

# Germany's Supreme Court strengthens far-right Alternative for Germany

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15 June 2022

On Wednesday, Germany's Supreme Court handed down a ruling in favour of the Alternative for Germany (AfD) that amounts to a *carte blanche* for future government participation by the far-right party.

The AfD had sued then-Chancellor Angela Merkel (CDU, Christian Democratic Union) for publicly criticising the election of Liberal Democratic Party (FDP) politician Thomas Kemmerich as Thuringia's state premier with the help of the AfD's votes in February 2020.

Kemmerich, whose party had only five seats in the state parliament, was elected state premier of the eastern German state on February 5, 2020 by a three-party alliance of AfD, CDU and FDP in a surprise coup. Of the 45 votes for Kemmerich, 22 came from the AfD, which is led in Thuringia by neo-Nazi Björn Höcke.

For the first time since the end of the Third Reich, a prime minister was thus elected in a German state with the votes of a right-wing, fascist party. This triggered a storm of indignation nationwide and internationally. Merkel, who was on a foreign trip to South Africa, felt compelled to react publicly.

At a press conference with the South African president, she condemned Kemmerich's election in a "preliminary remark for domestic political reasons." She spoke of a "unique event" that had broken with the basic convictions of the CDU and of herself "that no majorities are to be won with the help of the AfD." This was "unforgivable" and had to be "reversed." His election was "a bad day for democracy."

Three days later, Kemmerich resigned after the Thuringia CDU and the federal FDP, which had originally supported his election, withdrew their support.

Now, at the request of the AfD, the Supreme Court has ruled that Merkel's public statement and its publication on the Chancellery's official website violated the "right to equal opportunities for political parties" enshrined in Article 21 of the constitution. It ordered the state to reimburse the AfD for its legal costs.

Formally, the court justified its ruling in favour of the AfD

on the grounds that Merkel had made her statements "in an official capacity" and not as a CDU politician or private individual. State organs—and thus also ministers and chancellors—were obliged to observe "neutrality in the political battle of opinions" and may not use "the means and opportunities associated with the office of government" for political purposes.

"Accordingly, a statement by a federal minister taking sides in the political battle of opinions violates the principle of equal opportunity of the parties and violates the integrity of the free and open process of the formation of political objectives from the people to the organs of the state," reads the official press release explaining the ruling.

But this is legal hair-splitting, as is evident from a minority opinion by Judge Astrid Wallrabenstein. Wallrabenstein is one of three members of the eight-member Second Senate of the Supreme Court who did not support the ruling—a conflict of opinion that is rather unusual in the history of the court.

Wallrabenstein points out that government work in a party democracy is always shaped by party politics. The danger that the process of forming political objectives could be undermined is "justified precisely by the appearance of neutrality of government action." A duty of neutrality existed only in the use of state resources, but not "in the self-representation of government activity."

If one reads the reasoning of the judgement more closely, it becomes clear that the majority of the court meant to give *carte blanche* to the AfD. The ruling explicitly accuses Merkel of ruling out government alliances with the far-right party—at least for the time being.

Thus, the official press release on the ruling states that Merkel's statement contains "negative qualifications" of the AfD. It was "not limited to an assessment of the election of the Thuringia state premier and the behaviour of the CDU members of the state parliament in this regard," but also contained "a fundamental statement on how to deal with the applicant [the AfD] and on its position in the democratic spectrum."

"The statement that the prime ministerial election broke

with the ‘basic conviction’ that no majorities could be formed with ‘the AfD,’” the court said, “qualifies the applicant overall as a party with which any (parliamentary) cooperation is ruled out from the outset.” This assessment is reinforced by the fact that Merkel “described the process as ‘unforgivable’ and demanded that its outcome be reversed.”

And further: “By finally stating that the prime ministerial election in Thuringia was ‘a bad day for democracy,’ she made it clear that she considers the applicant’s [the AfD’s] participation in the formation of parliamentary majorities to be generally detrimental to democracy, and implicitly made an overall negative value judgement about the applicant’s ability to form coalitions and cooperate in the democratic polity.”

This was an “encroachment on the right to equal participation in the process of political decision-making.” Merkel had thus “exceeded the substantive limits of her authority to express herself, as stipulated by the neutrality requirement.” She had “taken sides against the AfD by excluding it from the circle of parties capable of forming coalitions and cooperating in the democratic spectrum.”

These words leave nothing to be desired in terms of clarity. A politician who, in an official capacity, speaks out against cooperation with a party that trivialises the Nazi dictatorship, stirs up xenophobia and is linked to a dense network of violent neo-Nazis is violating the constitution!

The Supreme Court goes even further. It concedes that in certain cases—if the “ability to act and stability of the federal government” or the “reputation of and confidence in the Federal Republic of Germany in the community of states” were threatened—the neutrality requirement does not apply. The Court added, this was not the case when Kemmerich was elected with the votes of the AfD.

The stability of the federal government, at that time a grand coalition of the CDU/CSU and SPD, had not been threatened because the Thuringian CDU’s closing of ranks with the right-wing extremists had already been condemned by other CDU politicians, such as the then party leader Annegret Kramp-Karrenbauer, the ruling found. And “that the election of the Minister President in Thuringia was capable of shaking the reputation of or confidence in the Federal Republic of Germany to a relevant extent, limiting its ability to act in foreign policy, was not evident,” the court states succinctly.

The WSWS has shown for years that the AfD owed its rise primarily to the policies of the other establishment parties and support from the state apparatus. It was the policy of social cuts and anti-immigration clamp-downs, pursued by all parties from the FDP to the Left Party, that made the AfD strong in the first place. The then head of the Office for the Protection of the Constitution (as Germany’s secret service

is called), Hans-Georg Maassen, advised the AfD in private talks on how to avoid coming under surveillance by the agency.

When the AfD entered the Bundestag (federal parliament) in autumn 2017 with 92 deputies, all the other parties worked with it. By joining the grand coalition, the SPD made the AfD leader of the opposition for a legislative period. It was represented in all parliamentary committees and in this way was systematically integrated into the work of government.

After Kemmerich’s election as Minister President of Thuringia, the WSWS wrote, “The decision of the two parties [CDU and FDP] to form a ruling majority with the aid of the AfD is a historic turning point. It confirms that the ruling class in Germany is once again resorting to fascist and authoritarian methods to implement its policies of social inequality and militarism in the face of broad popular opposition.”

Meanwhile, the AfD is in deep crisis. It has massively lost votes in the last three state elections. In Schleswig-Holstein, it has even been kicked out of a state parliament for the first time. Thousands of members have left, including long-time co-chair Jörg Meuthen. The fascist wing around Björn Höcke increasingly dominates the party.

Against this background, the ruling by the Supreme Court is an attempt to give the neo-Nazi party a new boost. AfD leader Tino Chrupalla, himself a representative of its far-right wing, cheered, “It’s a good day for democracy.” Merkel, he said, had blatantly violated the AfD’s rights and the constitution with her remarks.

The AfD is needed by the ruling class to counter the growing radicalisation of workers and young people against militarism, war and the consequences of inflation and social cuts, and to intimidate the working class.



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