



DERADICALIZATION AND INTEGRATION LEGAL & POLICY FRAMEWORK

Germany/WP4 Country Report

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List of abbreviations

AfD	Alternative für Deutschland, engl. Alternative for Germany
Art.	Article
BfV	Bundesamt für Verfassungsschutz, engl. Federal Office for the Protection of the Constitution
BKA	Bundeskriminalamt, engl. Federal Criminal Police Office
BVerfSchG	Bundesverfassungsschutzgesetz, Act Regulating the Cooperation between the Federation and the Federal States in Matters Relating to the Protection of the Constitution and on the Federal Office for the Protection of the Constitution
DeZIM	Deutsches Institut für Integrations- und Migrationsforschung, engl. German Centre for Integration and Migration Research
LfV	Landesamt für Verfassungsschutz, eng. State Office for the Protection of the Constitution
LKA	Landeskriminalamt, engl. State Office of Criminal Investigations
BVerfG	Bundesverfassungsgericht, engl. Federal Constitutional Court
FdGO	Freiheitlich demokratische Grundordnung, engl. free democratic basic order
FRG	Federal Republic of Germany
GBA	Generalbundesanwalt/-anwältin beim Bundesgerichtshof, engl. Public Prosecutor General at the Federal Court of Justice
GG	Grundgesetz, engl. Basic Law
KPD	Kommunistische Partei Deutschlands, engl. Communist Party of Germany
NSdAP	Nationalsozialistische Deutsche Arbeiterpartei, engl. National Socialist German Workers' Party
RAF	Rote Armee Fraktion, engl. Red Army Faction
StGB	Strafgesetzbuch, engl. Criminal Code of the Federal Republic of Germany
SRP	Sozialistische Reichspartei, engl. Socialist Reich Party

About the Project

D.Rad is a comparative study of radicalisation and polarisation in Europe and beyond. It aims to identify the actors, networks, and wider social contexts driving radicalisation, particularly among young people in urban and peri-urban areas. D.Rad conceptualises this through the I-GAP spectrum (injustice-grievance-alienation-polarisation) with the goal of moving towards measurable evaluations of de-radicalisation programmes. Our intention is to identify the building blocks of radicalisation, which include a sense of being victimised; a sense of being thwarted or lacking agency in established legal and political structures; and coming under the influence of “us vs them” identity formulations.

D.Rad benefits from an exceptional breadth of backgrounds. The project spans national contexts including the UK, France, Italy, Germany, Poland, Hungary, Finland, Slovenia, Bosnia, Serbia, Kosovo, Israel, Iraq, Jordan, Turkey, Georgia, Austria, and several minority nationalisms. It bridges academic disciplines ranging from political science and cultural studies to social psychology and artificial intelligence. Dissemination methods include D.Rad labs, D.Rad hubs, policy papers, academic workshops, visual outputs and digital galleries. As such, D.Rad establishes a rigorous foundation to test practical interventions geared to prevention, inclusion and de-radicalisation.

With the possibility of capturing the trajectories of seventeen nations and several minority nations, the project will provide a unique evidence base for the comparative analysis of law and policy as nation states adapt to new security challenges. The process of mapping these varieties and their link to national contexts will be crucial in uncovering strengths and weaknesses in existing interventions. Furthermore, D.Rad accounts for the problem that processes of radicalisation often occur in circumstances that escape the control and scrutiny of traditional national frameworks of justice. The participation of AI professionals in modelling, analysing and devising solutions to online radicalisation will be central to the project’s aims.

Executive summary

Since 2015 at the latest, the threat of radical political violence has once again become highly present in Germany. With an increasing influx of refugees due to the Syrian war and other conflicts in the Middle East, the New Right has succeeded in tapping into latent xenophobic sentiments among the population and in mobilizing masses against migration, Muslims and other minorities, creating a climate of fear. Alongside right-wing extremism, Islamism has repeatedly been at the center of public attention on radicalization ever since the attacks in New York in September 2001. However, apart from one serious terrorist attack in December 2016 on a Christmas market in Berlin, jihadist terrorism remains a rather potential threat in Germany.

This report provides an overview of the constitutional principles and legal and policy framework that guide state measures against radicalization. It describes the historical specificity of Germany's modern day policy approach to deradicalization, which is linked to the concept of 'militant democracy' developed in the former Federal Republic of Germany (FRG) that aimed to prevent extremism before any attacks on democratic order actually materialized. Using the examples of two case studies, the report demonstrates the significant role of civil society in preventing radicalization and promoting democracy and points to the specific challenges of deradicalization efforts in the fields of right-wing extremism and Islamism.

1. Introduction

Since 2015 at the latest, the threat of radical political violence has once again become highly present in Germany. With an increasing influx of refugees due to the Syrian war and other conflicts in the Middle East, the New Right has succeeded in tapping into latent xenophobic sentiments among the population and in mobilizing masses against migration, Muslims and other minorities, creating a climate of aggression and anti-immigrant sentiment. The discursive climate of violence resulted in three far-right terrorist attacks during 2019/20¹, motivated by racism and anti-Semitism, in which 13 people were killed. However, Islamism has repeatedly been at the center of public attention on radicalization ever since the September 11 attacks in New York, despite the fact that Germany itself has experienced only one jihadist terrorist attack, on a Christmas market in Berlin in December 2016, and generally shows low numbers of Islamist violence compared to other Western European countries such as France and the United Kingdom.

This report aims to outline Germany's legal, institutional and political approach to (de)radicalization considering its specific historical and socio-economic context. The German state's approach to radicalization and de-radicalization has been shaped by the historical experience of National Socialism and the subsequent division of Germany in the context of the Cold War. Building on the narrative of an overly liberal Weimar Republic, which enabled National Socialism to seize power, a concept of state protection emerged in the post-war period with the goal of creating preventive mechanisms to protect democracy from external extremist enemies, i.e., allowing the state to intervene before crimes actually materialize.

First, the report presents the socioeconomic and political context of radicalization in contemporary Germany. Here, it is shown that the sharp increase in anti-immigrant violence in 2015/16 following the influx of refugees cannot be solely linked to right-wing mobilization. Rather, the ideological and organizational structures that have been developing since the 1990s at the latest must be reflected upon. The first chapter also refers the painful experiences of many people in East Germany in the course of reunification and discusses regional inequalities between rural and urban regions that may facilitate the popularization of radical discourse.

Next, the report presents the constitutional framework for the state's approach to deradicalization. The first part outlines the constitutional framework, i.e. the constitutional principles representing the basic democratic order, and explains the fundamental rights laid down in the Constitution. The second part discusses the relevant institutional actors and their areas of responsibility. With the help of several concise examples, the following subchapter presents the historical development of criminal law in the field of radicalization and explains some of criminal law elements that may conflict with the constitutionally guaranteed fundamental rights.

Finally, the report addresses the current institutional and political state approach to deradicalization in the context of the legal framework presented. It outlines the various state programs and critically discusses the special role of civil society in preventing extremism and

¹ In February 2020, in the small western German city of Hanau, a far-right terrorist shot nine people to death for racist reasons and then executed his mother and himself. Just a few months before, in October 2019, a far-right perpetrator attacked the main synagogue in the eastern German city of Halle to kill all 68 people that were celebrating Yom Kippur. After failing to break into the synagogue he killed a female passer-by and a man at a kebab shop. And just four months before, in June 2019, a neo-Nazi assassinated the politician Walter Lübcke (CDU), president of the Kassel governmental district, who had become a target of far-right propaganda after openly supporting the government's refugee policy.

promoting democracy. Based on this, two case studies will be used to show how civil society engages in the prevention of right-wing extremism and Islamism and to identify respective challenges.

At the end, the most important results are summarized, on the basis of which policy recommendations for the state's approach to radicalization are formulated. We highlight the project-based funding structure as a major problem that leads to funding gaps and competence losses. To solve this problem, permanent funding for civil society structures must be established, for instance within the framework of the Democracy Act, which was recently blocked by the Christian Democratic Union (CDU) and the Christian Social Union (CSU) (Gensing, 2021). To overcome the narrow focus on external extremists and effectively combat extremist structures within security agencies in Germany, we also recommend more transparency and independent monitoring of state authorities, as well as a critical political discourse on everyday racism and exclusion in public institution. Overall, for an evidence-based political approach to the new challenges for German democracy, scientific research, especially research on institutional racism, must be greatly expanded.

2. The socio-economic, political and cultural context

There is a visible increase in authoritarian attitudes, nationalist sentiments and conspiracy beliefs challenging Germany's liberal democracy, unfolding in the context of the multiple social, economic and political crises that have shaped the country in the three decades following the fall of the Berlin Wall. According to Wilhelm Heitmeyer (2018), market-friendly governments trimmed to cutting welfare expenditures have accentuated social disintegration, decreased the public trust in democratic institutions and facilitated the rise of authoritarian right-wing movements. There is an increase of authoritarian attitudes² among the population, which have been simmering under the surface for a long time, initially not articulated and represented by any political organization. This increase followed experiences of uncertainty and loss of control spurred by a challenging social transformation after reunification, radical neoliberal reforms around the so-called "Agenda 2010"³ at the beginning of the 2000s, as well as the global financial crisis that began in the US in 2008 and ultimately led to the Euro Crisis

This changed dramatically in 2015/16 with the increasing influx of refugees from Syria and other countries, which provided an ideal context for the rise of far-right, anti-Muslim movements that claimed to be the only organizations capable of representing the discontent among the German population. These movements became melting pots for widespread authoritarian and racist attitudes, articulating a radical right-wing counter-program to that of the "established parties". In 2017, the Alternative for Germany (AfD), the most important representative of the New Right, succeeded in entering the Bundestag as the strongest opposition party.

