The Socialist Equality Party’s lawsuit against Germany’s secret service

Sozialistische Gleichheitspartei
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The following lawsuit was submitted by lawyer Dr. Pier Stolle to the Berlin administrative court on 24 January against the Federal Interior Ministry. It appeals for “the defendant to be ordered to cease distributing, allowing the distribution of, or enabling access to the Verfassungsschutz (Federal Office for the Protection of the Constitution) Report 2017 as published by them in digital, written, or any other form, so long as the Socialist Equality Party (Sozialistische Gleichheitspartei—SGP) continues to be mentioned in it.” A statement by the SGP on the lawsuit can be found here.

Grounds:

I. Background

1.

In February 2017, the plaintiff changed its name from the “Partei für Soziale Gleichheit” (Party for Social Equality) to “Sozialistische Gleichheitspartei, Vierte Internationale” (Socialist Equality Party, Fourth International).

The plaintiff is the German section of the International Committee of the Fourth International (ICFI). The SGP works to win workers in Germany to the programme of socialist internationalism, and hopes on the basis of this programme to unite the workers and mobilise them to take political power and establish a workers’ state. Its goal is to create the objective conditions for the building of a “truly democratic, egalitarian and socialist society,” according to the party’s statement of principles.

To achieve this goal, the SGP focuses chiefly on holding informational events and lectures, and publishes articles daily on the *World Socialist Web Site* (www.wsws.org) analysing world political and economic developments.

In its statement of principles, the plaintiff elaborates further that it advocates the nationalisation of the productive forces, the abolition of national borders and the creation of a rationally-planned, globally integrated economy, as well as the united socialist states of Europe.

It is also noted in the statement of principles that the plaintiff's most important tool to develop socialist consciousness in the working class is the *World Socialist Web Site*. With its daily analysis of global political and economic developments, exposures of the social reality of capitalism, comments on important cultural questions, discussions of philosophical and historical issues and investigation of critical questions of revolutionary strategy, tactics, and practice, this website will play a critical role in establishing a contemporary global Marxist movement.

The plaintiff stands in elections, including the federal election and the European elections in May 2019. In the manifesto for this election, it opposes militarism and war, poverty and exploitation, and calls for a socialist Europe, social equality, and the defence of democratic rights.

2.

In the Verfassungsschutz Report 2017 published by the defendant, the plaintiff is first mentioned on page 131 under the heading “left-wing extremism.”

On page 100 of the Verfassungsschutz Report, the report states on the phenomenon of “left-wing extremism” that “left-wing extremists” pursue the goal of abolishing the state and social order, and thereby also freedom and democratic rights, and replacing it with a communist, or “anarchist system free of rulers.” Violence is seen as legitimate, the report adds. The ideological basis is the opposition to the capitalist system as a whole, because for “left-wing extremists,” capitalism is responsible for all social and political ills, including social injustice, the ‘destruction’ of housing, wars, right-wing extremism, and racism, as well as environmental catastrophes.”

On page 127 under the subheading IV “Left-wing extremist party spectrum,” it is further stated that their goal is the creation of a socialist order so as to establish a communist classless society, although they make use of legal methods, such as the participation in elections. In contrast to “militant left-wing extremists,” they would only consider the use of violence as legitimate in principle and unavoidable in a revolutionary situation.

With respect to the plaintiff, it is then noted on page 131 that according to its own records, it has 261 members, follows the traditional Trotskyist theory of the socialist revolution as a permanent global process led by workers councils, and secured 931 first ballot votes and 1,291 second ballot votes (0.0 percent) in the federal election on 24 September, 2017.

Furthermore, on page 148, it is noted with respect to the plaintiff that the plaintiff’s programmatic “agitation” is directed against the existing state and social order invariably slandered as ‘capitalism’, against the EU, supposed nationalism, imperialism, and militarism, as well as against Social Democracy, the trade unions, and the Left Party. The party attempts to gain publicity for its political ideas by participating in elections and organising lecture series, continues the report.

3.

In a letter of 11 December, 2018, the undersigned, exercising the rights of the plaintiff, called upon the defendant to cease distribution of the Verfassungsschutz Report 2017 published by them, so long as the plaintiff is mentioned in it.

In the letter, a deadline of 6 p.m. on 29 December, 2018, was set. No response was received from the defendant.

A lawsuit was therefore necessary.

II. Legal appraisal

The mentioning of the plaintiff in the Verfassungsschutz Report 2017, which is published by the defendant and the subject of this proceeding, is unlawful, because the preconditions for including the plaintiff in the report are not met.

1. Legal requirements to be mentioned in a Verfassungsschutz report

A Verfassungsschutz report is not merely an arbitrary product of public service work. The naming of a natural or legal person in a secret service report goes well beyond the mere participation of state officials in public controversies, or the creation of a sufficient basis of information to aid independent decision-making by citizens, since it arises from a specialist set of powers to protect against a specific, narrowly defined set of threats,

and results in a burdensome, negative sanction for the person named (consider BVerfG, NJW 2005, 2912 [2913]).

In compiling a secret service report—and especially when determining which persons or groups of persons are to be included in it—special standards of care must be observed. The secret service report amounts to a warning signal. The naming of a person or group of persons in the secret service report is at the same time in effect the issuing of an order to the public not to support this group of persons, not to join the group, and not to accept its offerings—whatever they may be. It is designed to prevent citizens from engaging with or even joining this group of persons. The secret service report is regularly reported on in the media and discussed in public, ensuring it has a widespread impact. The result of this is that by being named in the secret service report, (potential) collaborative partners will be reluctant to cooperate, making it more difficult for the affected group of persons to enter into business, cultural, social, or other relations with others. Being named in the secret service report is thus linked to a considerable negative stigma in public life (consider OVG Berlin-Brandenburg, U. v. 06.04.2006 - OVG 3 B 3.99).

