

Summary of Dissertation:

Report on the Protection of the Constitution – Influence on the Formation of Political Will Public Relations Work by the Domestic German Intelligence Services

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The dissertation considers problems of non-formal state acts, examined by way of example in the form of the publication of the Report on the Protection of the Constitution. Since 1969, the Ministry of the Interior of the Federal Republic of Germany has published an annual Report on the Protection of the Constitution of approximately 350 pages in length. It focuses in particular on extreme right-wing and left-wing efforts and suspected cases, Islamist / Islamist terror incidents as well as chapters on espionage and sabotage and the Scientology organisation. The reports show the potential exposure of the state to risks and describe the defensive measures taken by the competent public authorities.

Subject of the Investigation

It is clarified what is meant by information measures designed to steer conduct as differentiated from other forms of state handling of information, and how these types of statements fit in with the entire system of state administrative action. In the course of this, it has to be clarified what we understand by Reports on the Protection of the Constitution in the Federal Republic of Germany, how they are structured and what they specifically contain. One significant problem is the political steering of conduct involved in and also intended by the publication of such reports, which the information players in the political legal public sphere intend.

For the dissertation submitted, this means in detail: after the classification of the administrative protection of the constitution and a brief description of the historical development of the Protection of the Constitution Reports, the concept of “state communication” and its aim are examined. In this context, it is important for the choice of subject that public state communication (state communication) has fundamentally changed over time and continues to change under the present conditions of modern information and communication media (such as, for example, the Internet). Informal state government and administrative acts play an increasingly important role in state

practice. This in particular affects official government public relations in the form of the publication of Protection of the Constitution Reports. Their declared aim is to promote an intellectual political debate about persons and groups who or which have been classified as anti-constitutional or extremist by the public authorities responsible for the protection of the constitution. This intended intellectual political debate takes place on a broad front. The state, for example, also participates in this task in the form of political education with differing content. This collective concept includes various measures of state institutions such as the Federal Agency for Civic Education, which aim to teach political competence to act and power of judgement. The focus lies on academic discussion, but is also in part aimed at the open "combat of convictions" and the steering of acts in a practical life context.

Categorisation of the Protection of the Constitution Report

The author then more precisely classifies the Protection of the Constitution Report in the system of forms of state acts. The classical type of state act in the past was the administrative act. Once it became clear that direct state steering with these "ordering" direct forms of act in the shape of commands and prohibitions was no longer sufficient in order to efficiently achieve public aims, in particular within the framework of food and product safety monitoring, but also with regard to the political information of the general public, a differentiation of state steering developed. The state sought additional structural means with which it is in a position to elicit conduct from citizens with no decision-making powers in a non-commanding way. These informal means often develop a far more efficient steering of conduct than statutes or administrative acts. They also include means which are suitable to influence consciousness in the population by the targeted provision and dissemination of information. The intention is to influence the (state) raising of consciousness and the (political) conduct of citizens. The modern democratic state can no longer rely on orders and compulsion, but must instead increasingly seek the cooperation, participation and acceptance of the parties.

Vis indirecta

Whereas the use of informal means does not create legal consequences either in an individual case or at a normative level, the targeted use of information can have considerable effect and result in considerable repercussions from a factual point of view. State information activity is a manifestation of the new state exercise of sovereignty through *vis indirecta*, which develops outside the traditional type of form of state activity and is dependent on legislative and administrative competences. Due to its broad effects amongst the general public, such information typically develops a dynamic life of its own beyond the control of the information provider. This arises

through the combination of the state authority of the information, its multiplication and eventual distortion through reportage in the media, as well as wrong interpretation of such information by its recipients. Targeted state information for the population to steer conduct (including political conduct) has therefore become an independent steering instrument which requires classification and systematic investigation. The population must take a warning about certain political efforts seriously, and it does. This can mean that the political group or party forming the subject-matter of the report may be discredited sharply amongst the general public, persuading its members to leave and preventing interested parties from joining.

Controversial discussions on the permissibility of and preconditions for state information acts have arisen about whether the disadvantageous consequences for fundamental rights caused by state measures and based on a change of conduct by third parties can be classified as encroachments on fundamental rights.

