally geared towards sanctioning acts that have already occurred. They therefore call for the measures in criminal law on terrorism to be carefully weighed up in order to ensure a balance between effectively combating terrorism and safeguarding the rule of law and individual freedoms (Dessecker et al., 2020). This requires a continuous review and adaptation of the legal framework in the light of changing security requirements.

Based on the extensive analysis by Piesker et al. (2021) on counter-terrorism in Germany, it is clear that the security landscape has changed considerably since the attacks of 11 September 2001. The study specifically evaluates the application practice of various regulations that have been implemented in response to this changed threat situation. Central to this are the amendments and extensions to the Federal Constitution Protection Act, the MAD Act, the BND Act and the Security Investigation Act. The ongoing amendment of these laws reflects a dynamic response to the evolving challenges in the fight against terrorism. A significant aspect of the evaluation concerns the powers of the intelligence services, particularly with regard to the collection and processing of information. The study shows that these powers have not only been extended, but also scrutinised in detail to ensure a balance between effective counter-terrorism and the protection of individual freedoms (Piesker et al., 2021). It is interesting to note that despite the extended powers, these instruments are used in a proportionate and targeted manner. For example, while requests for inventory data from teleservice providers

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have been used more frequently, this increase reflects the changing communications landscape and the need to adapt to modern communication channels rather than an arbitrary expansion of surveillance (Piesker et al., 2021). Another important aspect is the issue of notification obligations and transparency towards those affected. The study emphasises that the practice of notification is questioned in the case of less fundamental rights-intensive measures, which underlines the need for a differentiated view of the depth of interference of such measures (Piesker et al., 2021). In summary, the evaluation shows that the German security authorities act within the framework of the legal requirements and endeavour to limit intrusions into citizens' privacy to what is necessary. This careful balancing of security needs and fundamental rights is a core feature of German counter-terrorism policy (Piesker et al., 2021). However, the study by Piesker et al. (2021) emphasises the importance of continuously reviewing and adapting the legal framework in light of changing security requirements. This emphasises the need to ensure a balance between effective counter-terrorism and the preservation of the rule of law and individual freedoms and reflects the dynamic and complex nature of counter-terrorism in a modern constitutional state.

4. DISCUSSION

The discussion of the results of this study in the context of the central question - how German courts and legislators can maintain the balance between security and civil rights in the fight against terrorism - requires a differentiated consideration of the aspects presented in the results.

Firstly, the analysis shows that the fight against terrorism in Germany has led to a significant expansion of criminal law and an increase in the powers of the security authorities, as described by Puschke and Rienhoff (2018) and Kortmann and Rosenow-Williams (2016). This development reflects a trend towards prioritising security, partly at the expense of individual liberties. At the same time, the findings of Piesker et al. (2021) clearly show that the German security authorities are endeavouring to maintain a balance between security needs and fundamental rights by limiting intrusions into privacy to the extent necessary. This endeavour for a balanced approach is crucial to maintain the integrity of the rule of law and the protection of individual freedoms.

Secondly, the findings emphasise the importance of judicial independence, particularly in the context of anti-terrorism laws, which are often preventative in nature. As Ananian-Welsh (2016) emphasises, such laws can jeopardise judicial independence by expanding the role of the courts in the area of crime prevention. This dilemma between the need to effectively combat terrorism and uphold the principles of the rule of law is a key challenge facing the German legal system.

Thirdly, the findings illustrate the importance of considering the multifactorial nature of terrorism, including the psychological and media aspects, as outlined by Jaschke (2020). Combating terrorism therefore requires not only a response in the form of security measures, but also a deep understanding of the complex and dynamic challenges associated with this threat.

Fourthly, the introduction of a Freedom Commission, as proposed by Ahmed et al. (2022), is an important step towards ensuring that legislative proposals in the fight against terrorism are scrutinised in a way that protects fundamental rights. This approach reflects a growing

awareness of the need for a balanced consideration of security and liberty and takes into account the potential impact of expanded security laws on individual freedoms.
In conclusion, it can be said that maintaining a balance between security measures and the protection of civil rights in the fight against terrorism is an ongoing challenge. The legal framework needs to be continuously adapted and reviewed in order to ensure both effective counter-terrorism measures and the preservation of the rule of law and individual freedoms. The results of this study show that efforts are being made in Germany to maintain this balance, but constant critical reflection and evaluation of the measures taken is essential in order to achieve the goal of a balanced counter-terrorism policy based on the rule of law.

5. CONCLUSION

This study has analysed in detail the question of how German courts and legislators can maintain the balance between security and civil rights in the fight against terrorism. The results illustrate the ongoing challenge of finding a balance in German legal and security policy. One focus is on expanding criminal law and strengthening the powers of the security authorities, while at the same time recognising a growing awareness of the need to protect individual freedoms and judicial independence. The need for a constant critical review and adaptation of counter-terrorism laws is becoming clear, particularly with regard to their impact on the principles of the rule of law and individual freedoms. It is essential not to see criminal law as the sole tool in the fight against terrorism, but to embed it in a broader context of social, psychological and political measures.

The implications for practice and policy show that strengthening judicial independence is crucial. Courts must maintain their independent role in the review of terrorism laws and measures to ensure a balanced consideration of security needs and fundamental rights. Furthermore, recognising the multifactorial nature of terrorism is crucial for effective counter-terrorism. This requires an in-depth understanding of the psychological and media dimensions of terrorism. In addition, the promotion of transparency and public dialogue in the development and implementation of counter-terrorism laws is important in order to achieve broad understanding and acceptance in society.

There are various perspectives for future research. Long-term studies on the impact of anti-terrorism laws are needed to analyse their long-term effects on society and the legal system. International comparative studies could provide valuable insights into successful practices and approaches. The role of the media in terrorism reporting and its influence on public opinion and policy-making requires further investigation to better understand the discursive dynamics of counter-terrorism. The planned introduction of a Freedom Commission also opens up research opportunities to evaluate its effectiveness in legislation.

Finally, it should be noted that the present study also has limitations. The focus on German legal and security policy could limit the generalisability of the results to other contexts. In addition, the study is mainly based on a literature review, which means that the empirical database is limited. Future research should therefore include empirical studies to deepen and validate the insights gained here. Despite these limitations, the study provides important insights into the challenges and opportunities for maintaining a balance between security and civil liberties in counter-terrorism.

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