

Socialist Equality Party takes legal action against surveillance by German secret service

By the Sozialistische Gleichheitspartei
10 January 2019

The Sozialistische Gleichheitspartei (SGP—Socialist Equality Party) is taking legal action against its surveillance by the German Federal Agency for the Protection of the Constitution (Verfassungsschutz) and the naming of the party in the domestic secret service’s annual report as an object of interest. The report, released last July, identified the SGP for the first time as a “left-wing extremist” party. The sole reason given by the authorities to justify this was that the SGP criticises capitalism, other political parties and the trade unions.

The party published a detailed statement on the actions of the secret service in August, which it defined as a calculated political attack motivated by the far-right political views of the secret service’s then-President Hans-Georg Maassen. Dr. Peer Stolle, the SGP’s lawyer, has submitted formal notice to the federal agency in writing, which is published below.

Stolle is chairman of the Republican Association of Lawyers (RAV). He has conducted several cases against the Verfassungsschutz and represented the co-plaintiff Ergün Kubasik in the trial of the right-wing extremist terrorist NSU group.

Dear Sir or Madam,

We hereby inform you that we have been instructed to represent the legal interests of the Sozialistische Gleichheitspartei, represented by its chairman, Ulrich Rippert, in the matter presented in this letter. A power of attorney in our name is enclosed with this letter.

The Sozialistische Gleichheitspartei is the German section of the International Committee of the Fourth International (ICFI). The SGP works to win workers in Germany to the programme of socialist internationalism, and hopes on the basis of this programme to unite the workers and mobilise them to take political power and establish a workers’ state. Its goal is to create the objective conditions for the building of a “truly

democratic, egalitarian and socialist society,” according to the party’s statement of principles. To achieve this goal, the SGP focuses chiefly on holding informational events and lectures, and publishes articles daily on the *World Socialist Web Site* analysing world political and economic developments.

In the Verfassungsschutz Report 2017 published by you, you mention our client on pages 131 and 148 under the heading “left-wing extremism.” There, you detail, among other things, that the SGP directs its programmatic agitation against the existing state and social order, invariably slandered as ‘capitalism,’ against the EU, supposed nationalism, imperialism and militarism, as well as against Social Democracy, the trade unions, and the Left Party. Additionally, the report details how our client seeks to publicise the party and its views by participating in elections and organising lecture series.

The mentioning of our client in the Verfassungsschutz Report 2017 published by you is unlawful because the preconditions for including our client in the report are not met.

A Verfassungsschutz report is not merely a selective product of public service work. The naming of a natural or legal person in a secret service report goes well beyond the mere participation of state officials in public controversies, or the creation of a sufficient basis of information to enable independent decision-making by citizens, since it arises from a specialist set of powers to protect against a specific, narrowly defined set of threats, and results in a burdensome, negative sanction for the person named (consider BVerfG, NJW 2005, 2912 [2913]).

In compiling a secret service report—and especially when determining which persons or groups of persons are to be included in it—special standards of care must be observed. The secret service report amounts to a warning signal. The naming of a person or group of persons in the

secret service report is at the same time, in effect, the issuing of an order to the public not to support this group of persons, not to join the group, and not to accept its offerings—whatever they may be. It is designed to prevent citizens from engaging with or even joining this group of persons. The secret service report is regularly reported on in the media and discussed in public, ensuring it has a widespread impact. The result is that by being named in the secret service report, the affected group may find that (potential) collaborative partners will be reluctant to cooperate, making it more difficult for the affected group of persons to enter into business, cultural, social or other relations with other parties. Being named in the secret service report is thus linked to a considerable negative stigma in public life (consider OVG Berlin-Brandenburg, U. v. 06.04.2006 - OVG 3 B 3.99).

Furthermore, with the inclusion of a person or group of persons in a secret service report, the general legal discretionary limits apply, among which is the principle of proportionality. The naming is therefore permissible only if it is in fact necessary and proportionate in the strict sense of the term (BVerfG, a. a. O.).

Our client does not fulfill the conditions required for inclusion in the Verfassungsschutz Report 2017 published by you. According to §16 BVerfSchG, your office informs the public once a year in a report with a particular focus on current developments about efforts and activities according to ¶3,2 BVerfSchG, insofar as sufficient, weighty, actual evidence to do so exists. According to ¶3.1 No.1 BVerfSchG, your office has the responsibility to collect and evaluate information about attempts aimed at overturning the free democratic constitutional order, or directed against the existence or security of the federal state or any one of its member states, or which would unlawfully restrict the carrying out of official business by the state organs of the federal state, any one of its member states, or its members.

Types of behavior by or on behalf of groups of persons are to be classified as an attempt to overthrow the free democratic constitutional order only if the activity of the group of persons aims at suspending fundamental constitutional principles, which are contained in ¶4.2 BVerfSchG. It therefore requires the conclusion that those types of activities are actually initiated by the group of persons. This is also based on ¶4.1c BVerfSchG, according to which attempts against the free democratic constitutional order are those politically defined types of behavior directed by a person or group of persons towards the goal and purpose of overturning or rendering

inapplicable one of the constitutional principles contained in subparagraph 2.

These preconditions are not met in this case. Insofar as the report details that the agitation of our client is directed against ‘capitalism,’ against the EU, supposed nationalism, imperialism and militarism, as well as against Social Democracy, the trade unions and the Left Party, neither constitutional principles in the spirit of ¶4.2 BVerfSchG are presented, nor evidence of attempts as set forth in ¶4.1 BVerfSchG.

The inclusion of our client in the Verfassungsschutz Report 2017 is therefore unlawful.

For our part, we assume that since the statements of your agency’s former president, Dr. Hans-Georg Maassen, about “left-wing extremist forces” in the SPD at the latest, an internal review is being undertaken to determine whether in the statements of your agency the relevant provisions in the legal regulations have been followed, as well as whether they will legally be followed.

In the name of and exercising the right of our client, we therefore call upon you not to distribute, allow the distribution of, or enable access to the Verfassungsschutz Report 2017 as published by you in digital, written or any other form, so long as the Sozialistische Gleichheitspartei continues to be mentioned in it.

We will for our part consider it adequate if the relevant passages on pages 131 and 148 are blacked out.

Yours sincerely,

Dr. Stolle

Lawyer

To contact the WSWS and the
Socialist Equality Party visit:

<http://www.wsws.org>