Most recently, the Covid-19 crisis has reignited radicalization processes. In Germany, the movement "Querdenken" emerged in protest over the government's anti-pandemic restrictions. The movement includes a wide range of political affiliations but is open to far-right actors and conspiracy ideologues (Nachtwey et al., 2020). It shares anti-Semitic conspiracy myths and a deep mistrust in official institutions and public media outlets. A variety of incidents have been documented in which participants of the protests have violated legal regulations, attacked police officers, journalists and others, and spread hate speech against politicians and experts (Sundermann, 2020).

Socioeconomic context of radicalization

Issues of regional social inequality are commonplace in public debates and are repeatedly cited as reasons for the increasing polarization of German society (Fuest & Immel, 2019). The social and economic disparities between East and West Germany are seen as an important motive for the rise of the New Right, embodied by the AfD. Especially directly after the fall of the Berlin Wall, many people in East Germany experienced downward mobility (Mau, 2020),

² Authoritarian attitudes are understood as the popular demand for more discretionary exercise of political power and for the exclusion and discrimination of minorities (Heitmeyer, 2018, p. 84).

³ The "Agenda 2010" is a neoliberal reform package of the German social system and labor market that was designed and implemented from 2003 to 2005 by the government of the Social Democratic Party (SPD) and the Alliance 90/The Greens. In particular, the labor market reforms, which are discussed under the label "Hartz IV," have severely reduced state protection and increased social inequality and fears of unemployment and social degradation. The reforms are criticized for having contributed massively to the polarization of society.

with qualifications rapidly losing value and unemployment rising notoriously (ibid., p. 169). To this day, significant differences also exist with regard to wealth distribution (ibid., p. 176 et seq.). Another reason for the unequal development of reunited Germany is related to the elite transfer that took place in the 1990s: the majority of leadership positions in politics and business, but also in the public service and the media, came to be held by West German citizens (ibid., p. 177f). This imbalance in elite recruitment continues today: more than three decades after the fall of the Wall, East Germans constitute only 23% of the personnel in East German leadership positions (ibid., p. 181).

However, studies also show that the inequality of household incomes between regions, both between eastern and western Germany and between urban and rural areas, has declined in recent years (Fuest & Immel, 2019). This is primarily due to the catching-up process of the eastern German states, while income divergences have tended to increase in the western German regions (ibid., p. 19). On the other hand, the demographic gap between rural regions and cities is growing, especially in eastern Germany (ibid., p. 19f). Population density in rural regions in eastern Germany fell by more than a third between 1994 and 2016 (ibid., p. 20). At the same time, the median age has risen from 38 to 50 years between 1994 and 2016 (ibid.).

Immigrants and people with a migration background are particularly disadvantaged by social inequality in Germany. Particularly within the education system, a close correlation between educational success and social origin is noticeable (Knauer, 2019). This also leads to differences in both educational and employment trajectories later in life. Migrants are also disproportionately represented in comparatively poorly paid industries with precarious working conditions in the service and care sectors (Khalil et al., 2020).

History of terrorism and political violence

Long before racist and anti-Semitic positions found access to formal representation in the political mainstream through the AfD, right-wing violence and terrorism had shaped the political culture of the country (Hille, 2020). Already in the early 1990s, with the rise of nationalism after reunification, a wave of violence against immigrants and people of colour erupted, culminating in pogroms like those in Hoyerswerda, Mölln, Rostock-Lichtenhagen or Solingen⁴. According to data gathered by Germany's Federal Office for the Protection of the Constitution (BfV), the number of reported cases of right-wing violence sharply increased from less than 200 in 1990 to more than 800 in 1991 and to more than 1,300 in both 1992 and 1993 (Bleich, 2007, p. 154). It was during this time that the later members of the so-called National-Socialist Underground (NSU) radicalized, a clandestine group of armed far-right extremists responsible for nine racially-motivated murders and the assassination of one police officer between 2000 and 2007 (NSU-Watch, 2020).

⁴ In the early 1990s, neo-Nazis repeatedly attacked and set fire to residences of asylum seekers as well as homes of foreigners, applauded by local residents. The political background to these attacks was heated public debates about the right of asylum. In 1992, two ten- and fourteen-year-old girls and their grandmother died in Mölln after neo-Nazis threw incendiary devices at their house. A year later, five women and girls with Turkish ethnic background were killed by racists in Solingen. These far-right mobilizations played an essential part in facilitating that the center-right and right-wing campaign reaches its objective of introducing a more restrictive asylum policy in 1993 (Adaire, 2019).

In 2015, a new wave of right-wing terrorism⁵ emerged with daily violent attacks on refugees, leading to disturbing records of political violence. In the context of anti-migration movements, terrorist cells such as the “Freital Group” formed and committed serious attacks on refugees and left-wing politicians, while the police managed to stop further far-right cells such as “Oldschool Society” and “Revolution Chemnitz” right before they could carry out their murderous plans, ideologically rooted in white supremacy, anti-Muslim racism, antisemitism and misogyny. Most recently, in a period of few months in 2019 and 2020, three right-wing terrorist attacks took place, killing 13 people. In total, right-wing violence has killed at least 213 people since the German reunification (Brausam, 2021).

In comparison to right-wing extremism, evidence of jihadist terrorism appears relatively low. Apart from the deadly attack on a Christmas market in 2016, jihadism remains a rather potential threat, exemplified by the numerous attacks in other European and non-European countries. Moreover, there is no indication for ethno-separatist or left-wing terrorism in Germany. The peak of left-wing terrorism dates back to the 1970s, a period known as the German Autumn, and is associated with the activities of the Red Army Faction (RAF). The RAF, a communist and anti-imperialist urban guerrilla in the FRG, was founded in the 1970s around Andreas Baader, Ulrike Meinhof and Gudrun Ensslin. It was responsible for more than 30 murders, as well as several hostage-takings, bank robberies and explosives attacks. The peak of the RAF's violent activity was marked in 1977, when the RAF carried out an assassination attempt on Federal Prosecutor General Siegfried Buback and shot the chairman of the board of Dresdner Bank, Jürgen Ponto, during a failed kidnapping attempt. In addition, RAF members kidnapped Hanns-Martin Schleyer, the president of the German Employers' Association, in early September, whose kidnapping ended with his murder (Menke, 2007).

Left-wing movements today no longer pose a terrorist threat and comprise a very heterogeneous scene within which only small segments see violence as a legitimate political means in confrontations with the police or right-wing extremists (police advisory). Nevertheless, in 2019, the BfV counted 921 violent offenses, including 355 "bodily injuries," and two attempted homicides against right-wing extremists (Verfassungsschutz, 2020, p. 32). The majority of violent acts is directed against buildings, infrastructure or other objects, or takes place in confrontation with the police, for example in the context of protests against gentrification or right-wing extremist marches. Without denying the existence of left-wing violence, it must be understood as part of a dynamic between heavily armed and sometimes aggressive police forces and comparatively vulnerable groups of people. One of the most prominent recent cases of left-wing violence was the G20 protests in Hamburg in 2017, which saw massive clashes between police and so-called "autonomous groups" (von Lucke, 2017).

Political response to radicalization

As in most Western European countries after the attacks of September 11, 2001, public debate and law enforcement in Germany primarily focused on jihadist radicalization throughout the

⁵ Against the backdrop of the so-called “refugee crisis” and a massive social mobilization against the government’s migration policy led by actors of the New Right, such as Pegida or the Alternative for Germany (AfD), hundreds of arson attacks against refugee homes took place in 2014, 2015 and 2016. Many of the perpetrators had not previously been politically organized and were part of a network of personal relationships that emerged during protests against the reception of refugees (and that were initiated by local Neo-Nazis). The best-known cases include the terrorist cells “Freital Group”, “Revolution Chemnitz” and “Oldschool Society”.

2000s. This gave rise to the spread of anti-Muslim resentment in society, further driven and entrenched in the political mainstream by concepts such as that of a “Leitkultur” (“guiding or leading culture”). The concept was originally introduced in 1996 by the Syrian political scientist Bassam Tibi in order to engage in a rational debate about immigration and social cohesion in Europe (Tibi, 2017). However, the term was instrumentalized and reinterpreted in the early 2000s by the conservative politician Friedrich Merz (CDU). His concept of Leitkultur, which has since been taken up again and again in conservative circles, postulates a supposedly existing consensus of values among Germans to which immigrants must adapt. It is a right-wing political campaign term and stands as an alternative integration model in contrast to the idea of multiculturalism (Scholz, 2017). Beginning with the uncovering of the right-wing terrorist network NSU, awareness of the danger of right-wing extremist movements in Germany has gradually increased in recent years. This acknowledgment received further support with the nationwide wave of arson attacks on immigrants in 2015-16. At the latest since the murder of the conservative politician Walter Lübcke in 2019 by a neo-Nazi, right-wing extremism has also been recognized in the ranks of conservative parties as the greatest danger to democracy. As result of this and two other far-right terrorist attacks in 2019/20, in May 2020 the Cabinet Committee for the fight against racism and right-wing extremism was established, which adopted a catalogue of 89 specific measures to fight right-wing extremism and institutional racism.

