



Court rejects claim by the National Democratic Party of Germany

In its decision in the case of [Nationaldemokratische Partei Deutschlands \(NPD\) v. Germany](#) (application no. 55977/13) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns a political party, the NPD, and its complaint about being referred to and stigmatised as being both far-right and unconstitutional. In particular, the party alleged that there had been a wide range of infringements of its legal rights in Germany (amounting to a *de facto* ban), and that it had had no means to redress these. Examples of alleged violations included the dismissal of its members from jobs in public service; the inability of the party to open bank accounts; and the prevention of its candidates from standing in elections.

The Court held that sufficient remedies had been available to the NPD at the national level, which had enabled it to effectively enforce its rights under the Convention. The NPD and its members had been able to challenge individual cases of discrimination or restrictions in the German courts. Such remedies had not been made ineffective for any of the reasons advanced by the NPD. In particular, domestic proceedings were not made ineffective because they were not always successful; because they could only provide a remedy for violations after they had happened; or because multiple sets of proceedings were required to address multiple instances of alleged violations. The NPD and/or its members were able to address alleged violations before the criminal, civil and administrative courts, if/when violations occurred in individual cases. Indeed, a declaratory judgment about the party's constitutionality was not required in order for such proceedings to be brought.

Principal facts

The applicant party, the National Democratic Party of Germany (*Nationaldemokratische Partei Deutschlands*, NPD), is a German political party founded on 28 November 1964.

In November 2012, the NPD lodged an application with the Federal Constitutional Court, against the Federal Parliament, the Federal Council and the Federal Government. The NPD sought a declaration that it was not unconstitutional under Article 21 of the Basic Law; or, in the alternative, a finding that the defendants had violated its rights under Article 21, by repeatedly alleging that the NPD was unconstitutional and thereby causing the effects of a *de facto* party ban. In the further alternative, the NPD sought a finding that its rights were violated because there was no remedy allowing political parties to ascertain their constitutionality.

In support of its application, the NPD cited leading politicians who had stated that the NPD was unconstitutional, and referred to a wide range of alleged ways that the NPD and its members had been stigmatised as a result. These included allegations that its members had been excluded from working in the public sector; that the party had been unable to open bank accounts; that its candidates had been barred from participating in elections; and that its gatherings received insufficient protection from the police. The NPD maintained that it lacked the resources to challenge each of these infringements individually, and that the defendants (due to their public comments) were the ultimate cause of them.

The Federal Constitutional Court dismissed the application as inadmissible in February 2013. It found that there was no legal basis for the claim, as only certain public authorities (and not a party) could apply for a decision on whether a political party was unconstitutional. This did not amount to a gap in legal protection, as the party (or its members) could apply to administrative, civil and criminal

courts whenever its rights (or the rights of its members) were infringed. As to the argument that the public authorities had infringed the party's rights by repeatedly declaring the NPD to be unconstitutional, the court held that this had not been substantiated, given that the comments had been made by individual politicians rather than public bodies, and that the NPD has not established that the comments had infringed its status as a political party.

In December 2013, the Federal Council lodged an application with the Federal Constitutional Court for the banning of the NPD under Article 21 of the Basic Law. The proceedings are pending.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 September 2013.

Relying on Article 13 (right to an effective remedy) in conjunction with Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), and Article 3 of Protocol No. 1 (right to free elections), the NPD complained that it has been stigmatised as an unconstitutional party, that this has resulted in a *de facto* ban on its existence, and that it has had no effective remedy at a national level to address this.

The decision was given by a Chamber of seven, composed as follows:

Khanlar **Hajiyev** (Azerbaijan), *President*,
Angelika **Nußberger** (Germany),
Erik **Møse** (Norway),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein), *Judges*,

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

The NPD argued that their right to an effective remedy had been breached, because repeated violations of their Convention rights had occurred, and there was no way to obtain adequate redress for these violations (in breach of Article 13). The party had not disputed the existence of domestic remedies, whereby the party or its supporters could obtain redress for breaches of their rights by applying to the courts. However, the party put forward various reasons as to why such remedies were not sufficient.

The Court rejected all of these arguments. Remedies had been freely available to the NPD in the form of proceedings before the administrative, civil and criminal courts. The party had argued that these were not sufficient, because proceedings were not always successful. However, the right to an effective remedy requires access to claim a remedy before a competent authority – not the provision of a remedy that is bound to succeed. The fact that such proceedings are not successful in each and every case had not made them ineffective. Furthermore, a remedy is effective either if it prevents a violation, or if it provides adequate redress for a violation that has already occurred. The fact that the NPD could pursue proceedings only after alleged breaches had not made those remedies ineffective. The proceedings were also not ineffective, on the grounds that the NPD and/or its members were required to initiate multiple instances of them. The existence of multiple sets of proceedings to address multiple alleged violations does not mean that those proceedings are incapable of providing a remedy.

In addition, it was not clear how the additional remedy requested by the NPD – a declaratory judgment that it was not an unconstitutional party – would address its complaint. Even with the

provision of such a declaration, the party would still be required to undertake separate legal actions whenever its rights were infringed in individual cases.

Therefore, the Court held that sufficient remedies had been available to the NPD at the national level, which had enabled it to effectively enforce its rights under the Convention. The application was therefore manifestly ill-founded, and declared inadmissible.

The decision is available only in English.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

George Stafford (tel: + 33 3 90 21 41 71)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.