



The AfD in the focus of the Office for the Protection of the Constitution

An unconstitutional process.

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Completely surprisingly, former health minister Jens Spahn, a member of the CDU executive committee, got in the way of the CDU/CSU and SPD coalition partners. Although the CDU has an incompatibility resolution against the AfD, in an interview with the *Bild newspaper* on April 11 he called for the AfD to be dealt with in parliament "in the same way as any other opposition party". It could have been a - now probably futile - test to abandon the "firewall" against the AfD.

Whatever your stance on the AfD, Spahn's proposal was sensible and complies with the law. Firstly, the AfD is the second largest party in the German Bundestag. It was elected by 20.6 percent of eligible voters, so it is a popular party, and that cannot be debated away. Secondly, it is a registered party that is allowed to operate like any other party as long as it is not banned[1].

The AfD is classified as "definitely right-wing extremist"

A new situation arose on May 2, 2025, when the Federal Ministry of the Interior issued the following statement: "As of today, the Federal Office for the Protection of the Constitution classifies the 'Alternative for Germany' (AfD) as confirmed right-wing extremist due to the extremist character of the party as a whole, which disregards human dignity." [2]

The press release issued by the Federal Office for the Protection of the Constitution (BfV) states: "The party's prevailing ethnic and descent-based understanding of the people is not compatible with the free democratic basic order. It aims to exclude certain population groups from equal participation in society, to expose them to unconstitutional unequal treatment and thus to assign them a legally devalued status. Specifically, the AfD does not consider German citizens with a history of migration from Muslim countries to be equal members of the German people as defined by the party in ethnic terms." [3]

This accusation is an astonishing blunder by the employees of this not uncontroversial authority, whose former president Thomas Haldenwang wrote in a guest article for the *Frankfurter Allgemeine Zeitung* on April 1, 2024, among other things, that freedom of expression is "not a carte blanche". He was referring to the "delegitimization of the state" category introduced by his authority in 2021 and took the unconstitutional view that the Office for the Protection of the Constitution should not only investigate criminal statements such as incitement to hatred, but also expressions of opinion "below the limits of criminal law and without prejudice to their legality".

The AfD is now being accused of being unconstitutional because it discriminates against certain population groups, citing the free democratic basic order. This ignores the fact that, until the reform of nationality law in 2000, German citizenship was generally based on the principle of descent (*jus sanguinis*), i.e. the "right of blood." Furthermore, no distinction is made between the people and the population, which is essential. This is because the population includes all people living in Germany, whereas the people only include those people who have German citizenship.

A distinction between citizens and non-citizens is therefore legal, and it is legal to reserve special rights for citizens, such as the right to vote. This also exists in most other countries and is not objectionable under international law.

The press release continues: "The ongoing agitation against refugees and migrants in particular promotes the spread and deepening of prejudices, resentment and fears towards this group of people." Here, the BfV distinguishes between refugees, i.e. people without residence status, and migrants, i.e. immigrants with or without residence status. Although these are completely different immigrants, they are inadmissibly understood as one group of people. Neither refugees nor migrants have German citizenship, but they do have certain rights, especially if they are recognized as asylum seekers.

Now there are very different people among the group of people named by the BfV, and it is perhaps ethically reprehensible, but in no way punishable, if someone rejects these sometimes unfortunate people or polemicizes against criminals who have entered the country. It would be downright absurd to demand that refugees arriving in Germany irregularly should be welcomed unconditionally. But of course all German citizens, with or without a history of migration, have the same rights. If individual AfD members say otherwise, this is wrong and does not correspond to the party program.

German citizenship law has been gradually weakened in recent years, resulting in parallel societies whose members enjoy all citizenship rights, but in some cases have their own values, for example with regard to the status of women. This can lead to disputes in society, and as long as no criminal offences are committed, negative statements are covered by the freedom of expression guaranteed by the constitution (this may also include terms such as "headscarf girls", "alimorious knifemen" or "other good-for-nothings"). All in all, the BfV's main argumentation is, to put it mildly, legally bungling, unconstitutional and obviously ideologically justified in line with government policy.

Immediately after the classification of the AfD as "confirmed right-wing extremist", US Secretary of State Marco Rubio and US Vice President James Vance were extremely critical of this process. "Germany has just given its spy agency new powers to monitor the opposition," Rubio wrote on the online platform X. 'This is not democracy - this is tyranny in disguise.' [5] He recommended that Germany should change its 'deadly open borders policy', which the AfD rejects. Vance wrote: "The AfD is the most popular party in Germany and by far the most representative of East Germany. Now the bureaucrats are trying to destroy it. The West collectively tore down the Berlin Wall. And it has been rebuilt - not by the Soviets or the Russians, but by the German establishment." [6]

The fact that such a critical assessment of German politics once again has to come from outside is an indictment of the Berlin political caste and its subservient media. The Federal Foreign Office, still headed by the unspeakable Minister Annalena Baerbock, could think of nothing more to say than: "This is democracy... This decision is the result of a thorough and independent investigation to protect our constitution and the rule of law... We have learned from our history that right-wing extremism must be stopped." [7] James Vance's statement fits in with this: the danger to Western democracies does not come from outside, but from within. [8]

Party ban for the AfD?