The publication of Protection of the Constitution Reports therefore raises many different issues. Ultimately, there is no question that the state must have the fundamental possibility of providing information about actively anti-constitutional organisations. After all, it has the duty to protect citizens on the basis of the constitution. However, it is questionable which (constitutional law) legal boundaries must be observed and how the relevant effects on the fundamental rights are to be judged.

The Federal Constitutional Court has to a large extent approved the government action described. It takes the view that the federal government is entitled to warn parliament and the general public about certain movements, groups belonging to them and their aims and activities, because it can rely on its direct constitutional task of state leadership even without the need for statutory authorisation.

Academic Legal and Political Issues

In dealing with the topic, it becomes clear that there is a close connection here between the constitution, law and politics. The mixture of these elements fluctuates; the proportion of pure politics is high in the present subject. This is due to the democratic dilemma which arises from the tension between the protection of freedom and the protection of democracy. In this context, the theory of the conception of "militant democracy" must be critically questioned. Replica disputes between the public authorities responsible for the protection of the constitution and the parties affected have been observed. There is room for objective discussions with regard to the "New

Right". The political culture of discussion in the Federal Republic can be developed further along the lines provided by the law.

Justification

The German federal government and the Federal Constitutional Court emphasise in relation to the necessary justification of the Protection of the Constitution Reports that the decision of the constitution in favour of a "well-fortified democracy" does not grant exemption from strict compliance with the requirements of the rule of law when it comes to the actual defence of the free democratic basic order in an individual case.

As Protection of the Constitution Reports are not just any information product, but instead lead to *de facto* encroachments on fundamental rights, it must be examined which aims the state pursues in this context and whether these aims are legitimate. This is in particular true from the point of view of the concept of free democratic basic order, which will have to be more clearly delineated here, as well as the problem of determining what is anti-constitutional in the sense of political extremism. At this point, the possible solution of the "democratic dilemma" may be relevant for the investigation. In the course of writing the dissertation, it was found that a look at the US-American concept of *freedom of speech* becomes necessary to clarify and bring to a head the German problem of the specific choice of well-fortified democracy.

Concepts of Extremism

No conclusive definition is found in case-law, the literature or in statutes of state acts providing information "to the general public" as a broad concept of "public relations". The disputed concept of extremism must logically also be defined as a further factual requirement of state education by the Protection of the Constitution Reports. The dissertation focuses on this area: the legal and "social sciences" definition of extremism and its exploitation are the main focus here. The investigation then goes on to consider the requirements imposed by the legal system of the Federal Republic of Germany on state information activity in the political sphere. Given that very few legality requirements are imposed by simple statutes, in particular statutes for the protection of the constitution, constitutional law legality requirements will also be considered alongside this. This method of proceeding involves the analysis of basic principles, connections and mechanisms of cause and effect at a legal and political level. In this context, particular interest attaches to the controversial issue in the literature and case-law of the permissibility of so-called reporting of suspicions. Here, issues of the necessity and the time dimension involved in the reporting on the

protection of the constitution taking into consideration the significance of the anti-constitutional efforts must be dealt with, with the aim of developing the author's own solution.

Personal Interest in Knowledge

Tension arises in situations between the legally legitimate fulfilment of tasks and competence spheres, ultimately with the aim of strengthening democracy and constitutional principles on the one hand, and the problem of delimiting boundaries and naturally the definition of the "anti-constitutional" conduct to be combatted on the other hand. From this perspective, the subject of the dissertation is at the interface area of the predominantly political field of examination which is also characterised by considerable legal elements. During the author's long professional career in different legal spheres of work – in the administration, as a judge, lecturer and lawyer – issues spanning several subjects have repeatedly come up which extend beyond legal thinking and have awakened the author's interest in political science, not least in view of the crossing of boundaries between conventional academic areas. The subject under discussion here is particularly suited to combine political science issues with the author's legal knowledge.

The investigation takes the following course: the subject of the dissertation submitted is the critical discussion of the views outlined and the development of an independent solution, mainly in answer to the question as to whether the publication of Protection of the Constitution Reports is compatible with current applicable law. The material basis for the dissertation mainly comprises legal and political science discourses in the specialist literature. In addition, the relevant factual and constitutional case law has been evaluated and used. In the assessment, there are interesting overlaps, but apparently also conceptual incompatibilities requiring clarification, such as, for example, with regard to the concept of extremism. In this context, legal influences are evident which characterise the course of the investigation.

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