3. The constitutional organization of the state

3.1. Constitutional principles

The principles of the German Constitution and its approach to 'extremism' are directly linked to German history and the historical-political reappraisal of National Socialism. Against the backdrop of the historical experience of National Socialism, the concept of 'wehrhafte Demokratie' ('militant democracy') emerged in the West German state. The concept is linked to the idea that democracy must be protected against extremism through rigorous and preventive action (Fuhrmann & Schulz, 2021). It builds on an interpretation of the past that regards the Weimar Republic as an overly tolerant German state that therefore became a target for extremist infiltration and abolishment of democracy. German post-war extremism prevention thus serves to avoid repeating such an alleged mistake. This means that the post-National Socialist FRG should prove itself resilient against the enemies of democracy by enshrining in the Basic Law ways of banning associations or depriving individuals of their fundamental rights if they are deemed to pose a threat to democracy. Preventive action also means that repressive measures must be taken against actions that are legal, but which can be assumed to have an intention that poses a potential threat to democracy. Specifically, this means that bans can be imposed before violent actions occur (ibid., p. 8). In addition to National Socialism, the historical experience of the Cold War and the anti-communist efforts of the West German state have created a historical context that arguably justified the establishment of legal possibilities to ban associations and deprive individuals of their basic political rights with the aim of preventing extremism and protecting democracy (Kalinowsky, 1993; Janssen & Schubert 1990).

The constitutional basis for preventive defense against extremism is rooted in the value-based nature of German Basic Law, the 'Grundgesetz', which is set out in Art. 79 (3) GG and declares any amendment affecting the constitutional principles laid out in Art. 20 inadmissible

(Flümann, 2014, p.147). Thus, the commitment to the constitutional principles representing the 'free democratic basic order' (fdGO) serve as the criterion for distinguishing democratic from extremist action. There are five constitutional principles laid out in Art. 20. The first one protects the political system of democracy, ensuring that the government is determined by free and secret elections. Related to this is the principle of separation of powers, according to which the legislative power, the executive power and the judicial power are separate. Closely linked to the principle of democracy is the principle of rule of law, which obliges the state i.a. to respect existing laws in order to prevent arbitrariness and abuse of power. Another principle concerns the welfare state, which establishes that the state must ensure that all citizens can lead a dignified life. Furthermore, the federal organization of the state is established as a constitutional principle, i.e., the composition of the state of 16 federal states, each with its own government, parliament and administration. Finally, the right to resist is also set as a central constitutional principle, granting citizens the right to not respond to the government in the case of threats to the democratic order.

Overall, the idea of a 'militant democracy' and the consequent possibility of restricting fundamental rights in order to prevent extremism is highly controversial. This is primarily due to an implicit equation of the protection of democracy with the protection of the state, which is accompanied by the assumption that the state itself cannot act undemocratically and represents a guarantor of democratic order (Fuhrmann & Schulz, 2021). However, a number of empirical cases prove that representatives of the state order can also exhibit far-right extremist sentiments and thus endanger democracy (ibid., p. 118). Another line of criticism responds to the fact that such an understanding of democratic protection would not primarily protect basic democratic rights against state repression, but rather only state institutions from potential opposition they may choose to label as extremist (ibid., p. 118). Furthermore, the concept of extremism itself is criticized for its analytical vagueness and its purely negative definition as being directed against the fdGO. This is accompanied by the danger of right-wing groups not agitating against the state, but against minorities, thereby falling through the raster of extremism prevention.

3.2. Constitutional rights

However, the protection of democracy in the form of state action against 'extremism' is at the same time limited by the civil rights enshrined in Articles 1 to 19 of the Constitution. Particularly relevant in this context is Art. 5 GG, freedom of expression, arts and science, which grants everyone the right to express and disseminate their opinions in speech, writing and pictures and to inform himself without hindrance from generally accessible sources and ensures freedom of reporting by means of broadcasts and film. According to Art. 5 GG, there shall be no censorship. However, the second paragraph of the article limits these rights at the same time by stating that expressions of opinion must take place within the framework of general laws and must not violate the right to personal honor or the protection of children. In the context of preventing extremism, this article is in a particularly tense relationship with the intention to prevent anti-constitutional mobilization, as it will be explained in more detail below.

Another particularly relevant Article for the state's handling of radicalization is Art. 8 GG, on freedom of assembly, which assures all citizens the right to assemble peacefully and unarmed without prior notification or permission. However, laws may restrict the right to assemble in the open air. In addition, Art. 9 GG guarantees the right to form associations, but organizations

whose aims or activities contravene the criminal laws or that are directed against the constitutional order shall be prohibited. This balancing of interests between basic political rights and extremism prevention constitutes a core dispute in the German legal system for dealing with right-wing extremist parties.

In addition, Art. 10 and 13 GG establish fundamental rights constraining state actions against radicalized extremists. Art. 10 GG safeguards privacy of correspondence, posts and telecommunications and restricts it only in the case of a legal order or when done for the sake of protecting the free democratic order. Art. 13 GG guarantees the inviolability of the home, which means that searches by rule may be authorised only by a judge and must take place in a prescribed form. In addition, Art. 13 GG stipulates that technical means of acoustical surveillance of homes used to avert urgent threats to public safety are subject to a court order. Against the backdrop of jihadist threats, Art. 16 GG also appears relevant, which guarantees that no German may be deprived of his or her citizenship, and that no German citizen may be extradited to a foreign country. Finally, Art. 18 GG formulates the possibility to revoke fundamental rights if there is a threat to the democratic order. Accordingly, persons are forfeited the fundamental rights to expression of opinion, freedom of teaching, secrecy of correspondence, property, and the right to asylum if these fundamental rights are abused to fight against the free democratic basic order.

3.3. Power and function of the executive authority

In order to assess whether the actions of individuals or associations are illegitimate and anti-constitutional, the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz, BfV) was established together with the State Offices (Landesämter für Verfassungsschutz, LfV) at the regional level. The BfV is an executive agency of the Federal Ministry of the Interior. The authorities collect intelligence, among other things by observing groups suspected of being hostile to the Constitution (Schiffauer, 2006). Information collected is then made available to the political authorities, other state agencies and the public so that they can implement the knowledge politically and administratively and take the necessary measures to avert danger in time (ibid.). Each state authority acts autonomously and is not bound by instructions from the Federal Office for the Protection of the Constitution. The area of responsibility and cooperation between the individual authorities is governed by the Act Regulating the Cooperation between the Federation and the Federal States in Matters Relating to the Protection of the Constitution and on the Federal Office for the Protection of the Constitution (Bundesverfassungsschutzgesetz, BVerfSchG).

The division of tasks between federal and state authorities for the protection of the constitution is as follows. The state authorities are responsible for collecting and evaluating information on extremist endeavors and security-threatening or intelligence activities within their respective state. The Federal Office collects and evaluates additional information on efforts and activities that are of national significance. In addition, the Federal Office for the Protection of the Constitution coordinates the state authorities in the performance of their tasks.

The Office for the Protection of the Constitution is faced with the task of observing not only groups that have been proven to be dangerous, but also those that could potentially become dangerous. In other words, it also observes groups and practices that are still within the bounds of the law. According to the official reading, the Office for the Protection of the

Constitution is therefore considered an “early warning system for democracy” (BfV, 2021). However, this self-image is highly controversial, especially considering its failure to prevent the NSU's murders, which went undetected for years, bypassing the surveillance efforts of intelligence services (Fuhrmann & Schulz 2021).

Fighting against politically motivated crime is primarily the task of the Police State Protection (ST) division of the Federal Criminal Police Office (BKA). The agency is responsible in particular for compiling nationwide situation reports in the area of politically motivated crime. For this purpose, findings from investigative proceedings of the federal and state police forces as well as evaluation results of national and international partner authorities are used. The jurisdiction of the BKA are defined by the Act on the Federal Police (Bundeskriminalamtgesetz).

According to the Code of Criminal Procedure, the police, and not the military (Bundeswehr), is also responsible for countering terrorist threats. The Bundeswehr can support the police under certain circumstances on an occasional basis. The military can be deployed in accordance with the German Emergency Laws for the sake of protecting civilian objects and of combating organized and militarily armed insurgents (§ 87a (4) GG). The Bundeswehr can also act in the event of a commercial aircraft being hijacked by terrorists as per the Aviation Security Act.

In addition to that, the Public Prosecutor General at the Federal Court of Justice (GBA) plays a significant role in the prosecution of terrorism. Its jurisdiction, which is governed by the Courts Constitution Act (Gerichtsverfassungsgesetz), includes prosecution in the field of state protection as well as the performance of prosecutorial duties in appeal proceedings. The GBA represents the federal government at the Federal Court of Justice. This is an exception to the provisions of the Basic Law (Art. 95, 5), which actually assigns prosecution to the federal states.

