

German Constitutional Court rejects ban on fascist NPD

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On Tuesday the German Federal Constitutional Court rejected a ban on the fascist National Democratic Party (NPD). The verdict was unanimous. The court justified its decision by arguing that while the far-right party was anti-constitutional and shared an ideological kinship with National Socialism (Nazism), it was not significant enough to seriously jeopardize democracy.

“There is currently no concrete indication of any possibility that its activities could be successful,” the president of the court, Andreas Vosskuhle, explained.

This was the second lawsuit against the NPD rejected by the Constitutional Court. The first case collapsed in 2003 because the court arrived at the conclusion that the large number of undercover agents inside the leadership bodies of the party made it impossible to arrive at a proper legal judgment. According to the judges, the NPD was “a state-run affair.”

At that time, both houses of parliament and the government had submitted a joint motion calling for a ban on the NPD. In December 2013, the upper house of parliament, the Federal Council, representing Germany’s states, lodged a new case calling for the prohibition of the NPD. Following reassurances from German interior ministers that undercover agents had been pulled out of the party’s executive committees, the Second Senate of the Constitutional Court opened main proceedings two years later, which have now ended with the rejection of the lawsuit.

The decision did not come as a surprise, it had been on the cards for some time. Nevertheless, it was keenly awaited because the constitutional court redefined the criteria for a party’s ban.

In the history of postwar Germany there have been only two bans imposed on political parties, and these date back more than 60 years. In 1952, the relatively insignificant, fascist Sozialistische Reichspartei was

banned, and in 1956 the government outlawed the German Communist Party (KPD).

The trial against the KPD was a legal assault on political convictions. Marxist writings were cited in detail in the courtroom. The judiciary not only banned the organization, many members were condemned to long prison sentences, had their personal assets seized, or were forced out of their jobs and found no new work. Among the victims were many who had been persecuted formerly for their resistance to the Nazis.

In rejecting the prohibition of the NDP, the Constitutional Court has now ruled that a party cannot be banned because of its convictions alone. The NPD’s beliefs, the court stated, are inhumane, racist and share kinship to the ideology of National Socialism. But the fact that a party aims at eliminating the basic democratic order was not sufficient for a ban. It must have the “potential” to achieve this goal and systematically work towards it.

The court concluded that this did not apply to the NPD. The party has lost considerable influence since the move to ban it. Its membership has fallen from 28,000 to the current level of 6,000, it receives barely more than one percent of the vote in federal elections and is no longer represented in any state parliament—the court argued. Many former supporters of the NPD now support other right-wing parties and organizations such as Pegida and the Alternative for Germany (AfD). The NPD itself has called for a first preference vote for the AfD in several state elections.

In its judgment, the Constitutional Court based itself on the jurisprudence of the European Court of Human Rights (ECHR). In the event of a ban, the NPD could have filed an appeal at the Strasbourg court, which the German court in Karlsruhe wanted to avoid. Strasbourg sets stricter standards for a party ban than Karlsruhe.

According to the case-law of the ECHR, it is not sufficient for a party to pursue anti-constitutional objectives as a ground to ban it. It must also have a realistic chance of realizing its objectives. It must have the resources and the influence to achieve its goals with a certain probability.

While the ECHR excludes a judgment based only on political convictions, based on its reasoning, a party can be banned when it gains influence and thus becomes a danger to the prevailing order.

The ECHR's precedent-setting verdict on this issue concerned the prohibition of the Turkish Welfare Party (Refah) in 1998. The Refah Party had filled the post of premier up to 1997, but was then ousted in a "soft" military coup and banned the following year. Its deputy chairman at that time was the current Turkish president, Recep Tayyip Erdogan. The ECHR dismissed a complaint from the Refah Party appealing against the ban. It supported the ban on the grounds that the party represented a threat to "democratic society" in Turkey, because it had received 21.4 percent of the vote in the last parliamentary elections.

The Constitutional Court's judgment on the NPD ban tends in the same direction. In essence, it means that the right of free expression and assembly for a party only applies as long as it has no significant influence and does not endanger the existing order.

The judgment has been criticised broadly in the German media, and by practically all of the country's political parties. They are all of the opinion that the NPD should have been banned solely on the basis of its views.

Heribert Prantl wrote in the *Süddeutsche Zeitung*: "The NPD should have been banned—not despite the fact that it is very small at the moment and insignificant in elections, but precisely because of this." According to Prantl, a ban would be a signal against "aggressive right-wing populism" and "an act of prevention."

Christian Social Union politician Thomas Kreuzer commented: "I think it is completely wrong to say we tolerate and allow radicals to work in parties until they have a certain relevance and could possibly achieve their goals."

The Social Democrat Eva Högl spoke of a "very disappointing" judgment: "A positive decision would have been helpful for our commitment to oppose the right-wing."

The Left Party politician Petra Pau also regretted the failure to ban the NPD. The majority of the Left Party, as well as many initiatives for democracy and tolerance, wanted an NPD ban, she explained.

The Social Equality Party, in contrast, has always opposed banning parties as a means of fighting the right-wing. When the Federal Council launched its case to ban the NPD four years ago, we wrote, under the heading "Why the SEP (Germany) rejects a state ban of the neo-fascist NPD":

"The banning of a political party represents a serious breach of the democratic rights of the working class. As masses of people turn their back on official politics because they feel they are not represented by any of the parties in the Bundestag, the ruling elite is reacting by attacking the right of assembly and setting itself up as arbiter of which parties people may or may not support.

"History has repeatedly shown that, in the final analysis, such curbs of democratic rights only strengthen and encourage the most right-wing and reactionary sections of society. At the same time, the workers movement is denied basic forms of free and democratic expression."

And nine months ago, we wrote in a WSWS article on the most recent prohibition procedure: "A ban of the NPD would be reactionary in every sense: it would not weaken right-wing extremist tendencies in society, but strengthen them; it would set a precedent for the suppression of all, especially left-wing, opposition; and it would strengthen the state's repressive apparatus, a key source of right-wing, authoritarian developments."

The outcome of the trial has confirmed this warning. The Constitutional Court has issued a ruling that can easily be directed against a revolutionary socialist party when it gains influence and support.



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