

Sozialistische Gleichheitspartei lawsuit against the Secret Service Berlin Administrative Court declares criticism of capitalism unconstitutional

**Statement of the Sozialistische Gleichheitspartei
2 February 2022**

On December 13, 2021, the Berlin Administrative Court dismissed the lawsuit lodged by the Sozialistische Gleichheitspartei (Socialist Equality Party, SGP) in January 2019. The SGP sued the German Ministry of the Interior because the Verfassungsschutz (Office for the Protection of the Constitution, as the German secret service is called) had listed it as a “left-wing extremist” organisation in its annual report and put it under surveillance. The judgement and the court opinion, which is now available in writing, constitute a fundamental attack on democratic rights. They aim to ban socialist ideas and any criticism of capitalism.

The verdict is exclusively politically motivated. It dismisses the SGP’s case not because the party opposes democracy and freedom, but because it defends them and openly states that they are incompatible with a social order that concentrates wealth and economic power in the hands of a tiny minority. In the tradition of Bismarck’s anti-socialist laws and the *Gesinnungsstrafrecht* (legal prosecution of opinions) of the Nazis, the court and its presiding judge Wilfried Peters declare any demand for the democratisation of the economy and any doubts about state institutions to be unconstitutional.

With its judgement, the court is reacting to the growing opposition to massive social inequality, the “profits before lives” policy in the pandemic and horrendous levels of military spending. Anyone who calls these policies in the interests of the rich by their name is to be muzzled. Almost 90 years after the Nazis came to power, socialist ideas are to be criminalised again.

The judgement targets the SGP because it provides this opposition with a voice and a socialist perspective, but it is also directed against anyone who criticises capitalism and rejects the government’s right-wing policies. Based on this judgement, every author who refers positively to the Marxist classics, every sociologist who examines the effects of social inequality on society, every journalist who sheds light on the right-wing terrorist networks in the armed forces and every striking worker could be declared an enemy of the constitution.

We therefore appeal to all those who want to defend democratic rights and confront the right-wing danger to support the SGP’s lawsuit. We will not accept the decision of the Administrative Court and have already applied for an appeal to the Berlin Higher Administrative Court. Support us in this, sign our petition on [Change.org](https://change.org), register as an active supporter and share this statement among your acquaintances and friends.

The judgement in detail

The court explicitly justifies the classification of the SGP as “left-wing

extremist” and its surveillance by the Verfassungsschutz on the grounds that it advocates a Marxist perspective. Because the SGP “does not engage in historical reflection, but pursues a political agenda based on the writings of Marx, Engels, Trotsky and Lenin,” it is directed against the liberal democratic basic order, according to the judgement.

In fact, almost all democratic rights in this country were won through the struggles of the Marxist workers’ movement. Even the limited parliamentary order could only be established in 1919 after the workers’ and soldiers’ councils had overthrown the Kaiser. Ultimately, it was only the workers’ parties that voted against the enabling act providing Hitler with dictatorial powers. It was the Trotskyists, who fought for a united front perspective at the time, which would have been able to stop the Nazis.

When the court refers to the “liberal democratic basic order,” it does not mean the basic democratic rights fought for by the Marxist workers’ movement, but the protection of capitalism against the majority of the population. Like Bismarck and Hitler before, it wants to ban any party that rests on Marx, Engels, Lenin or Trotsky.

The court does not deny that the SGP wants to achieve its goal of a socialist society by democratic means and to win the majority of the population for this. It refers to the statement in the SGP’s Declaration of Principles that “the decision on these and other democratic changes will be made by the masses themselves” and that workers must “vigorously defend all democratic rights” in the struggle for power.

