

Germany: parliament curbs freedom of speech and assembly

By Justus Leicht
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In the name of the “fight against right-wing extremism,” the Bundestag (Germany’s parliament) voted March 11 for sweeping restrictions on the right of association and freedom of expression. The Social Democratic Party (SPD), the Greens and the opposition Christian Democratic Union (CDU) and Christian Social Union (CSU) voted to extend laws covering incitement as well as those banning or restricting demonstrations. Only the liberal Free Democratic Party voted against the new laws.

The immediate grounds for the legislation is a planned march by the right-wing extremist German National Party (NPD) in front of the Brandenburg Gate on May 8, the 60th anniversary of the end of World War Two. For weeks, there has been a debate within ruling circles about how to prevent this march.

While Germany previously outlawed the public denial of the Holocaust or other serious Nazi crimes, the new statutes also make it a crime to “celebrate, approve or justify” Nazi rule, if this disturbs the “public peace” and violates “the dignity of the victims.” The likelihood that a demonstration would produce such an offence will now be sufficient grounds for banning it.

The reference to disturbing the peace and violating the dignity of victims was introduced in order to avoid accusations that the law was aimed directly at suppressing political opinion. Otherwise, the Supreme Court would probably have found the measures unconstitutional.

But the new laws are directed precisely at the suppression of political opinion. In response to the question, When can it be assumed that such an injury to the victims of Nazism has occurred?, an official communication from the Justice Ministry notes that this can be the case if Nazi bosses are “distinguished in any

special way.”

Any positive public pronouncement, no matter how this is expressed, regarding the Nazi regime or its individual representatives is to be outlawed. This could include a controversial contribution of a historian, the tasteless satire of a cabaret artist or a provocative work by an artist. An action that in itself is legal and harmless is ruled a criminal offence simply by virtue of the opinion it is alleged to express.

Moreover, the CDU had called for the “exclusion zone” around the parliament building, within which there is practically no freedom of assembly, to be extended up to the Brandenburg Gate and the adjacent Holocaust memorial. This proposal was withdrawn only after a legal expert invited by the CDU to testify before a parliamentary hearing on the matter warned that the Supreme Court would strike down such a regulation. The exclusion zone is ostensibly intended merely to protect the “functioning of parliament,” that is, to ensure members of parliament access to the Bundestag.

Neo-Nazi marches at historical sites—such as former concentration camps or the Holocaust memorial in Berlin—are to be more easily prohibited.

The new regulations enable the authorities to ban gatherings or impose onerous conditions, if there are indications of a potential affront to the dignity of the victims. The state legislatures are empowered to specify the places within their own jurisdictions where demonstrations could produce such an insult. At the federal level, the Holocaust memorial is specified as such a site.

It is questionable, however, whether the authorities will be able to enforce the law. This would certainly apply if the NPD announced a demonstration. The German constitution specifies that political parties enjoy certain

“party privileges,” which deny the courts authority to inquire into the content of party meetings, so long as the Supreme Court has not banned the organisation.

To make the law stick, the authorities and the courts must assume that the threat to the dignity of the victims arises merely from the fact that it is a demonstration by Nazis, or a party that has expressed an affinity for Nazism, like the NPD. This would create a special status for citizens that hold certain political views, who would be denied freedom of assembly and expression due solely to their expressed opinions.

This brings to mind the “enemy law” propagated under the Weimar Republic by Carl Schmitt (who later became president of the Association of Nazi Jurists) and which is today publicised by Bonn law professor Guenther Jakobs. Those whom it is claimed do not recognise the foundations of democracy and law shall be denied their elementary democratic rights. This is already being practiced by the Bush administration with regard to alleged terrorists and their supporters. Now this principle is to once again find a foothold in Germany.

In the struggle against fascism, the German establishment clearly has no faith in political argument or any inherent attraction of the “democratic constitutional structures.” Instead, it relies on the police and the public prosecutor’s office. In a February press statement announcing an initial draft of the law, Federal Justice Minister Zypries admitted, “With regard to the fact that the right-wing extremists are trying to recruit in schools, the tightening up of the law should send a signal to young people. The law draws a clear distinction between what is permitted, and that which is forbidden.”

It is revealing that nearly 60 years after the fall of Hitler’s Third Reich and the establishment of the Federal Republic of Germany, the SPD, the Greens and CDU/CSU today regard such prohibitions as necessary.

There are also other changes under discussion that could be used not only against the neo-Nazis. In February, Zypries announced that in bringing certain German laws into line with European Union legislation, the statutes prohibiting the “incitement of hatred” are to be tightened up. In the past, these statutes had applied only to inciting hatred against “sections of the population.” The law will now also apply to those inciting hatred of individual “persons,”

going beyond the legal protections covering slander, libel and malicious rumour.

The minister justified this change by citing the struggle against racism. It is conceivable, however, that a prohibition could be ordered against a left-wing demonstration protesting against the government’s “Hartz” social welfare cuts programme, or that individuals participating in such a demonstration could be criminalised, since they may well be “inciting hatred” against Chancellor Schröder or Employment Minister Clement.

Another amendment now being debated, according to a statement by Justice Minister Zypries, could even be employed against those who oppose war. The present statute prohibiting the denial of Nazi genocide is to be extended in the future to those who would deny other acts of genocide, “as long as the action is determined by a valid decision of an international court, whose competence is recognised by the Federal Republic of Germany.”

The Justice Ministry press statement in February provided as an example denying “genocide” in the former Yugoslavia, which was the pretext used by the SPD-Green government to justify participation in the war against Serbia.

The official parties have no other answer to Germany’s social crisis than further welfare cuts and the redistribution of society’s wealth upwards. German and European militarism is their only response to the aggressive international actions of the US. Thus, they create the social and political soil for the growth of right-wing and fascistic tendencies.

This then provides a pretext for strengthening the state and the destruction of democratic rights. Although directed against neo-Nazis today, tomorrow they can be used against any opposition, particularly one that is based upon the independent interests of the working class and the struggle for socialism.

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