In summary, it can be stated that the concept of ‘militant democracy’ has shaped the constitutional approach to radicalization in Germany to this day. It forms the basis for criminalizing political action as ‘extremist’ on the basis of the assumed undemocratic intention, even before criminal acts have been carried out. At the same time, the fundamental rights enshrined in the Constitution set strict limits on state action to protect democracy. This results in a permanent tension between preventing extremism and protecting democracy on the one hand and guaranteeing fundamental rights on the other. As has been shown, this tension is always an expression of social discourses, such as anti-communism in the FRG during the Cold War. The tension can neither be resolved nor can a clear and permanent balance between the two poles be found. Rather, the tension must be understood as the subject of an ongoing process of democratic negotiation in which the respective existing political power relations prevail.

4. Relevant legislative framework in the field of radicalization

4.1. Evolution of the legal framework against 'extremism'

Three areas can be identified for a rough classification of the provisions relevant to criminal law in relation to 'extremism': 1) communication offenses (e.g. incitement to hatred, §130 StGB; insult, §185 StGB; threatening to commit a felony, §241 StGB), 2) violent offenses (e.g. murder under specific aggravating circumstances, § 211; causing bodily harm, § 223; criminal damage, §303), 3) organizational offenses (e.g. violation of a ban on forming an association, §85 StGB; dissemination of propaganda material of unconstitutional organisations, §86a StGB; forming criminal organisations, §129 StGB) (Kalinowsky, 2003, p. 100).

The historical development of today's law on political crime ('Politisch motivierte Kriminalität') begins after the end of World War II and the defeat of National Socialism, when the Allies abolished a number of laws that were judged to be National Socialist (Kalinowsky, 1993). As a result of the criminal law reform in 1951, provisions of state protection were introduced into the German Criminal Code (Kalinowsky, 2003, p. 101). In this way, the concept of prevention of extremism as a key element in the protection of democracy was implemented in the legislative framework. The law reform introduced the new offense of "endangering of the democratic state" (§ 86 – 90a, Staatsgefährdung) in addition to the offenses of "high treason" (§ 81 – 83, Hochverrat) and "treason against the state" (§ 94 – 100a, Landesverrat). Thus, "instead of making concrete acts to subjects of punishment, the intention to abolish individual constitutional principles was made punishable as endangering the state" (Fuhrmann & Schulz, 2021, p. 47). The criminal element of state endangerment is thus interpreted more preventively than those of treason and treason against the state, which can be explained in the context of the historical-political narrative outlined above that National Socialism was made possible by an overly "tolerant" Weimar Republic (ibid.). The legal conclusion was to be able to intervene earlier, i.e., before an attempted overthrow.

On this legal basis, the SRP, which was classified as the successor party of the NSdAP, was banned in 1952, as was the KPD in 1956, whose commitment to the fdGO was considered purely tactical (Fuhrmann & Schulz, 2021, pp. 50f). Thus, the new political criminal law of the Federal Republic of Germany was not only directed against an imminent right-wing extremist danger, but also against communist activists, which can be explained against the background of the German division and the Cold War (ibid., pp. 50ff.).

In the mid-1970s, the first anti-terrorism law was drafted in West Germany, in the context of the rise of the left-wing terrorist RAF in Germany (Kalinowsky, 1993, pp. 208ff). The term terrorism is defined by law in the Criminal Code. As a rule, terrorist offenses are determined in connection with the formation of a terrorist organization (§ 129a, 129b StGB). Serious politically motivated violent offenses (§ 129a of the Criminal Code) are also considered terrorism. Furthermore, Sections 89a, 89b, 89c and 91 of the Criminal Code are assigned to terrorism. The central norm of the criminal law on terrorism, § 129a StGB, was also designed to be preventive (Frank & Freuding, 2020). Anyone who founded, participated as a member of, recruited for, or supported an association whose purposes or activities were to commit serious crimes (in particular murder, manslaughter, extortionate kidnapping, hostage-taking, and certain homicidal offenses) could henceforth expect a prison sentence of six months to

five years without having already committed an attempted or completed crime (ibid., p. 682). The preventive nature of criminal liability has been even further extended in recent times.

In 2009, section 89a of the Act of Prosecution for Preparation of Serious Violent Offences Endangering State (Gesetz zur Verfolgung der Vorbereitung schwerer staatsgefährdender Gewalttaten) was introduced, and significantly expanded criminal liability with respect to terrorism to the area of preparation acts (ibid., p. 683). The reason for these amendments was the assumption that laws criminalizing the establishment of a terrorist organization could not effectively counter the threats of international terrorism, which is increasingly carried out by radicalized individuals. The introduction of Section 89b of the German Criminal Code (StGB) already makes a mere contact with a terrorist organization a punishable offense. In addition to that, Section 91 of the StGB criminalizes the dissemination of instructions for the use of explosive devices via the Internet, which can be used to commit serious acts of violence endangering the state. In 2015, against the backdrop of increasing numbers of people traveling as 'foreign fighters' to the Middle East to take part in armed conflicts or to visit terrorist training camps, the anti-terrorism legislation was amended once again. Since then, even an unsuccessful attempt to leave the country for another state in order to participate in serious acts of state-threatening violence or to receive training in the manufacture or handling of firearms, explosives or similar dangerous means has been considered a terrorist offense.

With regard to right-wing extremism, new impulses for the development of criminal law to prevent it emerged in the course of reunification. In particular, the massive rise in right-wing extremist violence at the beginning of the 1990s presented a new challenge for the reunified German state. In 1994, the parliament responded with a comprehensive redesign of Section 130, on the Incitement of Masses, which brought legal changes in the area of so-called "communication offenses" (Seehafer, 2003, p. 33). For instance, the introduction of Section 130 (3) made the denial, downplaying, and approval of the National Socialist genocide punishable (ibid.). Among other things, the decision of the Federal Constitutional Court on the "Ausschwitz Lie"⁶ (Holocaust Denial, BVerfGE 90, 241) was groundbreaking in this context. This decision sets boundaries to the scope of freedom of expression when referring to the annihilation of the Jewish population and other ethnic minorities and social groups by the Nazis, which is denied by right-wing extremists, including revisionist historians, despite the large amount of indisputable evidence (Bröhmer et al., 2012, p. 365). The decision determined that criminal punishment for Holocaust denial is a legitimate restriction on freedom of speech, i.e., because it violates the personal rights of Holocaust victims (ibid.).

Following three right-wing terrorist attacks in Germany in 2019 and 2020, a new law to combat right-wing extremism and hate crime came into force in April 2021 (BMJV, 2021). The aim of the new law is, among other things, to be able to prosecute hate crime online more harshly and effectively in the future. One of the key points of the new law is the expansion of Section 241 of the German Criminal Code, which previously only made the threat of a crime – usually

⁶ The judgment concerns the permissibility of imposing restrictions on a gathering in which the denial of the persecution of Jews in the "Third Reich" is to be expected. The city of Munich had previously imposed a restriction on a meeting of the NPD on the basis of Section 5 No. 4 of the Assembly Act (VersG) that no content may be communicated that denies the persecution of the Jews in the Third Reich. The NPD had then filed a complaint against the restrictions on the basis of Article 5 (1) of the Basic Law, arguing that the restriction represents a violation of their fundamental right to freedom of expression.

the threat of murder – punishable. Now, threats to commit acts against sexual self-determination, physical integrity, personal freedom or property of significant value are also punishable by up to one year in prison. If the act is committed publicly on the Internet or by other means, the penalty is up to two years' imprisonment. The range of punishment for threatening to commit a crime has also been raised to up to two years' imprisonment if it is not committed publicly. If a crime is threatened publicly, up to three years' imprisonment may be imposed. This applies, for example, to threats of murder and rape on the Internet. Insults (§ 185 StGB) will also be punished more severely in the future. Anyone who publicly insults people online can now be punished with up to two years' imprisonment instead of up to one.

In addition, rewarding or expressing approval for the online threatening of serious crimes that have not yet been committed (§ 140 StGB), can be punished in order to counter attempts to create a climate of fear. Other changes establish the obligation of social networks to report posts containing hate speech to the Federal Criminal Police Office (BKA). This means that social networks will not only have to delete punishable postings from February 2022 onwards, but also report them to the BKA along with the user's IP address and port number. However, insults, defamation and slander are not covered by the reporting obligation, as it is considered difficult to distinguish them from statements protected by the right to freedom of expression. Finally, in June 2021, law 19/28678 and 19/31115 was passed that, among other things, intends to improve the protection against right-wing “enemy lists”. Together with the new Section 126a of the German Criminal Code (StGB), it intends to criminalize the dissemination of such lists in the future.

In summary, legislation in the field of extremism and terrorism has developed closely in accordance to historical experience. The criminal law approach to extremist parties until the 1960s was predominantly anti-communist in nature, in the context of the ideological confrontations during the Cold War (Wagner, 2016). The implementation of the Terrorism Act came in response to the left-wing terrorism of the RAF, but was further developed in the 2000s, especially against the backdrop of the international jihadist threat. Hate speech legislation, on the other hand, developed following the wave of right-wing extremist violence in the 1990s. The most recent far-reaching change in the law also took place in direct response to the increased right-wing extremist threat since 2015 and the three murderous acts of terrorism in 2019 and 2020. The common feature of the recent changes of the legal framework in the area of extremism and terrorism is its preventive nature, expanding the possibilities for punishing threats to commit a crime before they are committed.