It is this programme of democratic control over all areas of social life, including the economy, by the masses themselves, which the court declares anti-constitutional. Any statement that glaring social inequality is incompatible with democracy, that the power of the big banks and corporations runs counter to genuine popular government, or that the organs of the state serve the interests of the rich, should be banned, according to the court. This is what the judgement says:

If the organs established under the Basic Law (constitution) merely serve a capitalist class to maintain power, although according to the constitution they have the legitimacy of the entire people, it is obvious that the “new organs” envisaged by the plaintiff must have a legitimacy different from this. For if the “new organs” could also be traced back to the will of the entire people, nothing would in fact change in the circumstances criticised by the plaintiff. This suggests that the plaintiff has in mind a system of [workers’] councils for the “new organs” that is incompatible with the parliamentary democracy of the Basic Law.

The core of this verbiage is that any questioning of the democratic legitimacy of the state institutions is declared unconstitutional. Elsewhere, the court prohibits the SGP's view that the state organs represent the interests of the capitalists and must therefore be replaced by truly democratic organs. For: "Although according to Article 20 (2) paragraph 1 GG [Grundgesetz, constitution] all state power derives from the people, the plaintiff claims that the state is not legitimised by the entire people."

Thus, were a mass movement of the vast majority of the population to deny the legitimacy of the state organs, expropriate the big banks and corporations and democratise the economy, this, according to the court, is directed against a mystified "will of the entire people," which finds its absolute expression in the state organs. By these organs, the court expressly means the state apparatus of repression:

The fact that the plaintiff has an understanding of democracy that deviates from the conception of the Basic Law is shown, finally, by the fact that in paragraph 24 of the Statement of Principles, it denigrates institutions of the state that are legitimised in accordance with the Basic Law—namely the Verfassungsschutz and the Bundeswehr [Federal Armed Forces]—as undemocratic and directed against the people.

This is the language of dictatorship. Not the declared will of the majority of the population, but the institutions of the state must be protected. This argumentation has nothing to do with the protection of a "liberal democratic basic order" but aims to defend the state institutions against a democratic movement.

Trump's attempted coup in the USA on January 6, 2021 showed how acute the danger is of authoritarian tendencies in the state apparatus. In Germany, the army and police are riddled with far-right terrorist networks, and the Verfassungsschutz is closely intertwined with the neo-Nazi scene.

The same anti-democratic logic permeates the entire judgement. Thus, the court states that "the use of terms such as socialism, revolution and capitalism" is only permissible if they refer to a "transformation of the economic-political relations." If, however, the effects of the economic system on politics are addressed—for example by the vernacular that money makes the world go round—this is unconstitutional according to the court.

Marxism in particular is anti-constitutional, in the court's eyes, because "according to the Marxist understanding, capitalism can never be limited to the economic system alone. Rather, according to it, the totality of the relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure."

Since the dictates of the banks and corporations are becoming more and more obvious, the court wants to prohibit any reference to them. Accordingly, it declares the transformation of society according to socialist principles unconstitutional because this goes beyond a mere change in economic policy.

In delivering the court's oral judgement, presiding judge Peters even elevated the "market-based property system" to a "law of liberty" and declared the SGP's criticism of it, as well as the questioning of the "private ownership of the means of production" unconstitutional. He thus elevated the exploitation of people to a supreme fundamental right that must be defended even against the declared will of the vast majority.

The court also wants to ban any policy that proceeds from the existing class antagonisms. This is what the judgement says:

The plaintiff is free to say that the differentiation of society into classes is a "scientifically recognised and widely used instrument

for the analysis of societies." However, the plaintiff does not conduct sociological studies of society, but its party programme is based on the division of society into classes. This is clearly oriented towards class struggle.

So, according to the court, one is allowed to name the existing class antagonisms, but one is not allowed to derive political conclusions from them. In fact, this absurd formulation means any discussion of social inequality would end up being banned. When, for example, the British charity Oxfam states in this year's poverty report that inequality is at its greatest level in history and that "only systemic solutions will do to combat economic violence at its roots and lay the foundations for a more equal world," this is unconstitutional, according to the court.

