

German Socialist Equality Party answers legal document from Verfassungsschutz Secret Service

Peter Schwarz
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Germany's Verfassungsschutz Secret Service was abusing its “constitutional role in a legally impermissible manner” when it “stigmatises criticism of the capitalist system and the advocacy of its overcoming as ‘anti-constitutional’,” declared a legal brief submitted to the Berlin District Court by the German Socialist Equality Party (SGP) on 30 July.

In January this year, the SGP launched a lawsuit against its labelling by the Verfassungsschutz, in its public Report 2017, as “left-wing extremist” and an “object of observation.” The Federal Interior Ministry, which oversees the work of the Verfassungsschutz, responded with a detailed legal brief on 15 May. In it, the ministry declared “the advocacy of a democratic, egalitarian and socialist society,” the “agitation against so-called ‘imperialism’ and ‘militarism’,” and “thinking in class categories” to be unconstitutional.

The WSWs has already reported in detail on the SGP’s appeal and the Interior Ministry’s response.

The new legal brief, authored by lawyer Peer Stolle on behalf of the SGP, disproved the Interior Ministry’s 56-page document, point by point. It concluded that the Ministry did not meet the legal standard “according to which an association of persons can be publicly designated as ‘unconstitutional’.”

Stolle wrote that even the Verfassungsschutz’s behaviour during the dispute with the SGP “is far removed from the constitutional values it is allegedly intended to protect.” The Verfassungsschutz failed to provide access to its files on the SGP as requested by himself and the court, and merely presented “a convoluted exchange of emails that confirm nothing and are irrelevant to the case at hand.” However, the right to view such files was an “essential component of the fundamental and unalterable constitutional guarantee of the participants’ ability to influence the proceedings.” The denial of this right prevented “the conduct of a fair trial.”

Dealing with the content of the brief of the Verfassungsschutz, Stolle demonstrated in detail how it relied on “evidence” that had nothing to do with the SGP, or how the Verfassungsschutz abused its power by branding entirely legitimate Marxist and socialist views, criticism of capitalism, and opposition to nationalism and militarism as unconstitutional. “The evaluation of the advocacy of a more just economic order as unconstitutional,” according to Stolle, “is itself incompatible with the constitution.”

The Verfassungsschutz relied “in its presentation of evidence on documents which firstly have nothing to do with the plaintiff (i.e., the SGP),” the brief argued, “and secondly were authored in an entirely different historical context.” These papers and documents were then “interpreted in a way which is diametrically opposed to the meaning and content of the values arising from the constitution.”

According to the Verfassungsschutz’s standards, the brief continued, “any advocacy of socialism, any reference to Karl Marx, Friedrich Engels, Rosa Luxemburg, Leon Trotsky, and Vladimir Lenin is irreconcilable with the Basic Law.” Its line of argumentation recalled “the Socialist Laws under Bismarck, when associations of persons who advocated socialism were persecuted by the German state.”

In its document, the Verfassungsschutz relied heavily on the Federal Constitutional Court’s ruling banning the German Communist Party (KPD) in 1956.

Stolle stressed, with regard to this point, that the SGP had nothing in common with the KPD. The Trotskyist movement, in whose political traditions the SGP stands, combatted Stalinism and was persecuted by the Stalinist parties, including the KPD. “The statements made regarding the KPD are therefore not applicable to the complainant.”

Stolle further pointed out that the KPD ruling took place “under questionable constitutional conditions,” and “would no longer be enacted in the current form.” It emerged “during the period of the Cold War,” at “a period which was characterised by universal anti-communism” and “when many of those occupying positions in the judiciary and state administration were old Nazis.”

The brief dealt in detail with the Verfassungsschutz’s assertion that the SGP’s criticism of the capitalist economic order was directed against democracy.

Stolle noted that, according to the latest jurisprudence from the Federal Constitutional Court, “the concept of a free-democratic order” comprised “only a few basic principles which are essential for the existence of a free constitutional state.” “These include the guarantee of human dignity, the principle of democracy, the principle of the sovereignty of the people, and the principle of constitutionality.” The SGP’s activities were not directed against these principles. A specific form of state, such as parliamentary democracy, was not demanded by these principles.

