

Prosecution of German artists' group dropped following mass protests

By Sybille Fuchs
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Following a 17-month investigation, the prosecutor's office in the German city of Gera has ceased its investigation into the activities of the group of performance artists known as the Centre for Political Beauty (ZPS). The investigation was a scandalous attack on the freedom of expression and art. It came to an end only after massive protests.

Prosecutor Martin Zschächner commenced his investigation into the group on the suspicion that the ZPS was a "criminal organization." The "crime" of the performance artists was to use an artistic campaign to protest against the trivialisation of the Holocaust by Björn Höcke, the leader of the far-right Alternative for Germany (AfD) in the state Thuringia. International media reported on the case.

Anger mounted when journalists revealed that Zschächner was politically close to the AfD. It also became known that in recent years he had repeatedly reacted with lenience to right-wing offenders while severely persecuting "offenders" classified as leftists.

According to a report in the *Frankfurter Rundschau*, the prosecutor had referred to himself as a "supporter of the Kaiser" during his law studies in Heidelberg and had come into conflict with his professors over his right-wing views. The *Frankfurter Allgemeine Zeitung* quoted a fellow student of Zschächner, who now works as a judge, as saying everyone was "absolutely clear" that Zschächner was an "extreme rightist." The same source declared that he could not understand how such a person could end up as a prosecutor.

The *Süddeutsche Zeitung* reported on a case of suspected sedition made against a former co-worker of AfD deputy Stephan Brandner in 2017. Zschächner ruled in favour of the accused, declaring that remarks such as "Afros" are not "like us" and are "primitive people" who have been "forced into civilisation" were "neither insulting nor maliciously disparaging." He declared that such statements were permitted in accordance with the right of freedom of expression.

Indignation was also triggered by the fact that the Thuringian Justice Minister, Dieter Lauinger (Alliance 90/the Greens), who was in charge of the Gera public prosecutor's office, had covered up for the notoriously right-wing prosecutor, even though he had received several official complaints against him. In the *Süddeutsche Zeitung*, Lauinger admitted that he had "been informed about criticisms of Zschächner for a long time." Lauinger argued that "proceedings in the case of official complaints rest initially with the management of the prosecutor."

Asked why he had not reacted earlier, although "he had been very alienated" by certain of Zschächner's remarks, Lauinger replied, "I have to comply with my duty as Minister of Justice not to interfere in the prosecutor's investigations." The state coalition agreement reached by the Greens had stressed the independence of the judiciary.

The Greens, and the same applies to the Social Democratic Party (SPD), invariably stress the independence of the judiciary when it comes to protecting the activities of right-wing extremists. When it comes to leftists, they drop such scruples. In the case of a prosecutor, Lauinger's argument is simply wrong. Prosecutors, unlike judges, are not independent, but are instead subordinate to the Justice Minister.

The "idea that prosecutors should be left alone in all circumstances by 'politics' is a mistake," commented the *Süddeutsche Zeitung*. "It is a misconception that the work of public prosecutors is principally apolitical. That's wrong: prosecutors choose which cases come to court in the first place. ... Of course, evaluations are included, and these assessments are of necessity non-legal."

With his decision not to interfere, Lauinger deliberately granted a seal of approval to a right-wing prosecutor. The Left Party, which governs in Thuringia in a coalition with the Greens, shares political responsibility. The Left Party premier of the state, Bodo Ramelow, only took action when public outrage made further inaction impossible.

Less than a week after the investigation on April 8 was made public, the case against the Centre for Political Beauty

was dropped on the grounds of insufficient evidence. The decision was apparently made at a meeting between the management of the Gera prosecutor, the Thuringian attorney general and Lauinger.

Lauinger expressed his desire to sweep the affair under the carpet as quickly as possible. “I warmly welcome the unanimous legal opinion of the prosecutor’s office, the prosecutor general’s office and ministry at today’s meeting,” he said, obviously hoping to wind up the whole business.

The ZPS, however, is not prepared to accept the decision. It has requested to see the investigation files and examine them in detail. “We plan to take civil and criminal proceedings,” declared ZPS co-founder Philipp Ruch.

Immediately after the persecution of the ZPS was made public, many artists, academics, journalists and politicians declared their solidarity with the group. More than 20,000 signed an online petition initiated by the director of the Berlin Maxim Gorki Theater, Shermin Langhoff.

Prior to the petition, several prominent artists, such as the director of the Munich Kammerspiele, Matthias Lilienthal, and the artistic director of the Berlin Schaubühne, Thomas Ostermeier, had expressed their indignation. Lilienthal described the proceedings as a “complete and utter disgrace” and demanded: “It should be Björn Höcke who is investigated for forming a criminal organisation.” The actor and singer Herbert Grönemeyer and the satirist Jan Böhmermann also took up the case.

The preliminary investigation into the ZPS was started in the autumn of 2017, after the group set up a replica of the Holocaust memorial close to the house of the far-right AfD politician Bernd Höcke. Höcke had described the original monument, which is located in the middle of Berlin, as a “monument of shame.” Zschächner went ahead with his investigation even though the district court in the city of Cologne ruled in February 2018 that the ZPS action was basically in accord with the right to the free expression of art.

Section 129 of the Criminal Code, on which Zschächner based his investigations, is directed against dangerous criminal, mafia or terrorist organisations. It permits extensive surveillance measures and violations of the rights of the individual. This fact was highlighted by the signatories of the online petition.

The petition read: “What is the message sent to society and to artists? Are we to be intimidated? Must we assume in the future that prosecutors will undertake to monitor the communication of theatres and cultural institutions, because persons of interest are under surveillance in connection with §129 of the criminal code. Should an example be made to the effect that critical art endangers the public interest?”

The use of paragraph 129 meant that “the strongest means of investigation” to fight crime had been chosen. The petition poses the question: “What offence, with the threat of at least two years’ imprisonment, was accepted or put forward here? This alone is an unbearable and inadmissible procedure aimed at criminalising art!”

The resolution correctly stresses that this politically motivated attack on artistic freedom is a particularly “fatal signal for all civil society” because it takes place in a federal state, “which—to formulate it carefully—failed to carry out the necessary investigation to apprehend in time a real ‘criminal association’, such as the murderous ‘NSU’ right-wing terrorist network.”

The signatories are not prepared to accept the dropping of proceedings against the ZPS. They question both the “timing, but even more surprising the reasoning, because they continue to proceed from the correctness or legality of the proceedings, which is entirely unacceptable. It seems to us that those responsible are shirking their political responsibility, following a hail of strong and drastic criticism from all sides.”

The signatories demand an “official apology from those politically responsible as well as a statement that criminal investigations, which clearly affect the key spheres of artistic freedom, be avoided in future! Responsible person(s) should be held fully accountable and made to disclose their links with political figures or parties.”

In addition, the signatories demand that all the data collected in the affair be deleted immediately and the persons affected duly notified.

Their call to protest vociferously when basic rights are attacked or nullified should be fully supported. Only a broad mobilisation of the entire working population, including artists and intellectuals on the basis of a socialist programme, can protect and defend basic rights.

Under conditions of growing nationalism, trade war and conflicts between the imperialist powers, state forces are increasingly promoting the far right. This has been confirmed by the recent revelations of right-wing extremist cells in the German military and police. According to the Berlin crime squad, the ZPS was one of the targets on the execution list drawn up by the terrorist network in the German army headed by the army officer Franco A.

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