



On the continuity of the persecution of dissidents in Germany

Dr. Wolfgang Bittner's excerpt from his forthcoming book makes you sit up and take notice. The persecution of dissidents goes back further than we realize and appreciate.

Wolfgang Bittner

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Foreword by the editorial team

We are pleased to present our readers with another article by the well-known historian and author Wolfgang Bittner. The topic could not be more current - the persecution of dissenters. In Germany.

The article is an excerpt from the forthcoming book "Niemand soll hungern, ohne zu frieren" ("No one should starve without freezing"). It ends with a decision of the European Court of Human Rights in the case of a teacher from Lower Saxony in 1995. It would be nice if the persecution of dissidents in Germany had ended in 1995. Unfortunately, it is a fact that it has increased considerably in recent years and has really taken off.

With Corona and the Ukraine conflict, German and EU politicians have become less and less afraid to create new legal bases or to reinterpret existing ones in a strange way in order to criminalize opposition to state restrictions, even the mere expression of opinion, and in some cases to make it impossible.

This is a very disturbing and dangerous tendency.

Persecution throughout history

It is generally known that in the past, critics of the authorities and people who had ideas about social life that differed from those commonly held or prescribed were persecuted. Christians were burned in Rome, witches were burned in the Middle Ages, and until recently there was still uproar in some parts of Germany when a Catholic married a Protestant. The persecutions during the Nazi dictatorship also remain unforgotten.

Persecution in West Germany

It is meanwhile less well known that a veritable hunt for communists took place after 1945. In 1951, the German government applied for a ban on the Communist Party of Germany (KPD), which the Federal Constitutional Court upheld in a ruling on August 17, 1956. The consequences of the ban for the left-wing movement in the newly forming society of the FRG were serious. The party was dissolved, party assets were confiscated, offices were closed, newspapers were banned, print shops, bookshops and homes were searched and many functionaries were arrested. The party chairman Max Reimann and several top functionaries fled to the GDR to avoid arrest.

The repression and thousands of sentences against communists had already led to a dramatic decline in membership before the KPD was banned, making the communist movement irrelevant in West German politics. Left-wingers were even

sentenced to prison for "anti-constitutional relations", i.e. "contact guilt", because they had taken part in events in the GDR. It happened that they stood before the same judges who had sent them to concentration camps during National Socialism.

Destruction of livelihoods by Nazis - long after the war

In 1968, the German Communist Party (DKP) was founded as a communist successor organization, which was tolerated for political reasons. But its members were under observation by the Office for the Protection of the Constitution, and just three years later there was the so-called Extremist Decree, also known as the Radical Decree, to which many dissidents, mainly communists, fell victim. These victims, some of whom had survived in concentration camps during National Socialism, were often interrogated and harassed by officials, public prosecutors and judges who had already been hunting them down before 1945.

Together with Federal Chancellor Willy Brandt, the Conference of Minister Presidents agreed on January 28, 1972 that applicants and employees in the public service should be checked for their loyalty to the constitution in future. The resolution, entitled "Principles on the membership of civil servants in extremist organizations", led to a renewed hunt for socialists and communists. Hundreds of thousands of applicants for the civil service were checked for their political "reliability"[1].

Numerous civil servants and thousands of constitution protection officers had their hands full. Not only people applying for important public offices, university teaching positions or jobs in security-sensitive areas were affected by the screening practice, but also teachers, lawyers, doctors, economists, surveyors and so on. Even train drivers, postal workers and cemetery gardeners fell victim to the Radical Decree.

The main grounds for suspicion for the hearings were membership of the DKP, activities within this party, activities for a "Vietnam Organizing Committee" and trips to the GDR. A postal carrier from Frankfurt am Main was announced his dismissal on the grounds that, due to his "activities in the DKP" and its auxiliary organizations", his "dismissal from his civil service position was unavoidable" if he did not succeed in clearing up the doubts about his "loyalty to the constitution"[2].