“The fact that a capitalist economic system inevitably comes into conflict with democratic principles ought to be obvious and should be no secret to the defendant as an intelligence agency,” continued the legal brief. Examples mentioned included “the power of companies such as Amazon, Google, Facebook, and Twitter,” as well as the financial crisis of 2008.

The Verfassungsschutz’s line of argument on this issue was “tendentious.” This found manifestation in, among other things, the attempt to evaluate the demand for “the nationalisation of large companies (like Bombardier)” as directed against the free democratic order. The Verfassungsschutz thereby indirectly confirmed, wrote Stolle, that “it is governed by the defence of the interests of major corporations rather than society’s general wellbeing.”

“A dubious understanding of democracy” was also revealed by the Verfassungsschutz’s citation of the following passage from the SGP’s statement of principles, as proof that the party was engaged in unconstitutional activity, “As long as economic decisions that determine the lives of millions of people remain the preserve of private companies and banks, real democracy is impossible.”

The Basic Law, according to Stolle, contained “no explicit confirmation or guarantee of a specific economic order” and “also no concrete principles on how to frame economic life.” This was the obligation of lawmakers alone.

To draw the conclusion that, due to its adherence to Marxism, the SGP was “striving to abolish democracy” was “devious,” continued the document. Rather, the SGP advocated “the position that human dignity, the principle of democracy, and the sovereignty of the people and other free democratic principles can only fully be realised when they include economic life.” Particularly in recent times, “several publications and academic studies have appeared demonstrating that the growing inequality in OECD states is undermining democracy.”

The legal brief also decisively rejected the Verfassungsschutz’s claims that the SGP propagated violence, called for a “putsch,” promoted rule by a minority, and that the socialist revolution for which it fought was directed against ‘human rights’ and democratic principles.”

“At no point nor in reality does the plaintiff propagate violence to achieve its aims,” it stated. The SGP only referred to the use of violence within the context of the historical experience, “that opponents of the social system it advocates also do not hold back from resorting to violence.” If a situation should arise in which the majority of the population advocated the goals propagated by the SGP, it could be the case “that the minority, who sees itself as the enemy or opponent of this social system will resort to violence. It is worth recalling Chile in 1973, Nicaragua in 1980, and Cuba in 1961.”

The SGP’s programme aimed to “convince the majority of the population—the workers—of its course, and in this way to secure a majority.” None of this violated democratic principles. Nor did the society advocated by the SGP “exclude particular people or associations of people from social participation,” it merely wanted to “abolish privileges for certain groups so that everyone can participate in society under the same conditions.”

The passages on imperialism and militarism in the SGP’s brief

were also devastating for the Verfassungsschutz. In its brief, the Verfassungsschutz claimed that the SGP’s agitation “against alleged ‘imperialism’ and ‘militarism’” was unconstitutional because it was connected with the demand to overturn capitalism.

Stolle answered that the Verfassungsschutz proved in this chapter as well that “it misjudges its legal obligation.” If it believed “that the recent wars against Iraq or war threats against Iran promote freedom and democracy in that region” the “progress towards freedom and democracy in these countries could certainly be made the object of the evidence-gathering process.”

It was “evident” that a major cause, if not the main driving force, of the war against Iraq was economic interests. ... It remained a mystery why, in this context, the claim that the capitalist drive for profit must always lead to war was unconstitutional.” Even if one did not agree with or considered this claim to be false, no unconstitutional agitation could be identified in it.

Stolle’s brief demonstrated in legal language what the SGP had already politically explained regarding the Verfassungsschutz’s answer on 26 July. It was an “agitated rant against Marxism, and any form of socialist, progressive, or left-wing thought.” It showed “the extent to which the Verfassungsschutz had become a mouthpiece of the far-right.”

“The SGP,” we explained, “has been caught in the crosshairs of the Verfassungsschutz because it opposes the growth of militarism and the sharp shift of politics to the right, and has given expression to the widespread opposition in the population. ... But the attack on the SGP is also directed against all progressive movements. ... If the Interior Ministry gets its way, it will set a dangerous precedent. ... It can be used to crackdown on anyone who fights against social inequality, environmental destruction, state repression, military rearmament, and any other ills of capitalist society.”

We reiterate our appeal to all of those who fight for democratic rights and are unwilling to tolerate the rise of the far-right, to support the SGP in its conflict with the Verfassungsschutz.



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