4.2 The balancing of fundamental freedoms with the fight against extremism

The prevention of extremism and the prosecution of extremist activities under criminal law are always in tension with the fundamental rights of the Constitution. The following section will outline, with the help of a few examples, the balancing issues involved in countering and preventing extremism in Germany. The fundamental tension lies between the fundamental rights laid down in the Constitution, such as freedom of speech and freedom of assembly, on the one hand, and the guarantee of the basic democratic order and the protection of human dignity and dignity-based personal rights on the other.

Prosecution of hate speech

An important controversial issue concerns the balance between the right to freedom of speech on the one hand, and the criminal prosecution of hate speech on the other. In this context, criminal sanctions for expressing extremist political views are in tension with Art. 5 of the Basic Law, which grants freedom of speech (Flümann, 2015, p. 282). In other words, the question arises on whether expressions of opinion may be made punishable if they violate the constitutionally guaranteed dignity-based right of persons. In this regard, the Federal Constitutional Court sees particularly little room for restrictions on opinion when it comes to political speech or debates on issues of public interest (Hong, 2020a).

The constitutional standards for balancing freedom of speech and personality rights in the case of insults have been developed by the Federal Constitutional Court in decades of case law (Markard & Bredler, 2021). In a press release of June 2020, it classified the constitutional standards with reference to four parallel chamber decisions as follows (BVerfG, 2020). It has made clear that its case law emphasizes the central importance of freedom of expression, but at the same time takes its [whose? The case law's?] limits into account in terms of personality protection (Hong, 2020b). Thus, for criminal insults, freedom of speech mostly requires a thorough investigation of individual cases (ibid.).

A constitutional consideration concerns, for example, the question of whether an insult involves sufficient defamatory tone so that it can be prosecuted under criminal law. This depends in particular on whether, and to what extent, the statement affects fundamental rights of respect to which all people are equally entitled, or whether it rather diminishes the social reputation of the individual concerned (ibid.). A further consideration concerns the weighting of freedom of opinion, which is rated all the higher the more the statement aims to contribute to the formation of public opinion, and all the lower the more it is merely an emotionalizing spread of sentiments against individual persons (ibid.).

Freedom of speech is also constrained when it is assessed as “incitement of the masses” (Hong, 2020a). This concerns such statements that are directed against (definable) parts of the population and incite hatred against them, call for violent or arbitrary measures against them or attack their human dignity (§130 (2) StGB). In addition, hate speech is punishable if it is accompanied by death threats, threats of a terrorist attack (§ 126 StGB) or approval to such threats (§ 140 StGB) (Hong, 2020a).

Ban of a political party

Parties are an essential component of a democratic constitutional state. The ban of a political party is a serious interference in the democratic process of political opinion-forming and in the plural character of political development (Flümann, 2015, p. 160). Therefore, parties enjoy special protection compared to other kinds of associations with a political orientation (ibid.). Consequently, it is not sufficient to identify an anti-constitutional stance to ban a party. The condition for a party ban is that the party in question actively seeks to eliminate the free democratic basic order, which must be proven in court (ibid.). Accordingly, there has not been a party ban in Germany for 60 years (Dif, 2017).

Attempts to ban the National Democratic Party of Germany (NPD), an openly neo-Nazi party, failed in 2017 precisely for this reason. After the right-wing terrorist cell NSU, the ranks of

which included many NPD members, was uncovered in 2011, the upper house of the German parliament or Bundesrat decided almost unanimously in December 2012 to initiate a new party banning procedure after the first one had failed in 2003 for formal reasons. In this new trial, it was possible to prove the anti-democratic nature of the party as well as its positive references to National Socialism. However, the court also ruled that the NPD did not have the potential to enforce its anti-democratic goals at the time (BVerfG, 2017). The court argued that no basic tendency of the NPD to enforce its anti-constitutional intentions through violence or the commission of criminal acts could be proven (ibid.). Furthermore, there was no sufficient evidence to accuse the NPD of purposefully creating an atmosphere of fear that could have led to a noticeable impairment of the freedom of the process of political will formation (ibid.). In other words, the Court held that the NPD was too insignificant to constitute a serious threat to German democracy, and therefore is not unconstitutional (Molier & Rijpkema, 2017). This is evidenced by the party's weak parliamentary representation, declining membership (less than 6,000 members), and low mobilization capacity (ibid.). For the aforementioned reasons, the party ban as a preventive measure of constitutional protection was deemed not necessary (BpB, 2017). Instead, existing criminal law could be used to suppress threats and the buildup of violent potential by the NPD (ibid.).

In comparison, the ban of associations on the basis of Article 9 (2) GG is far more important in the state's approach to countering extremism. An association may be banned if its purposes or activities are contrary to criminal law or if it is directed against the constitutional order or the idea of international understanding (§ 3 (1) Law on Associations). This corresponds to Art. 9 (2) of the Basic Law, which, as an expression of a pluralistic but militant constitutional democracy, places a limit on freedom of associations. Unlike party bans, bans on associations are not decided by the Federal Constitutional Court, but by an executive order. Associations whose activities are limited to one federal state can be banned by the respective state interior minister (§ 3 (2) Law on Associations), while associations whose radius covers more than one federal state can be banned by the federal interior minister (Flümann, 2015, p. 216).

Ban of religious associations

In response to the growing relevance of religion-based extremism in Germany, debates have arisen concerning the limits between religious freedom and counter-extremism prevention. In Germany, religion-based extremism is associated in particular with the Salafi branch of Islam, although this is itself a highly diverse community, and only a small minority of believers legitimizes violence or is itself willing to use violence (Garbert, 2017). In principle, however, religious beliefs are protected by fundamental rights with respect to all religions, even if they are associated with religious ideas of inequality. The scope of protection of religious freedom also includes promoting one's faith as well as recruiting others away from their faith. Accordingly, "Da'wa"⁷ as a form of proselytizing is protected (Subai, 2018).

Association and criminal law place limits on religious freedom. Religious communities, just like associations, can be banned by the Ministry of the Interior (ibid.). One example is the ban of the so-called Islamic State (IS), which was imposed by the then Interior Minister Thomas de Maizière in 2014. The ban is accompanied by the punishment of the public display of "IS"-

⁷ Da'wa is an Arabic term that encompasses a wide range of meanings in general language and refers here to missionary activities and intensive propaganda activities by Salafi-jihadist groups that can be part of radicalization processes.

symbols such as its flag or sympathy-inducing badges. Furthermore, in connection with Islamist radicalization, membership in a (foreign) terrorist organization is punishable, as is the recruitment of members for such an organization's ranks.

5. The relevant policy and institutional framework in the field of radicalization

The binary opposition between democracy and extremism is deeply rooted in the political culture of the FRG and forms the basis for the state's approach to deradicalization. Against the backdrop of the historical-political reappraisal of National Socialism, the state's counter-extremism efforts are strongly preventive in nature and do not only begin when political violence occurs. A preventive approach is implemented by the state security authorities on the basis of criminal law. Moreover, measures of deradicalization are characterized by the federal division of responsibilities. As a result, the prevention structures in Germany significantly differ from other countries, such as France, where prevention work is controlled and organized centrally (BpB, 2021). In Germany, the federal states are responsible for the policy fields of security and education and thus for central areas of prevention. The measures taken by the federal states are shaped by the different challenges they face. Accordingly, the measures and programs of the states differ in type and scope. However, prevention measures are largely funded by the federal government as part of federal counter-extremism programs. Coordination between the federal structures takes place both through official coordination offices and through decentralized advice and information centers run by civil society organizations (Uhlmann, 2007, p. 23).

Furthermore, extremism prevention in Germany is characterized by a close cooperation between state authorities and civil society. Civil society plays a central role in preventing radicalization and encouraging de-radicalization. Funding comes primarily from the federal government, but the projects are mostly implemented at the local level. The structure of cooperation between governmental and civil society agencies differs from state to state and is based on the specific circumstances and needs of each state. So far, civil society prevention work has been based primarily on temporary project funds, for which actors compete in a competitive process. This is accompanied by the fact that the state sets the funding priorities, which depend on public awareness of the problem and political constellations. Civil society has little influence on this and must adapt to the given funding priorities. Against this background, experts have criticized that funding conditions tie civil society engagement to definitions of extremism and democracy perpetuated by state agencies, which produces blind spots with regard to institutional racism or other forms of exclusion (Diedrich, 2020).

Fundamental to the state's deradicalization approach is a three-part concept of prevention in primary, secondary and tertiary prevention (Handle et al., 2020, p. 6f). Primary prevention addresses the general population that is not yet radicalized and promotes democratic principles and participation on a broad level, for example through civic or political education at schools, youth clubs and other social settings. Primary prevention therefore means, in a direct sense, preventing so far non-existent radical tendencies through democracy promotion. In comparison, secondary prevention targets individuals with initial signs of radicalization and seeks to halt their radicalization process by integrating them in more democratically minded

social environments. Social work plays an important role in this process. In contrast, tertiary prevention focuses on individuals who are ready to use violence and who may have already committed extremist crimes or been involved in terrorist activities. Here, the aim is to disengage individuals from radicalized scenes through exit programs and to prevent them from committing new crimes. Often, these programs operate mainly in detention centers.

