

## **Summary of the Legal Opinion: serious threat to democracy in the Federal Republic of Germany due to “protection of the constitution”**

There is no established church.  
(Art. 140 of the Basic Law in conjunction  
with Art. 137 Para. 1 of the Weimar Constitution)

No one may be disadvantaged or favoured because  
of... their religious or political views.  
(Art. 3 Para. 3 of the Basic Law)

Democracy in the Federal Republic of Germany is seriously endangered. Established political interests delegitimize the results of free parliamentary elections, make the opposition contemptible through Nazification and endanger the functioning of parliamentarism by erecting ideological “firewalls”. In the vocabulary of the constitutional protection offices, the so-called “democracy agencies” (The Economist of April 29th, 1995 on page 36 regarding „German way of democracy“), one would have to speak of a fundamental disregard for democracy, which is primarily directed against opposition rights. The main instrument for this threat to democracy, which should classify as “extremist” in the official language, is the so-called “Verfassungsschutz” (VS), a state institution with the powers of a domestic secret service, which, however, also operates as a state propaganda office, in particular by issuing annual reports targeting ideologically undesirable political opposition. These reports, issued by the respective Ministry of Interior are termed “Verfassungsschutzberichte”. According to the President of the Federal Office for the Protection of the Constitution, these offices also feel responsible for “lowering the poll numbers” of an unwanted opposition party. This clearly means that this party's vote share should be reduced through the use of governmental resources. This intended state control of the election results should also be achieved by state monitoring of the social and ideological environment of the corresponding opposition party or what is officially viewed as such by the respective “Office for the Protection of the Constitution”. This police-like observation of political opposition is resulting in very negative effects on freedom of association and freedom of expression: the principle of human dignity is massively impaired by official nazifying of oppositional views that are legally expressed by official usage the ideological term “right-wing extremist”. An official radicalization can be observed in order to consider the desire of established political forces to use methods that are extremely questionable in terms of democratic theory against the opposition party Alternative for Germany (AfD), which is currently rising in favour with voters. Accordingly, the State Office for the Protection of the Constitution of the Free and Hanseatic City of Hamburg (LfV-HH), acting as a thought police has now in a radicalizing way labelled the State and Economic Policy Society (SWG), a registered association, within four years, in the period from 2019 to 2023, from a “test case” via a “suspected case” to a “secure extremist aspiration. “

To justify the accusation of so-called “extremism”, the association in question is not accused of any legal violations or at least preparatory actions, but rather of merely expressing opinions. Ideology, ideas, language style, political worldview, proximity to a certain worldview and the use of certain terms in some opinion pieces such as “Islamization,” “party cartel,” and “Umvolkung” (substituting the population by tolerating illegal immigration) are officially accused of being “anti-constitutional” or “extremist”. The association's magazine, namely the Deutschland-Journal, but also statements on the SWG website are subject to subsequent

ensorship by the secret service as a state propaganda agency. These expressions of opinion - and the sole purpose of this is to justify the use of secret service resources against the freedom of expression that the state is combating - are classified as “right-wing extremist” with a share of around 10 percent, and in particular there are “revisionist views of history”. However, the association's expressions of opinion when exercising thought control could largely be attributed to a “conservative-bourgeois background”, according to the office.

This approach of an LfV-HH authority to view legally expressed opinions, based on an ideological classification (“right-wing”, “conservative-bourgeois”), as a problem of state protection, leads to the central problem of the very specific German concept of state protection, which is increasingly becoming a serious threat to the rule of law, democracy and, in particular, diversity of opinion. While “liberal democracies of the West” (a term used by the Federal Constitutional Court on the classification of the German concept of outlawing political parties compared to “normal” democracies) draw a criminal line of violence when assessing the threat to the state and constitutional order. In the Federal Republic of Germany primarily a so-called “value limit” applies. This official definition of a threat to the constitution more or less inevitably leads to an ideological limit, i.e. ultimately to an ideological definition of a threat to the state and thus to a “thought police” in the sense of the relevant Japanese law of 1925. However, if not criminal law with regulations on high treason (§ 81 Penal Code) as a violent attempt to overthrow the political order, but rather “values” determine the enemy of the state, then this inevitably leads to a state ideology, as the alternative to constitutional democratic justification of political power is the return to the religious or ideological, in short: ideological justification of power as a historical norm in human history. The accusation of “Islamophobia” is thus very threatening, as it almost implies the status of Islam as a kind of state religion, which must then be excluded from criticism, i.e. from the fundamental right of freedom of expression.

In contrast to the concept of the rule of law with the requirement of legal equality and the principle of legality, as conceptually applied in criminal law, an ideological protection of democracy is only directed against oppositional efforts. This attitude of the State delegitimizes precisely that part of the state order through state authorities that distinguishes democracy from other forms of exercising political power, namely the constitutionally guaranteed right to exercise political opposition in a legal manner. This right to opposition is delegitimized in a decisive way as the constitutional protection authorities construct “enmity to democracy” out of criticism of established politicians, who are regarded as “the democrats”, while the fight against the opposition, which aims to establish ideological apartheid, is officially completely ignored. With this kind of accusation of “enmity to democracy”, “democracy” can only mean an idea of democracy that goes in the direction of a totalitarian “people's democracy”, where the criticism of “democratic politicians” (a term unknown in the Basic Law), i.e. socialists, is considered un-democratic as this was the case according to Article 6 of the GDR constitution of 1949 (“Boykotthetze”). This official approach is the only way to understand that an implicit reference to the radical communist past of officials of the party “The Greens”, who belonged to groups that supported the Khmer Rouge in more than just terms, is supposed to represent for the Hamburg Office for the Protection of the Constitution a problem for the constitution of the Federal Republic of Germany.