The partisan nature of the judgement is also evident from the determination of the amount in dispute. Instead of the usual 5,000 euros in such cases, the judge has summarily set the amount in dispute at 20,000 euros, which increases the court costs and the costs for an appeal enormously. The court's flimsy justification was the fact that the SGP had not only applied for deletion of the entry about it from the 2017 Verfassungsschutz report, but also from those in the following years, which, however, were almost identical and thus do not justify a quadrupling of costs. Moreover, the court itself is responsible for the fact that the SGP had to file subsequent applications, because it delayed the initial hearing for almost three years.

The stench of fascism

The Administrative Court's ruling must be seen as part of an international development; the turn by ruling circles towards authoritarian and fascist methods. In the USA, the Republican Party continues to back Donald Trump, who tried to prevent the election of his successor Joe Biden through a coup and is seeking to establish an authoritarian dictatorship. Here, the Alternative for Germany (AfD) is the first far-right party to sit in parliament since the fall of the Nazis. It has been integrated into parliamentary work by the other parties and sets the government's line on refugee policy and in many other areas. Right-wing extremist terrorist networks are promoted and protected by the state security apparatus.

The attack on the SGP is a central component of this shift to the right. It was first included in the Verfassungsschutz annual report in 2018. At the time, the agency was headed by right-wing extremist Hans-Georg Maassen.

When the SGP filed a suit against this, the Federal Ministry of the Interior responded with a 56-page brief that is not a legal document but an angry diatribe against socialism. The ministry declared that even "arguing for an egalitarian, democratic and socialist society" and "agitating against supposed 'imperialism' and 'militarism'" were anti-constitutional. It even wanted to ban "thinking in class categories" and the "belief in the existence of irreconcilably opposed competing classes."

The court has now backed this anti-democratic view and gone even further. Its argument that even a majority of the people must not be allowed to change the state organs because these embody the "will of the entire people" is not only directed against a socialist mass movement, but against elementary democratic principles.

Already the American Declaration of Independence of 1776 had proclaimed "the Right of the People to alter or to abolish it, and to institute new Government," whenever any form of Government becomes destructive of the ends of Life, Liberty and the pursuit of Happiness.

The ruling by the Berlin Administrative Court does not rest on this democratic tradition, but on the authoritarian tradition of the Kaiser's Empire, which declared the state order to be the highest good and banned social democracy on this basis.

The jurist Carl Schmitt, who later supported the Nazis, took up this ideological tradition in the Weimar Republic to justify the necessity of a "commissarial dictatorship" to suppress the revolution. Later, he justified the presidential dictatorships of Von Papen and Schleicher by arguing that the Reich President was the "guardian of the constitution." As such, he had to protect the "political unity of the entire German people" from parliament, which, as a "reflection of the social and economic clashes of interests," i.e., class contradictions, contributed to the disintegration of the state.

From there it was only a small step to the glorification of the "Führer." In 1934, Schmitt defended the reprehensible murder of 200 of Hitler's rivals after the alleged Röhm putsch in his infamous paper, "The Führer Protects the Law." In his "Constitutional Law," published in 1937, Schmitt's student Ernst Rudolf Huber then strictly demarcated the objective will of the people from "subjective popular convictions," which were determined by social conflicts of interest. "The actual bearer of the will of the people, however, remains the Führer," he declared. "Even if the voting population turn against him, it is he who embodies the objective calling of the people."

It is not surprising, given this legal tradition, that Judge Peters rejects any historical references. Already in the oral judgement he had declared: "Today we have heard a lot of historical things, about Bismarck's laws, arguments about Karl Marx, etc.," but all that is "not relevant" here.

With that alone he lost all legitimacy. It is not possible to talk about democracy in Germany, let alone denounce a party as anti-constitutional, without drawing the lessons of this historical experience. Hitler was able to come to power in Germany through "legal" and "democratic" means, the entire judicial and civil service apparatus, with a few honourable exceptions, served his dictatorship and helped him organise the war of extermination and the Holocaust.