Overall, extremism prevention involves a broad range of institutional actors, including schools, social work, and religious institutions⁸. There is an increasing trend to deepen cooperation between civil society groups and security actors. This is being pushed, among other things, by government funding of so-called model projects in which social workers are in close contact with security authorities. Experts have viewed this critically, describing it in part as a form of co-optation and depoliticization of civil society (Burschel et al., 2014). Close cooperation between civil society and security agencies also risks avoiding critical engagement with "extreme" structures within security agencies (Burczyk, 2017).

The first state-sponsored program of civil society extremism prevention and democracy promotion, the "Action program against aggression and violence," was created in the early 1990s against the backdrop of rampant racist violence of the post-reunification period. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and Civil Society was in charge of its planning and implementation. This institutional assignment has remained in place to this day. The program focused on violent and xenophobic youth from eastern Germany, who were considered particularly prone to right-wing extremism in the light of the massive wave of racist violence following the reunification. In total, more than 100 long-term projects were funded in about 30 cities, mostly supporting youth centers that aimed to integrate "deviant youth." However, the "accepting social work" approach was criticized by many experts as being too friendly to offenders and even indirectly supporting the right-wing, giving them a safe space in which to continue recruiting members (Bruderus, 1998).

The subsequent program, "Youth for tolerance and democracy - against right-wing extremism, xenophobia and antisemitism", was established by Chancellor Schröder (SPD) in 2001 under the slogan "rebellion of the decent" ("Aufstand der Anständigen"). The background for the program was two brutal racist acts that had made national headlines (Bleich, 2007, p. 155). In June 2000, Alberto Adriano was beaten to death by three right-wing youths in a park in the small town of Dessau. A month later, a bomb attack in a train station in the city of Düsseldorf injured ten people, including six Jewish immigrants. The federal government provided more than 200 million euros to strengthen civil society against right-wing extremism, promote political education and democratic culture, counsel victims and others affected by right-wing extremism and violence, and promote acceptance of diversity in the workplace (ibid.). Unlike the first initiatives in the 1990s, the focus shifted to building a general political culture of tolerance, combined with counseling for victims and others coping with acts of racist violence (ibid.). The trend has been to treat right-wing violence less as an isolated phenomenon of a

⁸ The Amadeu Antonio Foundation and the organization "cultures interactive e.V." are important stakeholders involved in the prevention against right-wing extremism. In the area of "islamist extremism" the most important stakeholders are the National Committee on Religiously Motivated Extremism (Bundesarbeitsgemeinschaft religiös begründeter Extremismus), the Violence Prevention Network e.V. and Ufuq e.V.. In the area of "left-wing extremism", one Competence centre, namely the Federal Agency for Left-Wing Militancy (Bundesfachstelle Linke Militanz) receives state funding, as well as four pilot projects, such as the project "Left-wing extremism in past and present" at the Berlin-Hohenschönhausen Memorial.

deviant youth in the former East and more as a problem of society as a whole. This trend was continued by the two programs "Support of counseling networks - mobile intervention against right-wing extremism" and "Diversity feels good. Youth for Diversity, Tolerance and Democracy", implemented in 2007.

In 2010, the newly elected conservative coalition government (CDU/FDP) changed the political focus of extremism prevention, which shows the close link between political constellations and the specific ways in which 'extremism' is framed and dealt with politically. While the focus had previously been primarily on right-wing extremism, the topics of "left-wing extremism" and "Islamism" were now added. This is evidenced by the new program "Initiative Strengthen Democracy", which was established alongside the program "Promoting Tolerance - Strengthening Competence".

There has always been strong criticism of this strategy of the German state to approach very different phenomena such as racism, right-wing terrorism, homophobia, jihadism and left-wing violence from a single lens of "extremism". Experts have problematized, among other things, that such a broad understanding of extremism suggests a structural equivalence of left-wing and right-wing positions and equates their levels of violence, while at the same time juxtaposing both phenomena in contrast with a supposedly democratic center (Burschel et al., 2014). However, a dichotomous understanding of the political space divided in a "democratic center" and "extremist fringes" contradicts the empirical facts. In fact, studies have shown that ideologies of inequality and authoritarian attitudes are prevalent in all parts of society, including the so-called center (Decker & Brähler, 2020).

Despite the criticism, the broad approach directed against "all forms of extremism" continues to shape the state's approach to de-radicalization to this day, although right-wing extremism is recognized as by far the greatest threat to democracy. This is evident in the federal program "Demokratie leben!" (Live democracy!), which has been funding civil society extremism prevention and democracy promotion since 2014, but also in the 2016 Federal Government Strategy to Prevent Extremism and Promote Democracy. However, despite the discursive equation of right-wing extremism, left-wing extremism, and Islamism, financial support emphasizes the prevention of right-wing extremism, which can be explained by the massive preponderance of right-wing extremist acts of violence.

Since 2020, however, a gradual change can also be seen at the discursive level, which pays particular attention to the danger of racism and right-wing extremism. In response to the far-right terrorist attacks in 2019 and 2020, a Cabinet Committee on Combating Racism and Right-Wing Extremism was established in May 2020 under the leadership of German Chancellor Angela Merkel. In November 2020, the cabinet committee adopted a catalog of 89 concrete measures, which was drawn up after consultation with representatives of civil society, especially migrant organizations, and academia (tagesschau, 2020).

Compared to previous strategies for preventing extremism and promoting democracy, the catalog is characterized by a broader perspective on right-wing extremism. This is reflected in the measures of political education and prevention that are also directed at public institutions and professionally active adults, including the police and journalists. At the same time, exit and disengagement work continues to be supported as an important component of de-radicalization. Another focus of the catalog is the threat posed by so-called enemy or death

lists, which can be prosecuted more effectively through the amendments to the Criminal Code announced in the catalog and adopted in the meantime. The catalog also announces further strengthening of cooperation between civil society and security authorities in the future, particularly in the further development of exit programs, the development of new deradicalization formats and in political education. Another core content of the catalog is the announcement of a Democracy Act, through which the existing project funding for civil society actors in the prevention of extremism is to be made more permanent through the long-term allocation of funds.

6. Case studies

In order to gain a better understanding of the state efforts for extremism prevention and democracy promotion at the local level by civil society actors, the following section examines two cases in more detail. Both cases are funded as 'pilot projects' of extremism prevention by the federal program Demokratie leben ('Live Democracy'). The first case refers to the organization Violence Prevention Network (VPN), which focuses on right-wing extremism and Islamism. The second case is the Alliance of Islamic Communities in Northern Germany e.V. (BIG e.V.) with its state-funded pilot project "Kamil 2.0" against Islamist extremism.

The analysis includes the following steps. First, we will outline the organizations involved, their activities and goals, and point out the innovative characteristics of the projects funded as 'pilot projects' by the government. Then, the knowledge of the organizations with regard to radicalization and de-radicalization is presented and commonalities with regard to processes of (de-)radicalization and the associated challenges between right-wing extremism and Islamism are elaborated. Finally, on this basis, conclusions are drawn with regard to extremism prevention and de-radicalization, from which we derive our policy recommendation (see annex IV). The analysis is based on an analysis of its websites and information materials and a semi-structured interview with a representative of one of the organizations.

Violence Prevention Network (VPN)

The first case is that of the Violence Prevention Network (VPN). VPN was founded in 2004 as a non-profit association in Berlin and converted into a non-profit GmbH in 2020. Today, the organization has more than 100 employees and operates counseling centers in several German cities. The majority of the budget comes from European Union funds, federal and state funds, and donations. In 2019, the total budget was 7,535,003.10 Euro. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has funded the organization as a pilot project in the prevention of right-wing extremism in 2019 and 2020 with 199,800.00 euros each as part of the state program 'Live Democracy'.

Their field of activity includes secondary and tertiary prevention in the area of right-wing extremism as well as religious-based extremism, especially Islamism. This means that their work is focused on highly radicalized, violent people, mostly men and boys, who have often been or are currently in prison. Initial contacts usually take place in this context. Women and girls have hardly been reached in the work on detention centers so far, but are to be given greater consideration in future projects.

VPN's work is based on the concept of 'responsibility pedagogy'. This means that the goal of the social workers is that the radicalized persons learn to take responsibility for their own actions. For this, it is necessary to talk to the radicalized persons, to listen to them and to express a certain sense of sympathy and appreciation. According to one of my interviewees, 95% of the perpetrators have difficult biographies, having experienced violence in the family or had parents who have themselves been in prison. Against this background, the social workers are concerned with meeting the offenders at eye level and helping them develop skills such as empathy, a sense of responsibility and self-reflection. They should learn to deal with biographical problems in a different way than with violence. At the same time, they distance themselves from the concept of 'accepting youth work', which was applied in the 1990s because the acts of radicalized individuals are unacceptable.

The primary goal of VPN is to prevent serious acts of violence and to mitigate resentments among radicalized individuals. The idea that everyone would become ideal democratic citizens is desirable, but difficult to realize and therefore considered an illusion. The path out of hateful radical spaces is nonetheless an important step toward democratic awareness.