Furthermore, with the inclusion of a person or group of persons in a secret service report, the general legal discretionary limits apply, among which is the principle of proportionality. The naming is therefore only permissible if it is in fact necessary and proportionate in the strict sense of the term (BVerfG, a. a. O.).

2. The plaintiff is not anti-constitutional

The legal basis for the publication of a so-called Verfassungsschutz report is § 16 subparagraph 2 BVerfSchG. It is set out there that the defendant informs the public about attempts and activities according to § 3 subparagraph 1, insofar as sufficient, weighty, actual evidence to do so exists, at least once annually in a summary report focusing particularly on current developments. It is therefore essential whether attempts according to § 3 are being undertaken by the plaintiff.

A. There is clearly no evidence of attempts by the plaintiff to oppose the free democratic constitutional order.

The activity of a group of persons must aim at suspending fundamental constitutional principles, which are contained in paragraph 4, subparagraph 2 BVerfSchG. It therefore requires the conclusion that those types of activities are actually initiated by the group of persons.

Attempts are those politically-defined types of behaviour directed by a person or group of persons towards the goal and purpose of overturning or restricting one of the constitutionally protected principles. In this context, overturning means the full restriction or partial abolition of a constitutionally-protected good. Rendering a good inapplicable takes place when the constitutionally-protected good is not formally abolished, but is in effect overturned or is not enforced (Roth, in: Schenke/Graulich/Ruthig, SicherheitsR des Bundes, §§ 3, 4 BVerfSchG Rn). 10). The overturning or restriction must be the essential goal of the group of persons.

Attempts to oppose the free democratic constitutional order according to § 3 1 No. 1 1 BVerfSchG are only given if, beyond the mere criticism of the constitutional values and principles, activities are developed aimed at overturning them, or at transforming the state and social order into an order that is incompatible with the basic principles of the free democratic constitutional order (BVerwGE 137, 275, Rn). 40; Roth, in: Schenke/Graulich/Ruthig, SicherheitsR des Bundes, §§ 3, 4 BVerfSchG Rn 53).

B. The defendant has not demonstrated this in the case. Neither ‘capitalism’, nor the EU, nationalism, imperialism, militarism, the Social Democracy, trade unions, or the Left Party are constitutionally protected goods according to paragraph 4 1c) i.V.m. paragraph 2 BVerfSchG. The advocacy of a democratic, egalitarian, socialist society does not contradict the Basic Law’s core values.

There is also no indication in the conducting of meetings, documenting of reports and analyses, and the participation in federal and European elections of behaviour directed towards the goal or purpose of overthrowing or transforming the state and social order to establish an order that is incompatible with the free-democratic principles of the constitutional order.

3. Lacking necessity

The naming of the plaintiff is also unnecessary for appropriately informing the public.

The plaintiff’s predecessor, the Partei für Soziale Gleichheit, has existed since 1997. It was not named in the defendant’s previous reports.

The wide-ranging impacts of the Verfassungsschutz Report must be taken into account. The organisations named there are designated “extremists” and thus officially enemies of the constitutional order. With its inclusion, an organisation is declared to be an enemy of the constitution and the state. Along with its function of issuing warnings, the Verfassungsschutz Report also serves to brand and sanction. The official designation as an enemy of the constitution is the basis for social exclusion bound up with broad-ranging consequences. These persons and groups of persons should be and will be socially isolated (vgl. Murswiek, NVwZ 2004, 769 ff.).

The naming is therefore only permissible if it is in fact necessary and proportionate in the strict sense of the term (BVerfG, a. a. O.). This is also legally based on paragraph 16, subparagraph 2, section 1 BVerfschG, according to which informing the public is only possible if sufficient and substantive evidence is presented; considered alongside subparagraph 3, according to which personal data can only be published if the publication is necessary for an understanding of the context, or the presentation of organisations or unorganised groups, and general public interest outweighs the right of the person concerned to protect their privacy.

These requirements are not met in the present case. The naming of the plaintiff is unnecessary. This is particularly so since the plaintiff is a party which, among other things, intends to participate in the European elections in May 2019. The naming of the plaintiff in the report that is the subject of this case is apt to deter eligible voters from voting for the plaintiff.

4. Interference with the plaintiff’s rights

The naming of the plaintiff in the subject of this case also interferes with some of the plaintiff’s protected rights.

This concerns the general right to publicity, which according to Art. 19 subparagraph 3 GG, the plaintiff can invoke as a legal person within the scope of its activities. This comprises protection from declarations by the state that would be apt to have a negative effect on the affected person’s public image. This includes the right of disposal and right of self-determination over one’s own public portrayal, as well as the protection of the claim of validity, the so-called “external honor,” the reputation in the eyes of others (BayVGH, B.v. 23.9.2010 – 10 CE 10.1830).

The naming in a Verfassungsschutz Report, regardless of in which form, exposes the plaintiff to the effects of the report’s negative stigmatisation.

The suit must therefore be upheld.

Additionally, an application is made for the entire administrative procedure and the technical files associated with the case to be consulted, and following consultation, for the undersigned to be granted access to the files.

Following the completion of the examination of the files, further grounds in support of the suit will be provided.