But for the court, this is "not relevant." Instead, it justified the SGP's anti-constitutionality, among other things, on the grounds that Leon Trotsky had called in 1938 for the "arming of the proletariat in the struggle against fascism," which—as the SGP's representatives explained in court—would have been the only way to prevent the Second World War and the Holocaust.

In its brief, the Interior Ministry had cited Trotsky's call as evidence that the Trotskyist SGP fought against the liberal democratic basic order. The court agrees with this in its written judgement. The court rejected the argument of the SGP, that references to Leon Trotsky "must be evaluated in their historical context"—in this case, in the context of fascism—because the party pursued a political agenda "based on Trotsky."

Thus, if a political party takes the position that the Nazi regime should have been overthrown in 1938 by an armed uprising of the working class, this is against the liberal democratic basic order! Judge Peters could not express his viewpoint that the state apparatus under all circumstances represents the "will of the entire people" more clearly.

The ban on the KPD

In its anti-democratic orientation, the court quite openly violates applicable law and supreme court jurisprudence. The law on the Bundesverfassungsschutz, on which the judgement is officially based, does not allow for such an interpretation at all. This law, which itself represents a massive restriction of the constitutionally guaranteed freedom

of expression, explicitly does not include capitalism and private property among the principles of the liberal democratic basic order that are worthy of protection.

The Supreme Court also explicitly stated in its judgement against the ban of the fascist German National Party (NPD) on January 17, 2017 that it was not the rejection of the state organs, but only the attack "on the possibility of equal participation of all citizens in the process of political decision-making and on the linking back of the exercise of state power to the people" that was to be considered anti-constitutional. The judgement explicitly states:

The rejection of parliamentarism, if it is combined with the demand for its replacement by a plebiscitary system, thus cannot justify the accusation of disregard for the liberal democratic basic order. However, the situation is different in the case of deprecating parliament with the aim of establishing a one-party system.

This ruling was cited both by the SGP's lawyer Peer Stolle in his briefs, and by the SGP's representatives in court. But Judge Peters deliberately ignored the references to the case law. Instead, he bases his written ruling almost entirely on the 1956 judgement on the ban of the German Communist Party (KPD).

This also underlines the reactionary and anti-democratic tradition in which the action against the SGP stands. The judgement against the KPD from the time of the Cold War has long been discredited. The then president of the Supreme Court, Jutta Limbach, had already stated in 1996 that she would have rejected the ban according to applicable constitutional principles. The historian Professor Josef Foscith, who has thoroughly researched the KPD trial by evaluating previously inaccessible state files, concludes in his book *Unconstitutional!* published in 2017, that the KPD verdict blatantly violated the constitution and was politically motivated. "There were no longer separate powers in these proceedings, but only one state, which, under pressure from the federal government, insisted that the KPD be banned," Foscith writes.

The Adenauer government was represented in this case by the same radical right-wing circles that had already played an active role in the persecution of communists under the Nazis. The head of the federal government's litigation office was Hans Ritter von Lex, who as a Reichstag member of the Bavarian People's Party (BVP) had declared his party's approval for Hitler's Enabling Act on 23 March 1933. Only a few days before, in a personal conversation, he had assured Hitler that he shared his goal of "eradicating Marxism in Germany."

"That the German people be freed from this contamination, even by using the strictest methods, was the common demand of all patriotic-minded circles," he said.

Judge Peters is using this ruling by former Nazi lawyers to ban socialist ideas altogether. Without citing any evidence, he accuses the Trotskyist SGP, employing the words of the KPD verdict, of advocating a one-party dictatorship in which "state power is concentrated with one state party"—something the Trotskyist movement has always rejected with regard to the Stalinised Soviet Union and the former East Germany.

