

Antifa Recherche Team Dresden

## Legislated Commemoration The new Saxony Assembly Act

In the past, the conservative government in Saxony has attempted to transpose the controversial totalitarianism theory into practical policy and valid law. The publicly financed Hannah Arendt Institute for the Research on Totalitarianism, which has researched the “twofold dictatorship experience of East Germany” since 1993, and the 2003 Saxon Memorials Act, which forced an indiscriminating commemoration of “victims of tyranny,” are examples. The fact that NS victims organizations refused to work with the foundation committees was of little to no interest to the ruling governmental parties. Instead, the Saxony law formed the basis for the Federal Memorials bill. With the Assembly Act, first passed in January 2010 and again in 2012, the CDU/FDP coalition in Saxony succeeded in passing legislation that exudes the spirit of totalitarian doctrine. This legislation not only codified the equation of National Socialism and Communism, but also attempted to regulate the memory of politics discourse and to restrict the exercise of basic political civil rights.

Passing the bill before the Nazi demonstrations on February 13th proved to be a successful maneuver. The bill was acclaimed, first and foremost, as an effective measure against the annual Nazi demonstrations in Dresden. That the legislation was intended to suppress not only Nazi demonstrations but also the expected counter-demonstrations was already clear from the 2009 coalition agreement between the governing CDU and FDP: “We will use all measures allowed by public assembly and demonstration laws, and we will revise these laws before February 13th 2010, in order to impose boundaries on extremists in Saxony.”<sup>1</sup> Tying this legislation so closely to the 13th of February and the Nazi demonstration made it difficult to argue against the bill. On the one hand, the bill purported to reestablish the much-loved Dresden tradition of “silent commemoration.” On the other, those who argued against the bill faced the accusation of playing into the Nazis’ hands.<sup>2</sup> Significantly, the law has never been applied to a February 13th demonstration.

---

1 Vertrag zwischen CDU und FDP über die Bildung der Staatsregierung für die 5. Legislaturperiode des Sächsischen Landtages, 2009, p. 49.

2 The State Attorney General Dr. Martens stated in a parliamentary debate on 20 January 2010, that “it doesn’t lack a certain perversity when speakers for the Left Party announce that they will appeal this act before the constitutional court, and by doing so proclaim nothing other than that the Left Party will clear the streets for the Nazis, only to turn around and throw rocks at them.” Plenary protocol 5/7 from 20 Jan 2010, p. 444.

## The development of the Saxony Assembly Act

The federalism reform of 2006 granted the Länder new legislative authorities. Among other things, it allowed the Länder to define assembly laws independently. Saxony, like Bavaria, had ambitions. The CDU/SPD government coalition of the fourth legislative session introduced a bill shortly before February 13th 2008 which would place stipulations on or prohibit demonstrations if they were to take place at a location or on a day that commemorated "the victims of the National Socialist tyranny or the victims of war or the resistance to the National Socialist tyranny," and if it were to be expected "that the event would violate the dignity of those whose fates were bound to this location or day."<sup>3</sup> Places of commemoration listed were the synagogues in Dresden and Görlitz, the memorial locations of the former synagogues in Leipzig and Chemnitz, the grounds of former concentration camps, memorials belonging to the Saxony Memorial Foundation, war cemeteries, the Monument to the Battle of the Nations in Leipzig and the Frauenkirche in Dresden – and the historical city center of Dresden on February 13th and 14th. Days of commemoration were dates related to National Socialism: the 27th and 30th of January, the 8th of May, the 20th of July, the 1st of September, the 9th of November, and also the National Day of Remembrance. A revision to include "victims of Communist tyranny" was denied on the grounds of a lack of relevant demonstrations. However, the bill was not considered before a new state parliament was elected in 2009. The new CDU/FDP coalition government proposed a new draft in October. The coalition saw the previously denied revision as necessary and expanded the stipulations to include the "Communist tyranny." Of the commemorative locations and days listed in the previous CDU/SPD coalition draft, only the Monument to the Battle of the Nations, the Frauenkirche with the surrounding Neumarkt, and the Dresden city center on the 13th and 14th of February, albeit over a considerably larger area, remained in the new draft. An unusually short period of time passed between the introduction of the bill and the passing of the new Saxony Assembly Act on the 20th of January 2010. The government was determined to announce the ratified law before the 65th anniversary commemoration of the bombing of Dresden, although in the end it was not necessary to use it on that occasion. The rush had consequences: the Greens, the SPD and the Left Party submitted an appeal. On April 19th 2011 the Constitutional Court of Saxony declared the Assembly Act null and void on formal grounds.<sup>4</sup>

---

3 "Sächsisches Versammlungsgesetz auf den Weg gebracht," press release of the Saxony State Department of Justice, 12 Feb 2008.

