

German Constitutional Court considers banning neo-fascist NPD

By Peter Schwarz
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Germany's Constitutional Court in Karlsruhe opened a three-day oral hearing on Tuesday into the banning of the neo-fascist National Democratic Party of Germany (NPD). The Bundesrat, the representative body of state governments at federal level, applied for the ban in 2013.

A previous attempt to ban the right-wing extremist party failed in 2003 because so many intelligence agents were found to be in its leadership that the court considered their presence to be an "immovable barrier" to a fair hearing. At the time, the Bundestag, the lower house of parliament, and the German government joined with the Bundesrat in supporting the ban.

The banning of the NPD is supported by all parties in the Bundestag, from the Christian Democratic Union (CDU)/Christian Social Union (CSU) to the SPD, the Greens and the Left Party. The Bundesrat was represented in court by, among others, Saxony's state premier Stanislaw Tillich (CDU), Bavaria's Horst Seehofer (CSU), and Baden-Württemberg's Winfried Kretschmann (Greens).

If the Constitutional Court decides to ban the NPD, it will be the third time a party has been banned in the history of the Federal Republic, and the first in 60 years. In 1952, the neo-Nazi Socialist Reich Party (SRP), and in 1956, the Communist Party of Germany (KPD) were banned.

The case is based on article 21 of Germany's Basic Law, which states that parties shall be unconstitutional, if "by reason of their aims or the behaviour of their adherents, [they] seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany." Germany's highest court can only reach a decision with the votes of six of its eight judges.

According to a ruling by the European Court of Human Rights, proportionality must also be considered. According to this, the intentions or goals of a party are not sufficient for a ban; it must be capable of actually realising its unconstitutional goals.

The supporters of a ban justify this assault on the constitutionally guaranteed rights of freedom of opinion and organisation by arguing that the NPD cultivates an anti-Semitic worldview close to National Socialism and provokes an "atmosphere of fear" with marches against refugees, anti-immigrant agitation and threats on local politicians.

Such positions, they further argue, cannot be supported with state funds. The NPD, which currently has representation in the Mecklenburg-Pomerania state parliament and in several

municipalities, and until 2014 had been represented in the Saxony parliament for 10 years, has obtained millions through the state funding of parties.

Heribert Prantl, the head of the *Süddeutsche Zeitung's* domestic affairs desk, who has been especially vigorous in his support for an NPD ban, justified this by arguing that protection for a party ends where "the protection of people who are victims of that party's actions begins," and when "right-wing extremist agitation encourages right-wing extremist violence."

Constitutional Court President Andreas Voßkuhle described a party ban at the beginning of the hearing as "both a sharp and double-edged sword which must be used with caution: it limits freedom so as to ensure freedom." A sensitive problem of the free legal order was involved because "freedom can be abused to abolish freedom and thus turned against itself."

Such attempts to portray the proceedings in Karlsruhe as a careful and difficult balancing act between democratic principles, on the one hand, and the protection of freedom and the vulnerable, on the other, obscure its real character.

A ban of the NPD would be reactionary in every sense: it would not weaken the 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. This is demonstrated by considerations of principle, as well as the current case and lessons from German history.

Strengthening of authoritarian tendencies

Such a drastic limitation of democratic rights as represented by the banning of a party always strengthens right-wing and authoritarian tendencies even when it is initially directed against a right-wing extremist organisation. Three years ago, the Partei für Soziale Gleichheit declared in a statement entitled "Why we reject 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. The workers movement, however, is weakened, because it needs democracy and freedom like air to breathe.”

This assessment has since been confirmed.

The failure of the first NPD ban in 2003 showed how closely the state apparatus and right-wing extremist movement are intertwined. It was revealed at the time that 30 of 200 leading NPD officials, more than one in seven, worked for the intelligence services.