"In view of the omnipotence of the state party and its sole insight into political necessities, the government's accountability to the people's representation and even more the formation and exercise of a parliamentary opposition are excluded," Peters develops his lying construct. "In such a polity, human rights are not guaranteed."

With this falsehood, which Judge Peters does not even bother to substantiate, he identifies the Trotskyist movement with the Stalinist crimes against which it was founded. In doing so, Peters deliberately ignores the statements made by Stolle in his briefs and by the SGP

representatives in court. They explicitly rejected the identification of Stalinism and Trotskyism at the hearing, stating:

In reality, Trotsky and the Left Opposition defended the Marxist principles embodied in the October Revolution against Stalinist counter-revolution. From the outset, these principles included democracy in the Soviet Union and an orientation toward international socialist revolution.

The unbridgeable chasm between Stalinist tyranny and genuine socialist principles was revealed in the Great Purges of the 1930s, during which hundreds of thousands of communists were murdered on charges of Trotskyism. In the German Democratic Republic (East Germany), Trotskyists like Oskar Hippe, who fought against the Stalinists for democracy and socialism, were sentenced to long prison terms.

That Judge Peters simply brushes aside these issues confirms he has delivered a political verdict aimed at criminalising Marxism and any serious opposition to the government's right-wing policies.

The political significance of the judgement

The court's effort to criminalise any questioning of the legitimacy of the state institutions, any criticism of capitalist society and any advocacy of a socialist transformation is an expression of the ruling class's panic-stricken dread of growing social opposition. It fears that the widespread rejection of a policy that places the profits of the rich before the vital interests of the great mass of working people and is arming for war is taking on a conscious and organised form.

As in an Orwellian dystopia, the court feels it can forbid the stating of the obvious. The class character of the state, which the court wants to prohibit from being named, has become particularly evident in the pandemic. In Germany alone, over 115,000 people have already died because the ruling class prioritizes its profits over people's lives. The whole of society is being deliberately infected to keep businesses running, profits flowing and share prices rising.

While the big corporations received hundreds of billions in taxpayers' money, nurses must slave away in hospitals that have been cut to the bone and schools which are not even equipped with rudimentary air filters. In the first year of the pandemic alone, the world's billionaires increased their fortunes by a staggering 60 percent to \$13 trillion, while at the same time another 160 million people were plunged into absolute poverty and struggle to survive.

Under the pretext of restructuring, hundreds of thousands of jobs are being cut, wages reduced, and social benefits slashed. The only budget being massively expanded is for armaments. Since 2014, the defence budget has been increased by over 30 percent. The coalition of the Social Democrats, Liberal Democrats and Greens is increasing it even further and has adopted a confrontational course with the nuclear powers Russia and China, risking a new world war.

These policies are hated in the population. Conceptions the court wants to ban are widely shared: that the government pursues policies in the interests of the rich; that the state serves to enforce these policies; and that society must be transformed along socialist lines.

On January 30, 1933, Germany's ruling class concluded it could only realise its war plans and crush the workers' movement with a regime led by the Nazis. Today, it is once again resorting to authoritarian methods to

counter opposition to its right-wing policies.

The inclusion of the SGP in the Verfassungsschutz annual report, its defamation as "left-wing extremist" and its surveillance by the intelligence agencies are essential steps in this direction. The judgement paves the legal path for banning the party. But the anti-democratic argumentation of the federal government and the court are directed against anyone who opposes the right-wing danger and criticises capitalism.

But 2022 is not 1933. The judgement was not made following massive defeats of the working class, but under conditions of a growing radicalisation. In Germany, Europe and around the world, a new mass movement of the working class is developing to fight back against deliberate mass infection, war, and inequality.

Under these conditions, the defence of the Sozialistische Gleichheitspartei is crucial. We once again call on all WSWs readers to sign our petition on Change.org today, make as generous a donation as possible towards our legal costs, and register as an active supporter. Share this statement and discuss it on social media and with friends and colleagues.



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