

Bavaria revives Germany's notorious "Radicals Decree"

Justus Leicht
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The district administration of Upper Bavaria has denied a candidate teacher a post as trainee because he was a member of the student and youth organisation of the Left Party up until the spring of 2017. Only following an interim injunction did the Bavarian administrative court allow 34-year-old Benedikt Glasl to continue his teacher training for the time being.

Despite the court's decision to allow Glasl to continue his training, his case raises serious issues. It makes clear that government agencies are prepared to take action against even the most harmless critics of capitalism, and that the German intelligence services, which have been severely discredited in light of their involvement in the activities of the far-right NSU terror gang, are regaining influence.

Glasl, who studied political science, social studies, German, history and sport for a teaching post, applied for a traineeship at a school a year ago, a prerequisite for becoming a teacher. He was assigned a job. But just before he could take up the post, which in Bavaria involves taking an oath as a civil servant, the administration declared that he could not be sworn in due to doubts about his loyalty to the constitution.

In a questionnaire, Glasl had acknowledged that he had been active during his studies in the Left Party movement and in the Social Democratic Student Union (SDS). He had protested, among other things, against military research at state universities and tuition fees.

The state administration forwarded its questionnaire to the local office of the state domestic intelligence service (known in Germany as the Office for the Protection of the Constitution), which took three months to review his case. In the meantime, Glasl was awarded an internship at his assigned school. He was able to continue his education, but received no salary and was not allowed to teach alone in front of a class.

Eventually, in January, Glasl attended a hearing held by the relevant administration director. Glasl denied that he had ever sought to transform existing society. In addition, he had been inactive for a long period before formally ending his membership of the two organizations. The administration of Upper Bavaria then advocated "the appointment of Mr. Glasl at the earliest opportunity."

However, on February 12 Glasl received a letter stating the very opposite. The secret service had vetoed his appointment,

although legally it is not able to do so. The Bavarian government adopted the argument put forward by the intelligence service in confidential letters, and now declared: "Ultimately, there has been no credible, recognisable distancing from extreme left-wing views." At the end of the letter, the administration explicitly referred to the intelligence service: the "relevant authority" had "convincingly expressed concerns for a second time."

Glasl lodged an expedited appeal against the decision with the administrative court, which ruled in his favour on March 9. This means he can continue his internship until the end of the school year.

In its interim order, the administrative court largely based its arguments on the Federal Constitutional Court's 1975 "Radicals Decree," which denied employment in the public services "to anti-constitutional forces." At that time the highest court in Germany had restricted a ban on employment from being imposed on a blanket basis, stipulating that every case be dealt with on an individual basis, which takes into account the personal impression given by the applicant.

The Bavarian administrative court justified its decision by arguing that the Basic Law guarantees every German the free choice of profession and equal access to public office. Teacher training is a state monopoly, even if the position itself does not qualify for status as a state official. As a result, Bavaria was obliged to provide Glasl with an "equivalent, non-discriminatory" preparatory post, if necessary as an employee—including a period of employment at a school.

In addition, there was no evidence that Glasl was seeking to turn students against the constitution. Finally, the state could not allow an applicant to undertake a traineeship for an extended period of time and then cancel it. Otherwise, the work done so far in training would be rendered "largely worthless."

The radicals decree reactivated in the case of Glasl was first enacted by the first Social Democratic-led government in post-war West Germany. On January 28, 1972, Chancellor Willy Brandt (SPD) and the country's state premiers adopted an agreement on "Principles on the issue of anti-constitutional forces in public services" at a conference on "Internal Security Issues."

The aim of this "state premier's decision" was to rid the

country's public services of so-called "enemies of the constitution." Under normal circumstances, recruitment authorities asked officials of the domestic intelligence service ("Rule Inquiry") whether they had "knowledge" of the applicant. If this were the case, then the candidate had to comment on this in his or her interview; if they were unable to dispel the doubts, then their application for a post was usually rejected. The applicant had the possibility of appealing against the decision, but such procedures usually lasted for many years.

According to the Federal Ministry of the Interior, a total of 454,000 security checks took place in federal and state governments from January 1, 1973, to June 30, 1975. Of these, 328 applicants were rejected. Altogether, from 1972 to 1991 about 3.5 million applicants for public service at a national and state level were examined following a "Rule Inquiry" by the employing authority or the intelligence services. In about 11,000 cases, trials of the persons concerned were held. A total of 1,250 people were not hired due to the ruling against them.

Around 260 existing civil servants or employees were dismissed during the same period. For the most part, teachers (around 80 percent) and university teachers (around 10 percent) were affected. There were also cases involving the judiciary, railways and post. Most of the rejections were made between 1973 and 1979, peaking in 1975. Despite the official claim that the radicals decree was directed equally against "right-wing and left-wing extremists," those affected were almost exclusively members or supporters of leftist organisations.

A commission of the International Labour Organisation (ILO), a specialist agency of the United Nations, came to the conclusion in February 1987 that the implementation of the decree banning persons from employment violated the ban against discrimination in employment and occupation. A judgment by the European Court of Human Rights in Strasbourg on September 26, 1995, involving a teacher from Lower Saxony who had been dismissed because of her membership of the DKP (German Communist Party) in 1986, saw it as a violation of the right to expression and association guaranteed by the European Convention on Human Rights.

The state of Bavaria has played a leading role when it comes to spying on and prosecuting those with leftist opinions. It was the last German state to end the use of the radicals decree and the only state to introduce a new procedure instead. On December 11, 1991, the state government issued a statement requiring the "constitutional compliance in public service."

The "new" procedure required each candidate for public service employment in Bavaria to indicate on a questionnaire whether he or she is or was a member or supporter of one of a number of organisations listed as anti-constitutional. The list of more than 200 domestic and foreign groups and parties includes Germany's Left Party and its predecessor organisations. On the basis of this information, employers can make inquiries to the secret services, which could then lead to the rejection of the applicant—in practice an alternative version of the "Radicals

Decree."

In fact, the current case goes even further. In 1995 the European Court of Human Rights ruled that such practices violate the European Convention on Human Rights. The Left Party is represented in most German state parliaments and in number of state governments. In addition, the Bavarian authorities granted the secret service a kind of veto right, capable of overriding its own judgements based on the case law of the Federal Constitutional Court.

The background to the events in Bavaria is growing social tensions and the consequent sharp shift to the right by the entire political establishment.

Last July, the Bavarian state parliament passed a new security law, which allows the police to indefinitely detain people in the event of "imminent danger." The Bavarian premier at that time and current federal interior minister, Horst Seehofer, has unequivocally declared his intention of establishing a "strong state" throughout Germany based on the Bavarian model.

His proposals include internment camps for refugees and mass deportations, as well as "effective video surveillance" of all "hotspots" in Germany, resulting in the systematic surveillance of the entire population. In addition, Seehofer announced the recruitment of 7,500 new federal police and a "zero tolerance" policy.

Olaf Scholz (SPD), who as mayor of Hamburg bore political responsibility for the massive police violence against protesters at the last G20 summit and for an accompanying campaign against "violent left-wing extremists," also has a key position in the new federal government as vice-chancellor and finance minister.



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