The essential instrument of the official fight against opposition, which as such is hardly compatible with the concept of a “liberal democracy of the West” and must therefore be

classified as “extremist” according to the relevant state vocabulary, is the censorship of free expression of opinions by a thought police. The state thus judges freely expressed opinions based on an official ideological assessment. The core of the German ideological state is the accusation of “right-wing extremism”, a rather contaminated term that the Federal Constitutional Court once classified as legally useless, especially since it could ultimately be raised against anyone due to its vagueness. In particular against the Office for the Protection of the Constitution itself: its central category “enemy of the constitution” is based on a friend-enemy stereotype that is seen as essential to this “extremism” by experts of political science.

This state-ideological terminology results in a Nazification of the opposition, which, due to the associated denigration of those affected as potentially politically motivated mass murderers, is hardly compatible with the obligation of state power to preserve human dignity, which is also treated as a category of accusation. This complex of accusations inevitably also includes so-called anti-Semitism, which is then shamelessly associated with terms such as “globalists” or “high finance”. With this methodology of the Office for the Protection of the Constitution, anti-Semitism could also be linked to the accusation of “right-wing extremism”, provided that - which represents another category of accusations - it involves an “ethnically defined understanding of the state”. The accusation against the Jews that has existed since ancient times was that they insisted on remaining an independent people and did not want to fit into the globalization of Hellenism, which was considered an expression of their “misanthropy” (in FRG German: hostility to human dignity).

With the central accusation of “revisionism”, the Office for the Protection of the Constitution is at least methodically adopting a category of accusations from the socialist movement of ideas, which translated into massive political persecution after the communist seizure of power. The accusation of “revisionism” was one of the “poisonous words” of the GDR dictatorship. With the accusation of “historical revisionism”, the reference to the constitution that the Office for the Protection of the Constitution is supposed to protect is completely dissolved and only argued based on state ideology. Which constitutional principle should be jeopardized by a different theory about the causes of the world war? Perhaps the constitutional principle of judicial independence?

As described in detail in the Legal Opinion, the Democracy Agency's allegations against the SWG are so absurd that they should not stand up to judicial review. However, the increasing ideological understanding of the constitution, which goes hand in hand with the term “constitutional protection” as a special case of state security in the Federal Republic of Germany, is affecting the predictability of the law required by the rule of law and thus also the forecasts regarding court decisions, with worrying effects even on the criminal justice system. Especially since the one-sided discriminatory approach of the Office for the Protection of the Constitution means that only the “splinters in the eye” of oppositional efforts can be made the subject of a court proceeding, while the “beams in the eye” of established groups cannot be made directly the subject of a procedure from the outset, like for example, the proclamation of a lawfully acting opposition party as the parliamentary arm of terrorism as done by a Federal Minister of State.

If the state were to act exclusively in accordance with the rule of law and not ideologically, the allegations against the SWG would not be a problem from the outset due to the lack of relevance

with regard to criminal law. In a democracy the state generally does not intervene in the political and ideological debates of its citizens, as long as these are carried out non-violently. According to the principle of rule of law, it is not an official task to subject potentially questionable expressions of opinion to state assessment (censorship). The undesirable development of the constitutional protection concept in Germany urgently requires a political response. What is required is a fundamental reform of state security based on the principles of a “liberal democracy of the West” in accordance with the recommendations of the Venice Commission of the Council of Europe on GUIDELINES ON PROHIBITION AND DISSOLUTION OF POLITICAL PARTIES AND ANALOGOUS MEASURES) of 10./11.12.1999 - CDL-INF (2000) 1: the ideological definition of a threat to the constitution must be replaced. Only the violent methods to achieve political goals can then justifiably be described as unconstitutional or hostile to the constitution in a legally relevant sense. A case for the “constitutional protection” would therefore only be associations that want to attain their political goals through violence, no matter how well-intentioned these goals may be. If the situation in Germany were free according to the usual democratic standards, the SWG would of course not be the subject of secret service surveillance by the Office for the Protection of the Constitution or be the subject of ideological reporting by the Police Ministry. For the political implementation of such a constitutional reform, an “alternative” is required, against which the ideological state action against the SWG is ultimately directed. The State Office for the Protection of the Constitution clearly sees the SWG as part of the ideological environment for this opposition party that is ideologically attacked by governmental institutions. This assessment is the only way to explain the ideological and political struggle of the Hamburg authorities against the SWG after 60 years of its existence. The ideological allegations against the SWG, judged according to constitutional criteria, constitute a central argument for the necessity of overcoming the ideologically oriented “constitutional protection” – in the interest of the rule of law, democracy and human dignity, i.e. in the interest of political freedom in the Federal Republic of Germany.