

Background to the government attack on Netzpolitik.org

German court in 1992 upheld 1931 treason conviction of Carl von Ossietzky

By Andreas Kunstmann
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The legal investigation into the blog *Netzpolitik.org* for treason has provoked strong opposition and a wave of anger. It recalls the darkest chapter in German history, with the rise of the Nazis.

The most well known and notorious treason conviction in Germany was in 1931, against the editor of the *Weltbühne* magazine, Carl von Ossietzky.

It is less well known that this criminal trial was reviewed by a court in the Federal Republic of Germany. Between 1988 and 1992, Germany's Federal Supreme Court (BGH) reconsidered the journalist's conviction and refused to overturn the judgement.

The basis for the conviction in November 1931 was the publication of an article entitled "Shady Dealings in the Air" ("Windiges aus der Luftfahrt") in the *Weltbühne* of 12 March 1929. Carl von Ossietzky was the magazine's publisher and editor in charge.

The article dealt with events at the Johannesthal Adlershof airfield that proved Germany was pursuing a rearmament programme in violation of the terms of the Versailles Treaty agreed to at the end of World War I, and systematically covering the program up.

In the initial trial, a report authored by the Reich prosecutor (predecessor of the Federal Prosecutor) played an important role in preparing the treason charge. At the time, the charge was demanded by the Defence Ministry, which disputed that the facts detailed in the article were "already known to all interested parties at home and abroad."

The charge followed only a few weeks after the completion of the report. The Reichsgericht (predecessor of the BGH) sentenced Carl von Ossietzky to one year and six months imprisonment. A pardon was demanded in a petition signed by 43,600

people, but rejected by Reich President Paul von Hindenburg.

Carl von Ossietzky subsequently spent 227 days in prison and was then sent to a concentration camp by the Nazis, where he died on 4 May 1938.

Fifty years later, Rosalinda von Ossietzky-Palm, Ossietzky's daughter, commissioned lawyer Heinrich Hannover, Bremen civil servant Ingo Müller and Berlin Judge Eckart Rotka to reopen the case. The request was filed at the Berlin appeals court on 1 March 1988. It was justified on the basis of new evidence.

For example, it was proven that the facts in the article were already known to the French army, meaning they were not secrets. It was also argued that the rearmament program "endangered the security of the Reich, and not the fact that these activities were published."

Among the appeals court judges was one who was jointly responsible for the acquittal in 1968 of Hans-Joachim Rehse, who had been a judge at the Volksgericht (People's Court) in Nazi Germany. The Berlin district court had cleared Rehse at the time because the presentation of cases by the People's Court "took place within the framework of technical considerations."

On 11 July 1991, the application to reopen the Ossietzky case was thrown out by the Berlin court. No new evidence or facts had allegedly been presented that would have been sufficient to justify overturning the original conviction.

The ruling stated, "... the application for a retrial is based on conditions which the court fully evaluated and arrived at an opposing conclusion after a review of the evidence in both instances referred to. A fact [rejected

by the previous ruling] is not new evidence.”

An appeal challenging this decision was filed with the Federal Supreme Court, which rejected the suit for a retrial on 3 December 1992. This was justified on the basis that no new evidence had been provided to show that “precisely” the information contained in the article had previously been known. It was, according to the BGH, not a question of whether the rearmament program as a whole was already known about.

The court said the new evidence, which, according to experts, showed the publication had not endangered the “security of the Reich,” was not new evidence according to law, and would thus not result in a retrial.

Heinrich Hannover, citing the BGH ruling, wrote: “For the judges in Karlsruhe, the Third Reich and the Second World War with its 50 million deaths never took place. They are holding on to principles that rely on a lack of critical awareness of history and guarantee the acquittal of their judicial colleagues in the Third Reich who sympathised with Adolf Hitler.”

Hannover quoted from the BGH ruling: “The reference to subsequent historical developments is irrelevant for a retrial. Within the framework of determining admissibility, the retrial court must determine the suitability of the retrial application, taking into account the standpoint and legal opinion of the court that convicted the defendant.”

Thus the BGH judges in 1992 made the decisive factor the standpoint and legal opinion of those judges who later became supporters of the Nazi state. Using similar arguments, the post-war German judiciary acquitted almost all judges and state prosecutors from the Nazi regime.

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All citations are from: Heinrich Hannover, *Die Republik vor Gericht, 1975-1995, Erinnerungen eines unbequemen Rechtsanwalts*; Chapter 19: *Carl von Ossietzkys “Landesverrat”—ein Wiederaufnahmeverfahren (1988-1992)*; Pp. 371-410.

See also: Elisabeth Hannover-Drück/Heinrich Hannover, *Politische Justiz 1918-1933*.

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