4 See also: Phillipp Rentel-Wollinger/Gina Rosa Wollinger, "Dresden im Februar. Ein Lackmusstest für die Demokratie in Sachsen", in: Weiterdenken – Heinrich-Böll-Stiftung Sachsen/Kulturbüro Sachsen (ed.), "Sachsens Demokratie"? Demokratische Kultur und Erinnerung, Medienlandschaft und Überwachungspolitik in Sachsen. Erweiterter Tagungsband, Dresden, 2012. pp. 77-83.

Three months later the ruling parties resubmitted the bill – now formally correct but with identical content. The Saxony parliament passed the new draft of the bill on January 25th 2012.<sup>5</sup>

## The Saxony Assembly Act

The Saxony Assembly Act is nearly identical to the Federal Assembly Act. Section 15, however, which concerns the grounds for intervention by authorities in the fundamental right of freedom of assembly, was changed substantially. Section 15, paragraph 2 states:

*“An assembly or a demonstration can be expressly prohibited or be made subject to stipulations if:*

*1. The assembly or the demonstration takes place at a location of exceptional historical significance, which commemorates*

*Persons who were victims of inhumane treatment under the National Socialist or Communist tyrannies, b) persons who resisted the National Socialist or Communist tyrannies, or c) the victims of war and*

*2. According to precise, demonstrable circumstances evident at the time of issue of the injunction it can be adduced that the dignity of such persons as denoted in Number 1 will be violated. This is in particular the case if the assembly or the demonstration a) denies or trivializes the tyranny of the National Socialist regime, the crimes committed by it or its responsibility for the Second World War, or places the blame on others, b) portrays institutions or representatives of the National Socialist or Communist tyrannies as commendable or honorable, or c) speaks out against the reconciliation or dialogue between peoples.*

*The Monument to the Battle of the Nations in Leipzig, the Frauenkirche including the Neumarkt in Dresden and, in addition, on the 13th and 14th of February the northern Altstadt and the southern interior Neustadt in Dresden are locations as specified in Sentence 1 Number 1. Their boundaries are defined in the addendum to this act.”<sup>6</sup>*

---

<sup>5</sup> On the advice of the constitutional committee, the judicial committee, and the European Union committee, a revision was undertaken. Section 15, paragraph 1 of the CDU/FDP coalition draft (Drs. 5/286), according to which assemblies or demonstrations could be subject to stipulations or prohibition “if, in the past, similar assemblies or demonstrations led to such an endangerment or disturbance and 1. they exhibited a concrete relation to the assembly or demonstration or 2. particular factual circumstances justified the assumption that the assembly or demonstration would, in the same way, lead to an endangerment” was deleted and the replaced with the wording found in the Federal Assembly Act.

<sup>6</sup> Law pertaining to assemblies and demonstration in the Free State of Saxony (Saxony Assembly Act – SächsVersG).

## Interventions in politics of memory

In 2005 Saxony amended the passage in the Federal Assembly Act that prohibited or placed stipulations on assemblies "if 1. The assembly or demonstration takes place at a location that is a memorial of historically exceptional, trans-regional significance, commemorating the victims of inhumane treatment under the tyrannical and despotic regime of the National Socialists."<sup>7</sup> Corresponding to the parallelizing discourse of "two dictatorships," the restrictions were broadened to include those locations commemorating the "Communist tyranny." Undefined locations commemorating "victims of war" were also added. Every specificity regarding National Socialism in the legislative text was made to disappear behind a curtain of equalization and universalizing rhetoric. With these two points, Saxony intentionally ventured into uncharted judicial terrain and went beyond the hitherto existing rulings of the Federal Constitutional Court, for example their prohibition of the Rudolf Hess memorial demonstration in Wunsiedel according to Section 130, paragraph 4 of the German Penal Code.<sup>8</sup> In this ruling, the court emphasized the sui generis nature of the National Socialist crimes, and that in this and only this context, exemptions for laws limiting the freedom of expression are justified. The CDU/FDP coalition, however, were not swayed by this ruling, and referred to the preamble of the Constitution of Saxony, in which it is stated: "In consideration of the woeful history of National Socialist and Communist tyranny [...] the people of the Free State of Saxony, thanks to the peaceful revolution of October 1989, have given themselves this constitution."<sup>9</sup> The equal ranking of National Socialism and Communism was systematically codified by law, totalitarianism theory became potent realpolitik.

