

Germany: - "The Great Bugging Operation"--a historical turning point

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In February of this year both houses of the German parliament overturned Article 13 of the constitution with the two thirds majority necessary for such a change. Article 13 previously guaranteed the inviolability of the home. This constitutional change represents an historical turning point in the political development of Germany since 1945, comparable to the enactment of the Emergency Laws 30 years ago.

At that time, during the first big economic crisis of the post-war period, parliament regulated how the constitution could be 'constitutionally' set aside during times of civil strife, revolution and war. The present change to the constitution--the so-called 'great bugging operation' (Grosse Lauschangriff)--agreed to by Chancellor Helmut Kohl's conservative-liberal coalition government, with the support of the opposition German Social Democratic Party (SPD), abolishes a number of fundamental rights, without the need to declare a state of emergency.

In future, police officers and secret service agents will be able to install listening devices and video cameras in homes and other private and business locations, so as to spy on occupants, visitors and employees. No prior judicial authorization is needed; it is sufficient that those observed are suspected of planning a criminal act.

In addition to such 'preventative' bugging, bugging operations to obtain evidence in active cases will also be allowed. Investigators may bug the homes of those they consider to be suspects and any other premises in which they might be found. This could include the premises of completely innocent persons. For this type of bugging operation judicial authorization is required, however the requirement to obtain it is extremely minimal.

The reason given for this constitutional change is the fight against 'organized crime.' But criminal and legal experts, such as the Trier law Professor Hans-Heiner Kühne, have demonstrated that 'organized crime'--according to the figures available from the General Attorneys office--is declining.

The high value of damages said to result from organized crime has been arbitrarily arrived at because no objective

figures are available. Furthermore, in the fight against organized crime, the very technical measures being legalized in the constitutional amendment will prove ineffective because the proposed targets--if they are indeed organized--have access to the modern techniques needed to protect themselves.

The law outlining the details of the constitutional change clearly reveals that the 'fight against organized crime' is just a pretext for restricting democratic rights. It is not the 'organized criminal' who is targeted, but every citizen. Whereas the new Article 13 refers to 'especially severe crimes' justifying a bugging operation, according to the law implementing the constitutional change, mere suspicion of a petty offense is sufficient. Suspected shop lifting by a youth is sufficient cause to permit the bugging of his parents or friends.

Naturally, bugging and spying operations are not new. The police laws of most German Länder (states) legalized them years ago. And in those states where the law formally forbids such activities, the secret service, State Attorneys, judges and police have hardly bothered themselves about such formalities. According to official figures, between 1990 and 1996 the number of annual requests for telephone taps increased from 2,494 to 6,428, affecting a total of one million telephone users. Computers, ISDN equipment and other telecommunications devices can be transformed into bugs by the appropriate external electronic commands. As far as bugging the homes and editorial offices of those considered politically unwelcome and unpopular is concerned, the German State Attorneys and police have never been known to have any qualms.

However, the present constitutional change removes the final impediments for the state authorities and prevents any recourse to legal process in opposing state attacks, or the corresponding police laws and decrees. In addition to the inviolability of the home, a series of other basic rights have been undermined, including the freedom of the press and the right to free speech.

In the future no one will dare go to the press with

information about corruption cases, tax swindles or other criminal activities by politicians, high-ranking officials or managers, if they must reckon with being bugged, identified and dealt with in one way or another. 'There must be an end to the exposé-terror of the news magazines,' explained Professor Josef Isensee, a legal advisor to the governing Christian Democratic Union/Christian Social Union (CDU/CSU).

Important democratic principles in criminal procedures are being thrown overboard as well, such as the presumption that one is innocent until proven guilty, which previously obliged the police to inform a suspect of his rights when first questioned, and forbade any measures which might restrict the free will of the accused. By legalizing bugging, the state has done away with the principle that no one can be forced to incriminate himself, as well as the right to refuse to give evidence against close relatives.

The French newspaper *Libération* wrote that it was reminded of 'the Gestapo and the Stasi (the former East German secret police).' The Berlin Chamber of Attorneys expressed the fear that the 'Federal Republic is coming to resemble the surveillance and snooper state of East Germany.' All the more remarkable is the unanimity with which the parties in the Bundestag (parliament) and the trade unions have either openly or passively supported this latest change to the constitution.

Five years ago the SPD made clear it had broken with all democratic traditions when it voted to abolish the right to asylum. Whereas in the 1960s many of its deputies and functionaries took to the streets to oppose the Emergency Laws, now they do not give the slightest indication that they have any concern with the defense of democratic rights. The SPD deputy Otto Schily, who in the 70s defended members of the terrorist Rote Armee Fraktion (RAF--Red Army Faction) as a lawyer and protested against the bugging of conversations between lawyers and their clients, played a central role in the latest constitutional change.

Only the SPD Mayor of Bremen, Henning Scherf (formerly regarded as a left), threatened to prevent the whole thing from becoming law. Bearing in mind the narrow majority for the constitutional change in the Bundesrat (upper house of parliament), it would have been possible for him to do so. But, in the event, he voted 'yes.' In return for his agreement, some changes were introduced to the original draft. With the support of a few Free Democratic Party (FDP) politicians, these amendments were passed, against the opposition of the majority of the ruling coalition. But these changes are limited to extending the circle of those professionals who are protected against bugging measures: parliamentary deputies, priests, doctors, lawyers, midwives and journalists.

This slight weakening of the constitutional amendment came about because at the last minute the influential newsmagazine *Der Spiegel* and other media groups sharply protested against the original draft, in which journalists were not exempted. The original version would have, in practice, abrogated the right of press freedom.

The Greens also did their bit, supporting Scherf's proposals and thus enabling the SPD to justify its vote in favor of the constitutional amendment.

What forces are at work in society, that bring forward such massive restrictions on democratic freedoms? Why are all of the parliamentary parties so compliantly and hastily rallying to the state and its apparatus for spying and repression?

The oft-cited parallel with the Stalinist regime and the Stasi secret police of East Germany is not so far from the mark. The more apparent the alienation and isolation of the ruling political caste in the old German Democratic Republic (East Germany) from the vast majority of the people, the more the Stasi was built up into a gigantic apparatus for intimidating and controlling the population.

The same process can be seen at work today. For years the Kohl government has systematically driven up unemployment and pushed for the dismantling the welfare state. It has had the energetic cooperation of the trade unions and all of the other parties in the Bundestag: the SPD, the Greens; the Partei des Demokratischen Sozialismus (PDS--Party of Democratic Socialism, the successor to the ruling party in the former East Germany). Now they sense the huge gulf between themselves and the rest of society. They view the hostility of the population as a threat and flee into the arms of the state.

What a fitting way to celebrate the 150th anniversary of the 1848 revolution! In that year, fearing the workers and their far-reaching social demands, the German bourgeoisie and its petty-bourgeois political representatives gave up their months-long struggle for democratic demands in favor of 'law and order,' and voluntarily subordinated themselves to the Prussian monarchy and its military state.

Since then, the ruling classes in Germany have always regarded democratic rights as temporary concessions and acts of grace on the part of the state, not as inalienable rights and inviolable guarantees of personal liberty.



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