One example of its most recent state-funded projects is "REE! - Change of Course for Right-Wing Extremists" (funding in 2021: 199,800 Euro), which revolves around strengthening cooperation with security authorities, such as the LKA and the Office for the Protection of the Constitution. The cooperation consists of security authorities arranging contact between VPN and surveilled "extremists", i.e. people who are about to be detained. The contact with VPN is intended to give them the opportunity to change their behavior before any acts with serious legal consequences occur. In return, VPN writes field reports about its work with radicalized individuals. Cooperation with the security authorities is also difficult in that they may receive confidential information from their clients that could lead to them being called as witnesses in court.

Alliance of Islamic Communities in Northern Germany e.V. (BIG e.V.)

The Alliance of Islamic Communities in Northern Germany e.V. (Bündnis der Islamischen Gemeinden in Norddeutschland e.V.) is an association of 16 mosques in Hamburg, Schleswig-Holstein and Lower Saxony. In total, more than 800 people volunteer in the communities of the BIG e.V., which has about 7,200 members. As an umbrella organization, the BIG e.V. supports its mosque communities and Islamic associations in organizational, legal and financial matters so that the member associations can implement religious, social, charitable and cultural services.

The Kamil 2.0 model project, funded by the government through the program 'Live Democracy' aims to protect young Muslim men and women from extremist, Islamist-based narratives. Their activities are thus located in primary prevention. The goal of the project is to develop new concepts for civic education with young adults of Islamic religion. In cooperation with mosque communities, the project develops concepts for addressing the target group in the following key topics: differences between extremist ideology and Islamic religion; devaluation of people with different opinions; identification and acceptance of the democratic system and democratic values; and media competence.

In a second step, the communities implement and test these concepts to further develop them in long-term relationships with Muslim communities. In addition, the project develops assistance for imams, multipliers and those responsible in Muslim communities who are overburdened in dealing with young radical people. Another goal of the project is to strengthen Muslim identities and facilitate the experience of democratic values in practical work. In accordance with the Beutelsbach Consensus⁹, BIG e.V.'s prevention work aims to enable people to form their own coherent opinions. This means that an open and critical discussion of one's own religious tradition and current issues is encouraged.

Two general challenges can be identified regarding the German state approach to extremism prevention. The first problem is the project-based funding structure. Civil society organizations must regularly apply for funding for their extremism prevention projects in competitive procedures. Their financing is thus only guaranteed for a period of a few years at a time and must then be reapplied for. Therefore, many projects have gaps in between individual projects, during which they receive no funding and have to lay off their staff. If new funding is then received, new staff must first be found. This is particularly problematic in the area of deradicalization, since prison activities with violent offenders require a particularly specific skill profile that cannot be replaced very easily.

In addition, funding as a pilot project, which provides projects with particularly high financing, is linked to the requirement of innovation. To receive funding as a pilot project, new elements must be incorporated into the work. Existing activities and strategies of deradicalization cannot simply be continued without change. There is a legitimizing pressure to be innovative, even if in a particular case this is not even considered necessary by the organization. The 'democracy law', recently proposed in the catalog of the Cabinet Committee on Combating Racism and Right-Wing Extremism, which was intended to provide long-term funding for civil society actors in the field of right-wing extremism prevention, was therefore initially received positively. However, in political practice, the passage of the bill is delayed due to reservations of the CDU.

The second point of criticism concerns the fact that state funding depends on public attention to extremism. The state's willingness to provide funding for right-wing extremism prevention always comes when dramatic events occur, such as in the early 1990s, when a massive wave of violence against immigrants occurred. In the 2000s, as a result of 9/11, the focus shifted primarily to Islamism and was promoted accordingly. After the events of the last few years,

⁹ The 'Beutelsbach Consensus' constitutes a minimum standard of civic and religious education in Germany. The consensus distinguishes political education from indoctrination. This means that participants in educational programs should not be manipulated, but trained to form their own independent judgments.

the focus is now back on right-wing extremism. However, these funding cycles do not correspond to reality. Right-wing terrorists like Stephan Ernst (the murderer of the politician Walter Lübcke) were already radicalized in the 1990s. This generation lives on, and even though public discourse may have become more quiet around its activities, it has not dissipated. Moreover, narrow definitions of right-wing extremism mean that not all forms of violence are recognized as political and cannot be dealt with accordingly. For example, the close link between violence against women or LBTQI and right-wing ideology is not yet adequately addressed in government programs (Agena & Rahner, 2021).

7. Conclusion

In the context of an increasingly dangerous threat posed by right-wing extremist violence in Germany, this report has examined the legal, institutional and political framework of the state's handling of radicalization and de-radicalization. In the first part, it was argued that the German state's modern-day understanding of democracy protection is closely linked to its historical-political interpretation of National Socialism as well as the anti-communist stance held by West Germany during the Cold War. From these experiences, the idea of state protection emerged, which preventively seeks to suppress "extremist" activity already before concrete criminal acts occur.

This preventive approach is accompanied by the possibility to restrict fundamental rights such as the rights to freedom of assembly, of expression and of religion, if the acts involved are assessed as a threat to the democratic order. Therefore, the approach is in strong tension with the constitutionally guaranteed fundamental rights in the Basic Law. However, various decisions of the Federal Constitutional Court show that parties in particular are very strongly protected, so that even the NPD, which is obviously linked to national socialist ideology, cannot be banned because it does not pose an immediate threat to democracy due to its low electoral success. The right to freedom of expression has also been protected time and again even when it has gone along with serious insults, which in turn attack the personal rights of those affected.

A major challenge currently exists in particular with regard to dealing with insults and threats in social networks. In the spring of 2021, the StGB was significantly tightened to make it easier to prosecute insults and threats on the Internet. However, due to protections of freedom of expression, there are still large legal gaps that are used by radical actors to spread hate. We therefore recommend further reflection on how hate speech on the Internet can be effectively combated (see annex IV).

In Germany, the prevention of extremism also relies heavily on the involvement of civil society. Since the 1990s, government programs have been continuously launched to provide project-based funding to local and nationwide NGOs with the purpose of strengthening democratic attitudes in society and reintegrating radicalized individuals. The challenges and flaws of this system for budget allocation were elaborated on the basis of two case studies for which civil society actors active in the fight against right-wing extremism and Islamism were interviewed. A major problem is the project-based funding structure, which leads to funding gaps and thus staff and competence losses. In addition, funding requirements push actors to keep creating new innovations instead of simply continuing functioning projects. For this reason, we

recommend establishing permanent funding for civil society structures, for example, within the framework of the Democracy Act, which has already been drafted but not yet adopted.

Moreover, we point critically to the narrow focus on extremists as operating by definition outside of the state, a vision that constitutes an overarching problem of the German approach to democracy protection as it leads to blind spots, overseeing extremist structures embedded within state authorities. Given the countless scandals in the past that have highlighted the existence and entanglement of extremists with intelligence and law enforcement agencies, we recommend greater transparency and independent monitoring of these agencies, as well as a differentiated political discourse on everyday racism and exclusion in public institutions. Extremism is not a problem of the margins, even if it perhaps manifests particularly violent there. Prejudice arises in the middle of society and is legitimized primarily by mainstream actors. The question of how to deal with the far-right AfD remains open and must be discussed further without falling into the commonplace idea that in democracies, all sides must be engaged with in dialogue.

For all the above-mentioned issues, there is a need for continuous scientific research. In particular, research on racism has been severely neglected in Germany for a long time and is now gradually being taken up by the German Centre for Integration and Migration Research (DeZIM), among others. Such research efforts need to be expanded and multiplied in order to be able to deal politically with the new challenges for German democracy in an evidence-based manner.

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ANNEX I: OVERVIEW OF THE LEGAL FRAMEWORK ON RADICALISATION & DE-RADICALISATION

Legislation title	Date	Type of law	Object/summary of legal issues related to radicalization	Link
Strafgesetzbuch (engl. Criminal Law Code)	Last reformulation on November 13th, 1998, last amendment in April 2021	Statute	The Strafgesetzbuch regulates the conditions and legal consequences of criminal offences.	https://www.gesetze-im-internet.de/englisch_stgb/index.html
Strafprozessordnung (engl. Code of Criminal Procedure)	Last reformulation on April 7th, 1987, last amendment in March 2021	Statute	The Strafprozessordnung regulates the rules for the conduct of criminal proceedings.	https://www.gesetze-im-internet.de/stpo/
Bundesverfassungsschutzgesetz (engl. Act Regulating the Cooperation between the Federation and the Federal States in Matters Relating to the Protection of the Constitution and on the Federal Office for the Protection of the Constitution)	Last reformulation on 30th, 1990, last amendment in May 2021	Statute	The Bundesverfassungsschutzgesetz regulates the tasks and legal status of the Federal Office for the Protection of the Constitution (BfV) and the cooperation of the BfV with the constitutional protection authorities of the states in Germany.	https://www.gesetze-im-internet.de/bverfschg/BJNR029700990.html

