

Berlin justice system prosecutes anti-fascist artists

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The Berlin state public prosecutor's office is proceeding with house searches and substantial charges against the artists' collective Centre for Political Beauty (ZPS) for carrying out an art action against the far-right Alternative for Germany (AfD). Responsibility for the public prosecutor's office lies with Left Party politician Lena Kreck, who replaced the Greens' Dirk Behrendt as Berlin Justice Senator (state minister) in December.

The ZPS had used the fictitious company Flyerservice Hahn to provide the AfD with purported distribution services for its campaign flyers in last year's Bundestag (federal) election campaign. "A limited company without an address, trade register entry or tax number," the artists reported, made all the AfD regional associations an offer they could not refuse.

The AfD accepted. The artists collected the material, stored it and finally destroyed it—a total of 5 million flyers, 72 tonnes. They later justified the action saying they had wanted to become the "world market leader in not distributing Nazi flyers."

Two days after the Bundestag elections on September 26, 2021, the ZPS claimed responsibility for the action. Even then, it emphasised that it had not stolen any campaign material from the AfD. They had merely offered to take over the distribution. Flyerservice Hahn had also not issued any invoices and had even offered to return the flyers to the AfD shortly before the Bundestag elections.

The AfD immediately filed a criminal complaint against ZPS, which the Berlin public prosecutor's office is now pursuing. According to *Tagesspiegel*, 10 officers from the State Protection Service at the State Criminal Police Office (LKA), responsible for politically motivated crimes, searched a flat and a studio starting at 7 a.m. on January 13. The raid lasted

for two hours. According to a police spokesperson, the investigators seized devices which held data.

In email correspondence, the ZPS had allegedly given "the untruthful impression of the existence of a company that never existed—with the aim of getting hold of the flyers," a spokeswoman for the Berlin Attorney General's Office told *Der Spiegel*.

To justify their brutal raid, the public prosecutor's office used a criminal offence that probably hardly anyone has ever heard of: Falsification of evidentiary data. This reads: "Whoever, for the purpose of deception in legal transactions, stores or alters evidentiary data in such a way that, if it were perceived, a false or falsified document would exist, or uses data stored or altered in such a way, shall be punished with imprisonment for not more than five years or with a fine."

This penal rule was introduced in 1986 to combat computer crime, to close gaps in criminal liability in the area of document forgery. But even in fraudulent online trading, it is disputed whether the mere creation of fake accounts using false personal data, for example, on eBay and the subsequent sale of goods under this account fulfils the offence in law. The Hamm Higher Regional Court (Oberlandesgericht) had denied this, the Berlin Court of Appeal later affirmed it.

However, it is undisputed that ZPS neither made nor wanted to make a profit, and criminal fraud was not in question when the house search was conducted. Nevertheless, the Berlin Attorney General's Office justified the searches on this ground. In the case of "classic acts of fraud on the internet, which go hand in hand with this statute (Section 269), searches are not unusual," a spokeswoman explained.

In case law, so far there have only been convictions for violations of Section 269 if some form of fraud was

involved, i.e., the perpetrators wanted to obtain money or assets by deception. In the case of false statements without the intention of enrichment, on the other hand, there is already an absence of “deception in legal transactions” due to the lack of legal relevance. The protection of the trust of a right-wing extremist party—whether someone actually wanted to distribute its leaflets—is hardly covered by the protective purpose of Section 269 of the Criminal Code but could at most be clarified under civil law.

ZPS spokesperson Pelzer told netzpolitik.org the suspicion was that the investigations could also be a pretext: “With this procedure, the State Protection Service can screen our structures and at the same time try to intimidate us.”

The ZPS has filed a complaint against the search warrant and called on “the whole of civil society” to “repel this attack on artistic freedom.” Their call is fully justified. If the view of the Berlin public prosecutor’s office prevails, artistic freedom, even freedom of the press, is massively threatened.

Working with fake identities has been common among artists, comedians and journalists for decades.

Journalists often depend on working for someone using a false identity for undercover research so they can expose wrongdoing. In Germany, for example, Günter Wallraff falsely posed as an arms dealer, and under the pseudonym Hans Esser, worked for several months as an editor for the tabloid *Bild*. He did not do this to write articles in the interest of the newspaper, but to expose its retrograde brand of pseudo-journalism.

So-called telephone pranks for radio and television, in which companies, authorities, politicians and celebrities are called and made fun of using false identities and under false pretences, also have a decades-long tradition in Germany. Erich Kästner (author of *Emil and the Detectives*) had dedicated the poem “Das verhexte Telefon” (The bewitched telephone) to the prank call in 1932.

The new Berlin Interior Senator, Iris Spranger (Social Democratic Party, SPD), did not want to say whether she had been informed about the raid on ZPS. Her press office responded to netzpolitik.org’s enquiry saying that the senator did not interfere and did not react to specific queries. In response to a press enquiry from netzpolitik.org, Berlin Culture Senator Klaus Lederer

(Left Party) said he did not want to comment on what he thought about house searches of known artist groups.

A spokeswoman for the Senate Department of Justice, led by Left Party politician and law professor Lena Kreck, who is authorised to give instructions to and supervise the public prosecutor’s office, refused to comment on the matter when asked by *junge Welt*.

The fact that the SPD-Left Party-Green Berlin Senate (state executive) under Franziska Giffey (SPD), which has only been in office for a month, as one of its first official acts, is taking police action against a group of artists who have carried out an art action against a far-right outfit, shows what can also be expected from these parties in the future: they will not take action against right-wingers, but against their opponents.



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