

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COMMISSION EUROPÉENNE DES DROITS DE L'HOMME EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION BY THE COMMISSION

ON THE ADMISSIBILITY

of Application No. 250/57

lodged by the German Communist Party,

dissolved by Decision of the Federal
Constitutional Court on 17th August, 1956,

and by MM. Max REIMANN and Walter FISCH

members of the former Steering Committee
of the said Party

against the Federal Republic of Germany

The European Commission of Human Rights, sitting in
private on 20th July, 1957, under the Presidency of
Mr. C. H. M. WALDOCK, the following members being present:

M. C. Th. EUSTATHIADES
M. P. BERG
M. P. FABER
M. L.J.C. BEAUFORT
M. F. N. DOMINEDO
M. A. SUESTERHEIN
M. S. PETREN
Mme G. JANSSEN-PEVTSCHIN
M. M. SØRENSEN
Mr. J. CROSBIE
M. F. SKARPHEDINSSON

M. P. MODINOS, Head of the Directorate of Human
Rights, acting as Secretary of the Commission.

Having regard to the application lodged on 11th February, 1957, by the German Communist Party, dissolved by Decision of the Federal Constitutional Court on 17th August, 1956, and by MM. Max Reimann and Walter Fisch, members of the former Steering Committee of the said Party, against the Federal Republic of Germany (application registered on 14th February, 1957, file No. 250/57);

Having regard to the decision whereby the European Commission of Human Rights, on 7th March, 1957, ordered the aforementioned application to be communicated to the Government of the Federal Republic, which was invited to present to the Commission, within six weeks, its written observations on the admissibility of the application;

Having regard to the Presidential Order prolonging the period of six weeks until 20th May, 1957;

Having regard to the memorial by the Government of the Federal Republic, deposited with the Secretariat of the Commission on 14th May, 1957;

Having regard to the Presidential Order dated 18th May, 1957, instructing that the memorial by the Government of the Federal Republic be communicated to the applicants and granting the latter a period of six weeks in which to submit their written observations;

Having regard to the counter-memorial addressed by the applicants to the Secretariat of the Commission on 7th July, 1957;

After deliberation,

Whereas the applicants have requested the Commission to find that the Government of the Federal Republic of Germany, by bringing about the dissolution and prohibition of the German Communist Party, has violated its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, which came into force for the Federal Republic on 3rd September, 1953;

Whereas the Federal Constitutional Court, in its Decision delivered on 17th August, 1956, has ruled as follows:

- (1) The German Communist Party is anti-constitutional.
- (2) The German Communist Party shall be dissolved.

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- (3) The creation of organisations to replace the German Communist Party, or the continuation of existing organisations serving the purpose of such replacement, is prohibited.
- (4) The assets of the German Communist Party shall be confiscated by the Federal Republic of Germany and used in the interests of the community;"

Whereas in support of their application the applicants invoke the provisions of Articles 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Whereas the Government of the Federal Republic of Germany claims that the dissolution of the German Communist Party by Decision of the Federal Constitutional Court has a legal basis, compatible with the Convention, in Article 21, paragraph 2, of the Basic Law of the Federal Republic, worded as follows:

"Parties which, according to their aims and the behaviour of their members, seek to impair or abolish the free and democratic basic order or to jeopardise the existence of the Federal Republic of Germany, shall be anti-constitutional. The Federal Constitutional Court shall decide on the question of anti-constitutionality";

Whereas the rights and freedoms set forth in Articles 9, 10 and 11 of the Convention may, under the terms of the second paragraphs of those Articles, be subject to such limitations as are prescribed by law, under the conditions laid down by the Convention,

Whereas in the present instance there is no need to consider the application of the second paragraphs of Articles 9, 10 and 11, since Article 17 of the Convention contains the following more general provision:

"Nothing in the Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention";

Whereas this fundamental provision of the Convention is designed to safeguard the rights listed therein by protecting the free operation of democratic institutions (see Preparatory Work, Official Records of the Consultative Assembly, 1949, First Session, Pages 1235, 1237 and 1239. "It is necessary to prevent totalitarian currents from exploiting, in their own interests, the principles enunciated by the Convention; that is, from invoking the rights of freedom in order to suppress Human Rights.");

Whereas a similar motive appears to have guided the German legislator when drafting Article 21 of the Basic Law;

Whereas the question at issue is to determine whether the application of the last-mentioned provision to the present case is in conformity with the said Article 17, and whether, therefore, within the meaning of that Article, the applicants have committed acts or engaged in any activity aimed at destroying the rights or freedoms set forth in the Convention or at securing more comprehensive limitations of those rights or freedoms than are provided for in the said Convention;

Whereas it is patent:

- (1) that the "aim of the Communist Party is to establish a socialist-communist system by means of a proletarian revolution and the dictatorship of the proletariat" (statements of the German Communist Party reproduced in the Decision by the Federal Constitutional Court and in 'Entscheidungen des Bundesverfassungsgerichts', cf. vol. 5, 1956, page 163); and
- (2) that the German Communist Party continues to vaunt these principles (loc. cit., pages 191 and 193-195);

Whereas even if it could be proved that the Party's present activity is directed towards the seizure of power solely through the constitutional means afforded to it in the Basic Law of the Federal Republic of Germany, this would in no sense imply that the Party had renounced its traditional objectives; on the contrary, the aforesaid statements reaffirm the continued adherence of the German Communist Party to those objectives;

Whereas the pursuit of such ultimate objectives, on the applicants' own admission, implies transition through the stages advocated by fundamental Communist doctrine, the essential stage being dictatorship of the proletariat;

Whereas recourse to a dictatorship for the establishment of a régime is incompatible with the Convention, inasmuch as it includes the destruction of many of the rights or freedoms enshrined therein;

Whereas the organisation and operation of the German Communist Party, in the circumstances of the case, constitute an activity within the meaning of Article 17;

Whereas it is clear from the foregoing that the application by the German Communist Party cannot rest upon any provision of the Convention, least of all on Articles 9, 10 and 11; and

that the said application should be declared inadmissible by virtue of Article 27, paragraph 2, of the Convention, as being incompatible with the provisions thereof;

Now therefore the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary of the Commission

President of the Commission

(P. MODINOS)

(C. H. M. WALDOCK)