Targeted violation of the Basic Law for decades

There is no doubt that this practice of reversing the burden of proof, of pointing fingers, raising suspicions, holding hearings and banning people from holding office was unconstitutional. According to Article 33 of the Basic Law, every German has "equal access to every public office according to his or her aptitude, ability and professional performance". According to Article 3, no one may be disadvantaged because of their political views; according to Article 4, the freedom of ideological conviction is inviolable; Article 9 grants every German the right to form associations. According to Article 21, parties shall participate in the formation of the political will of the people and shall be free to form. It goes on to say: "Parties which, by their aims or the conduct of their supporters, seek to impair or eliminate the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional." However, paragraph 4 states that the Federal Constitutional Court must decide on the question of unconstitutionality in a formal procedure.

It follows from this that members of a non-banned party cannot be accused of membership of that party in the slightest. Nevertheless, in a fundamental decision of February 6, 1975 (in the case of the teacher Anne Lenhard, a member of the DKP), the Federal Administrative Court took a more than dubious but desirable legal view when it stated: "The commitment to the goals of a (non-banned) political party that are incompatible with the free democratic basic order, and even more so the active commitment to these goals, make the civil servant applicant ... unsuitable for civil service..."

The Federal Constitutional Court, on the other hand, stated on 21 March 1961: "The privilege of Article 21(2), which primarily protects the party organization, also extends to the party-official activities of the functionaries and supporters of a party using generally permitted means. Their activities are protected by the party privilege even if their party is declared unconstitutional by a later decision of the Federal Constitutional Court... The supporters and functionaries of such a party act within the framework of constitutionally guaranteed tolerance when they propagate and promote the aims of their party, participate in elections, become active in election campaigns, collect donations, work in the party apparatus or even campaign for their constituency as members of parliament. The Basic Law accepts the danger that exists in the foundation or activity of such a party until it is determined to be unconstitutional." [3]

In contradiction to this and contrary to Article 21, Paragraph 4 of the Basic Law, the Hessian Administrative Court, in a ruling of July 27, 1977 on the case of the teacher Sylvia Gingold, incorrectly stated in the guiding principles: "The DKP is an anti-constitutional party". Here, as in other cases, administrative judges have revealed their ideological bias by making unconstitutional rulings.

It has been shown time and again that the judiciary is conservative and conforms to the government; this was the case in the German Empire, under National Socialism and is still the case today. You may think what you like about the DKP or the AfD, but the Basic Law allows for a broad spectrum of parties. Anyone who disagrees with the objectives of a registered party must confront them in democratic discourse.

Until the federal government under Helmut Schmidt abolished the extremism regulations at federal level in 1976, it is estimated that up to 3.5 million regular requests for security checks for civil service candidates were made to the constitution protection authorities; around 1250 people, mainly teachers and university lecturers, who were deemed to be left-wing extremists were not hired and around 260 people were dismissed.[4] According to new guidelines from 1979, information about a person was only to be requested from the constitution protection authorities if there were concrete grounds for suspicion. The federal states gradually abolished the Radicals Decree from the end of the 1970s, Bavaria only in 1991[5].

In 1995, the European Court of Human Rights ruled in the case of a teacher from Lower Saxony that her dismissal for membership in the DKP violated the right to freedom of expression and association under the European Convention on Human Rights.[6] This decision and the ruling of the Federal Constitutional Court of March 21, 1961 could become important again due to the increasing surveillance and paternalism of the population and also with regard to the exclusion of the AfD (a registered party) and its members. This is because it is irrelevant for the legal assessment of a party's registration whether it belongs to the right-wing or left-wing spectrum.

An advance print from Wolfgang Bittner's forthcoming book published by zeitgeist entitled: "Niemand soll hungern, ohne zu frieren" ("No one should starve without freezing"), Subtitle: "So wie es ist, kann und wird es nicht bleiben." ("It cannot and will not stay the way it is.")

Notes and information

1 Willy Brandt later described the Radical Decree as a mistake: <https://willy-brandt.de/ausstellungen/veranstaltungen/50-jahre-radikalenerlass/>

2 see: Wolfgang Bittner, "Wenn Briefträger ‚verfassungstreu‘ sein müssen – Der unheilvolle Erlass". In: "Vorgänge", 21. Jg. 1982, Heft 2, S. 1-4.

3 BVerfG E 12,296,306.

4 Vgl. Friedbert Mühldorfer, "Radikalenerlass", Historisches Lexikon Bayerns, 16.6.2014.

5 www.bpb.de/kurz-knapp/hintergrund-aktuell/346271/vor-50-jahren-radikalenerlass/

6 *ibid.*

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