Gerichtsverfassungsgesetz (engl. German code on court constitution)	Last reformulation on May 9th, 1975, last amendment in March 2021	Statute	The German code on court constitution regulates the court constitution of a part of the ordinary jurisdiction, namely the contentious civil jurisdiction and the criminal jurisdiction.	https://www.gesetze-im-internet.de/gvg/
Bundeskriminalamtgesetz (engl. Act on the Federal Police)	Last reformulation on May 25th, 2018, last amendment in June 2020	Statute	The Act on the Federal Police regulates the tasks of the Federal Criminal Police Office.	https://www.gesetze-im-internet.de/bkag_2018/
Luftsicherheitsgesetz (engl. Aviation Security Act)	Established on January 11th, 2005, last amendment in November 2019	Statute	The Aviation Security Act is designed to prevent aircraft hijackings, terrorist attacks on air traffic, and acts of sabotage against it.	https://www.gesetze-im-internet.de/lufsig/BJNR007810005.html
Vereinsgesetz (engl. Law on Associations)	Established on August 5th, 1964, last amendment in November 2020	Statute	The Association Act restricts the freedom of association from Article 9 (2) of the Basic Law .	https://www.gesetze-im-internet.de/vereinsg/BJNR005930964.html

NATIONAL CASE LAW

Case number	Date	Name of the court	Summary of legal issues related to radicalization	Link
1 BvR 2459/19	May 19th 2020	Federal Constitutional Court (Bundesverfassungsgericht)	In the proceedings 1 BvR 2459/19, a constitutional complaint against the order of the Higher Regional Court Stuttgart from September 20, 2019, was examined by the Federal Constitutional Court. The proceedings concerned a decision by the criminal courts on an insulting offense, in which the balancing of freedom of speech on the one hand and protection of the right of personality on the other was reviewed. The Constitutional Court confirmed the decision of the criminal courts that the personal honor of the public official had been unreasonably violated and that the insult was therefore not covered by the right to freedom of speech.	https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rk20200519_1bvr245919.html;jsessionid=F5FF0A28A50C3C083657861F66010732.1_cid377
1 BvR 2397/19	May 19th 2020	Federal Constitutional Court (Bundesverfassungsgericht)	In the proceedings 1 BvR 2397/19, a constitutional complaint against the order of the Regional Court Mönchengladbach from January 8, 2018, was examined by the Federal Constitutional Court. The constitutional complaint protests a criminal court conviction for insult based on statements published on a public online blog about judges involved in family law proceedings. The Federal Constitutional Court confirmed the conviction for insult,	https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rk20200519_1bvr

			because the protection of honor in this case outweighs the fundamental right to freedom of opinion.	r239719.html
1 BvR 362/18	May 19th 2020	Federal Constitutional Court (Bundesverfassungsgericht)	In the proceedings 1 BvR 362/18, a constitutional complaint against the order of the Higher Regional Court Stuttgart from September 27, 2019, was examined by the Federal Constitutional Court. The Constitutional Court ruled that the criminal conviction for insult violated the fundamental right to freedom of speech, since it was not clear from the reasons for the verdict why the insult was only a concrete defamation without factual reference and was therefore no longer covered by the right to freedom of speech.	https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rk20200519_1bvr036218.html
1 BvR 1094/19	May 19th 2020	Federal Constitutional Court (Bundesverfassungsgericht)	In the proceedings 1 BvR 1094/19 a constitutional complaint against the order of the Higher Regional Court Düsseldorf from March 27, 2019, was examined by the Federal Constitutional Court. The Constitutional Court ruled that the criminal conviction for insult violated the fundamental right to freedom of speech, because the reasons for the judgment do not sufficiently address the specific situation in which the statement was made and do not show why the interest in protecting the right of personality of the former Minister of Finance of North Rhine-Westphalia prevails.	https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rk20200519_1bvr109419.html
2 BvB 1/13	January 17 2017	Federal Constitutional Court (Bundesverfassungsgericht)	In the proceedings, the Constitutional Court ruled on the constitutional admissibility of a party ban. It concluded that, despite the party's anti-constitutional goals and activities, the ban is inadmissible because there are currently no	https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/01/bvB1170113.html

			concrete and substantial indications that make it appear possible for the NPD to materialize its antidemocratic political aspirations.	tscheidung en/DE/2017/01/bs20170117_2bv b000113.html
1 BvR 23/94; "Ausschwitz Lie" (Holocaust Denial)	April 13 1994	Federal Constitutional Court (Bundesverfassungsgericht)	The judgment concerned the question as to whether application of s. 5 no. 4 of the Assembly Act (Versammlungsgesetz) to assemblies at which denial of the persecution of Jews is to be expected is in violation of Article 5.1 sentence 1 of the Basic Law. The Constitutional Court saw this as a justifiable restriction on free speech. The Court noted that the scope of the freedom of speech clause predominantly covers opinions and not statements of fact.	https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/1994/04/rs19940413_1bvr002394.html

Civic Rights of the Basic Law

	Constitutional provisions
Minority rights	Article 1 GG [Human dignity – Human rights – Legally binding force of basic rights] Article 2 GG [Personal freedoms]

	<p>Article 3 GG [Equality before the law]</p> <p>Article 16 GG [Citizenship – Extradition]</p> <p>Article 16a GG [Right of asylum]</p>
Freedom of religion and belief	Article 4 GG [Freedom of faith and conscience]
Freedom of expression	Article 5 GG [Freedom of expression, arts and sciences]
Freedom of assembly	Article 8 GG [Freedom of assembly]
Freedom of association/political parties etc.	Article 9 GG [Freedom of association]
Surveillance laws	<p>Article 10 GG [Privacy of correspondence, posts and telecommunications]</p> <p>Article 13 GG [Inviolability of the home]</p>

Right to privacy	Article 10 GG [Privacy of correspondence, posts and telecommunications] Article 13 GG [Inviolability of the home]
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ANNEX II: LIST OF INSTITUTIONS DEALING WITH RADICALISATION & COUNTER-RADICALISATION

Authority	Tier of government	Type of organization	Area of competence in the field of radicalization & deradicalization	Link
Cabinet Committee for the fight against racism and right-wing extremism	National	Cabinet Committee	Prevention of right-wing extremism and racism	https://www.bundesregierung.de/breg-en/news/cabinet-right-wing-extremism-1820094
Bundesministerin für Familie, Senioren, Frauen und Jugend (engl. Federal Ministry for Family Affairs, Senior Citizens, Women and Youth)	National	Ministry	Prevention of extremism and promotion of democracy; responsible for state program "Live Democracy"	https://www.bmfsfj.de/bmfsfj/meta/en
Bundesministerium des Innern, für Bau und Heimat (engl. Federal Ministry of the Interior, Building and Community)	National	Ministry	Counter-terrorism, prevention of extremism, protection of the constitution	https://www.bmi.bund.de/EN/home/home_node.html
Bundesamt für Verfassungsschutz (engl. Federal Office for the Protection of the Constitution)	National	Security Agency	Protection of the constitution	https://www.verfassungsschutz.de/DE/home/home_node.html
Landesamt für Verfassungsschutz (engl. State Office for the Protection of the Constitution)	Regional	Security Agency	Protection of the constitution	

Generalbundesanwalt beim Bundesgerichtshof (engl. Public Prosecutor General of the Federal Court of Justice)	National	Prosecutor of the Federal Government	Prosecution of state security, including terrorism	https://www.generalbundesanwalt.de/EN/Home/home_node.html;jsessionid=6526C96EA257F5A92987A5C732EB2EC9.intranet242
Bundeskriminalamt (engl. Federal Criminal Police Office)	National	Security Agency	Protection of internal security	https://www.bka.de/EN/Home/home_node.html
Landeskriminalamt (State Office of Criminal Investigations)	Regional	Security Agency	Protection of regional security	

ANNEX III: BEST PRACTICES / INTERVENTIONS / PROGRAMMES

Name	Date	Agents	Approach	Scale
Action Program against Aggression and Violence (AgAG)	1992	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and civil society	Integrative	Nationwide: regional focus on eastern Germany
Youth for tolerance and democracy - against right-wing extremism, xenophobia and antisemitism	2001 - 2006	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and civil society	Integrative and preventive	Nationwide; regional focus on east Germany
Support of counselling networks – mobile intervention against right-wing extremism	2007 - 2010	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and civil society	Integrative and preventive	Nationwide
Diversity feels good. Youth for Diversity, Tolerance and Democracy	2007 - 2010	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and civil society	Integrative and preventive	Nationwide
Initiative Strengthen Democracy	2010 - 2014	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and civil society	Integrative and preventive	Nationwide

Promoting Tolerance - Strengthening Competence (TFKS)	2011 - 2014	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and civil society	Integrative and preventive	Nationwide
Live Democracy!	2015 – until today	The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and civil society	Integrative and preventive	Nationwide

ANNEX IV: POLICY RECOMMENDATIONS

- 1) Development of strategies for combating and preventing extremist elements embedded within state authorities, especially the security authorities. Establishment of independent monitoring bodies for secret services, police and military.
- 2) Greater sensitivity and action against institutional racism and hostile attitudes in the center of society. Further reflection on effective measures against hate and incitement online.
- 3) Establishment of long-term funding structures for civil society engagement in the area of de-radicalization.
- 4) Independence of funding structures from public attention cycles in the area of de-radicalization.
- 5) Long-term funding and structural expansion of scientific research on right-wing extremism, radicalization, everyday racism and hate speech.