The move by the Federal Office for the Protection of the Constitution, which is already having serious consequences for the AfD, appears to be a preparation for a ban procedure against the party, which is once again being loudly demanded by some politicians. [9] Instead of engaging with the ideas and goals of the AfD in political discourse, this second strongest party in Germany, which according to statistical surveys has at times overtaken the CDU, is to be eliminated.

First of all, the party is apparently to be dried up through discrimination, deprivation of basic rights, funding and possible occupational bans. After all, who joins a party if it is likely to lead to serious problems with the state, including the deprivation of their livelihood? This was demonstrated in the 1970s by the example of the German Communist Party (DKP), a successor organization to the German Communist Party (KPD), which was banned in 1956; it slipped into insignificance, making further measures unnecessary.

You may think what you like about the AfD, but it is a registered party that can only be banned by a ruling of the Federal Constitutional Court. The banning procedure is subject to strict guidelines. The Bundestag, Bundesrat and Federal Government are entitled to apply. The basis for a ban is Article 21 Paragraph 2 of the Basic Law: "Parties which, according to their aims or the behavior of their supporters, aim to impair or eliminate the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional." The Federal Constitutional Court also decides on the exclusion of state funding (Article 21 (3) of the Basic Law) upon application.

The hurdles for a party ban are high. According to the previous case law of the Federal Constitutional Court, the mere dissemination of anti-constitutional ideas is not enough. "In addition, an actively militant, aggressive attitude towards the free democratic basic order, which the party aims to abolish, as well as concrete evidence that achieving the anti-constitutional goals pursued by the party does not appear to be completely hopeless." [10] The Federal Constitutional Court Act regulates the procedure in more detail.

Insofar as a party has not been banned, the party privilege of Article 21 of the Basic Law also applies to the "party-official activities of functionaries and supporters using generally permitted means", as the Federal Constitutional Court stated in a decision of March 21, 1961. [11]

The BVerfG went on to say: "Their activities are protected by the party privilege even if their party is declared unconstitutional by a later decision of the BVerfG... The supporters and functionaries of such a party act within the framework of constitutionally guaranteed tolerance when they propagate and promote the aims of their party, participate in elections, become active in election campaigns, collect donations, work in the party apparatus or even campaign for their constituency as members of parliament. The Basic Law accepts the danger that exists in the foundation or activity of such a party until it is determined to be unconstitutional."

This decision, which was ignored by some courts in the past for ideological reasons, concerned the KPD at the time, but it is of course also valid for any other party. It is irrelevant for the legal assessment of a party's registration and its activities whether it belongs to the right-wing or left-wing spectrum [12].

The writer and publicist Dr. jur. Wolfgang Bittner is the author of numerous books, including "Die Eroberung Europas durch die US" and "Deutschland - Verraten und verkauft". His book "Niemand soll hungern, ohne zu frieren. It cannot and will not stay as it is" was recently published by zeitgeist.

Sources and notes

1 The German Federal Constitutional Court was decisive on this in a ruling from 21.3.1961: BVerfG E 12, 296, 306

2 Cf. https://x.com/BMI_Bund/status/1918227042392252664 (3.5.2025)

3 See: www.verfassungsschutz.de/SharedDocs/pressemitteilungen/DE/2025/pressemitteilung-2025-05-02.html

4 Cf. www.afd.de/grundsatzprogramm/

5 Cited from <https://x.com/SecRubio/status/1918344238468649055> (3.5.2025); see also: www.tagesschau.de/inland/innenpolitik/afd-verfassungsschutz-rubio-100.html

6 Cited from <https://x.com/JDVance/status/1918403354922799463> (3.5.2025)

7 Ibid.

8 Cf. www.youtube.com/watch?v=nOGrOp7PJD0&t=1598s (2.5.2025). See also Sahra Wagenknecht, www.youtube.com/watch?v=DiVbYog9Ixc (3.5.2025)

9 Cf. www.tagesschau.de/inland/innenpolitik/reaktion-einstufung-afd-rechtsextrem-102.html

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Cf. www.bundesverfassungsgericht.de/DE/DasBundesverfassungsgericht/Verfahrensarten/Parteiverbotsverfahren/parteiverl

11 BVerfG E 12, 296, 306

12 On this, Wolfgang Bittner with further references: "Niemand soll hungern, ohne zu frieren", Verlag zeitgeist 2024, p. 178.

ARTICLE TAGS:

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