The agents were not only active as informers, they carried out leading functions in the NPD with financial support from the state. In North Rhine-Westphalia, for example, NPD chair Udo Holtmann and his deputy Wolfgang Frenz both worked for the domestic intelligence service. The Constitutional Court rejected the application to ban the party at the time with the revealing justification that the NPD was “essentially a state organisation.”

To enable the bringing of a new case to ban the NPD, all intelligence agents in the NPD leadership had to be abandoned or withdrawn. The Constitutional Court laid great significance on this point, demanding testimonies from the interior ministers at state and federal level in written form.

Significantly, the NPD partially tore itself apart with internal quarrels during the period in which the agents were withdrawn. Over the last five years alone, it has changed its chairman four times and lost considerable influence. It only avoided financial bankruptcy because the federal administrative court waived half of a fine of over a million euros for a false report by the party on its finances.

The suspicion is thus suggested that the agents, in close collaboration with their supervisors in the intelligence agencies, formed the organisational and political backbone of the party and held it together.

The crisis of the NPD has in no way led to a decline of right-wing extremism in Germany. Quite the contrary: Organisations like Pegida and AfD, thriving on the anti-refugee agitation whipped up by politicians and the media, have in part or entirely adopted the NPD’s politics. Many former and current NPD members are involved in these organisations—potentially also agents that have been withdrawn from the NPD. NPD members are also found in new neo-Nazi parties such as “the Right” and the “III Way,” which are more militant than the NPD.

If the NPD is in fact banned, it will not mean the suppression of the neo-Nazi scene, but rather a clearing of the decks in the right-wing swamp and a reorganisation of the extreme right under pressure from, and with the assistance of, the state.

The authoritarian dangers bound up with a ban of the NPD are also illustrated by the high-handed attitude of the court. The eight judges of the second chamber in this case are the court of first and last instance. They are subject to no control. Yet they are not politically neutral. Representatives of the established parties are here deciding which parties will be allowed to compete in elections and which will not.

Constitutional Court Judge Peter Müller (CDU), who is leading the proceedings as court reporter, was state premier in Saarland until 2011. In this position, he spoke out strongly and clearly against the NPD. As interior minister in the state of Thuringia,

another judge, Peter Huber (CSU/CDU), even published a pamphlet against the NPD in 2010. In normal legal proceedings, both judges would have had to recuse themselves. But not in the NPD case. The judges also have the last word when it comes to determining their own impartiality. They brushed aside a motion from the NPD’s lawyer claiming a conflict of interest.

Historical precedents

There are several precedents in history where bans on parties initially directed against right-wing extremist organisations were used to suppress the workers’ movement.

When a right-wing extremist murdered Foreign Minister Walther Rathenau under the Weimar Republic in 1922, the protection of the republic law was passed. This established the legal basis for the dissolution of organisations hostile to the constitution and the persecution of anti-constitutional statements. This measure was used overwhelmingly against the left. It did not prevent, but rather encouraged, Hitler’s rise to power. Under the Nazis, judges who during the Weimar Republic had used it to persecute communists, Social Democrats and trade unionists continued to do so.

In 1952, the banning of the fascist SRP served to prepare the ban of the KPD. It was aimed at creating the impression that the state not only took action against the left but also the right. Only three days after the application to ban the SRP, the application to ban the KPD was filed with the Constitutional Court. However, the KPD case lasted until 1956.

Ultimately, the judges did not confine themselves to a political ban on the KPD, but also confiscated its finances and those of many members, condemned hundreds of communists to long prison terms (some stood before the same judges who had imprisoned them under the Nazis) and ensured that they lost their jobs and were blacklisted in their professions.

The Stalinists were deeply discredited by that point due to the suppression of the uprisings in East Germany and Hungary. But the ban was not directed against Stalinism. It aimed to intimidate all who dared to call capitalism into question.

The case to ban the NPD has a similar purpose. Its main task is to newly define the criteria, under conditions of deepening social and political tensions, under which a political party can be banned and suppressed. The initial target is the NPD, but it will ultimately be used against any political organisation or movement opposed to the capitalist system.

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