The attempt to justify the choice of locations of "historically exceptional significance" impinged directly on politics of memory discourses, and strove to establish a specific interpretation. All and sundry Dresden myths were dredged up in order to do so: the destruction of Dresden shortly before the end of the war, and the large amount of refugees in the city, which drastically increased the number of victims.<sup>10</sup> The Frauenkirche became the the "strongest symbol of civilian victims of the war,"<sup>11</sup> and Dresden as a whole represented "the epitome of the hardships and injuries of war in the public awareness and practiced commemoration of the citizens of the Free State [of Saxony] and beyond."<sup>12</sup> This version was the officially sanctioned interpretation – and was to be enforced by the state monopoly on power, if necessary. The government's justification for including the Monument to the Battle of the Nations

<sup>7</sup> Law pertaining to assemblies and demonstrations (Assembly Act), Section 15, paragraph 2.

<sup>8</sup> Constitutional Court ruling: BVerfG, 1 BvR 2150/08 from 04 Nov 2009, paragraph-no. (1-110).

<sup>9</sup> Verfassung des Freistaates Sachsen, SächsGVBl. Jg. 1992, Bl.-Nr. 20, S. 243.

<sup>10</sup> See the draft bill submitted by the CDU/FDP faction, Drs 5/286 from 29 Oct 2009, p. 16.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., p. 17.

in the Act was nothing short of an acrobatics routine: The explanatory memorandum speaks of commemorating “the bloodiest battle in the history of the world before the First World War,” and that the Monument is an architectural reminder of the atmosphere of “national pathos and the heroization of death in battle on the eve of the First World War.”<sup>13</sup> At the same time, the speaker of the CDU-faction called the Monument an “admonishment against war” and claimed: “I know many people from Leipzig who have told me: For us it’s a reminder that no one should ever again lose their lives in a war such as that started by the National Socialists.”<sup>14</sup>

The fact that entire districts of Dresden could be declared demonstration-free zones on the 13th and 14th of February if “the dignity of persons”, in accordance with the law, was seen as impaired was blatantly justified with the need to recognize the Dresden tradition of “silent commemoration” as the only legitimate demonstration on these dates. Carsten Biesok, legal policy spokesperson for the FDP faction stated: “Commemorating the victims of the Second World War silently and peacefully on the 13th of February is a matter of exercising basic rights. With our Assembly Act we are reinstating this freedom.”<sup>15</sup> Home Secretary Markus Ulbig added: “At these locations we do not want to allow any demonstrations that deride the victims or make a dignified commemoration – especially for the citizens of Dresden – impossible.”<sup>16</sup>

## State Intervention

The locations listed in the Act are exemplary; it is left to the discretion of the administrative authorities in Saxony to name further locations of historical significance. This discretion and the authority to determine when and how the “dignity of persons” is violated gives the offices of public order, which are in fact administrative institutions and not institutions of political opinion-making, the power of political interpretation, while making the debate about these questions an administrative act, withdrawn from the public. At this point, the goal of the Saxony Assembly Act becomes clear, if it had not been so before. It goes beyond historicopolitical aspects. It is intended to place limits on the public sphere as a place of political debate. The Act assumes the interpretive authority over what may or may not be said in public. This legal regulation of the sayable shows a “submission of the political to the state based via the juridical, the exercise of a capacity to strip politics of its initiative through which the state precedes and legitimizes itself.”<sup>17</sup> The practical consequence of the Assembly Act is the banning of unwanted

---

<sup>13</sup> Ibid., p. 15.

<sup>14</sup> See plenary protocol 5/7, from 20 Jan 2010, p. 422

<sup>15</sup> Plenary protocol 5/48 from 25 Jan 2012, p. 4826.

<sup>16</sup> Ibid., p. 4830.

<sup>17</sup> Jacques Rancière, *Disagreement: Politics and Philosophy*, (Minneapolis: University of Minnesota Press, 1999), 109.

opinions from the public sphere, and thus the successive limitation of the freedoms of assembly and expression. The new Saxony Assembly Act is thus an expression of an anti-participatory and tendentially authoritarian understanding of politics, which places the power to interpret and to act solely in the hands of the state and its institutions.

Translated by Amy Lee