EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 251 (2019)
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The AfD political party failed to exhaust domestic remedies for its complaint against the German intelligence service

In its decision in the case of Alternative für Deutschland (AfD) v. Germany (application no. 57939/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned public comments by the Federal Office for the Protection of the Constitution about its suspicion of endeavours hostile to the constitution by the applicant party.

The Court found in particular that Alternative für Deutschland had failed to use domestic remedies and that there had been no special circumstances dispensing it from its obligation to pursue those remedies.

Principal facts

The applicant party, Alternative für Deutschland (AfD), is a German political party that was founded on 6 February 2013. It has participated in elections to the European Parliament, the Federal Parliament (*Bundestag*) and parliaments of the *Länder*.

The Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz;* the Office) is Germany's domestic intelligence service responsible for the surveillance of endeavours hostile to the constitution (*verfassungsfeindliche Bestrebungen*). In October 2018, in a hearing before the Federal Parliament, the Office's president stated that it was actively gathering information on the AfD in order to enable the authorities to decide whether to put the applicant party or parts of it under surveillance.

In January 2019 the Office announced that the applicant party's youth organisation, *Junge Alternative*, as well as a sub-structure of the AfD called *Der Flügel*, were suspected of endeavours that were hostile to the constitution (*Verdachtsfall*). In particular, there was sufficient evidence of an anti-migration and anti-Muslim attitude; their programmes contained positions which clearly violated human dignity, and members of the sub-structure had ties to extremist groups. At the same time, the Office stated that there was no such suspicion for the party as a whole, but that the Office would continue to monitor the AfD at the level of a preliminary suspicion (*Prüffall*).

In February 2019 the Cologne Administrative Court decided in favour of the applicant party, finding that there was no basis in domestic law for the Office for the Protection of the Constitution to have considered the applicant publicly in such a category (*Prüffall)*.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 7 December 2018.

Relying on Article 10 (freedom of expression) and Article 11 (Freedom of assembly and association) of the European Convention on Human Rights, as well as Article 14 (prohibition of discrimination) in conjunction with Article 10 and Article 11, the applicant party complained that the Federal Office for the Protection of the Constitution had been about to inform the public that it was suspected of endeavours hostile to the constitution (*Verdachtsfall*), a category which brought about stigmatisation and a "*de facto* ban".

It also complained under Article 6 (Right to a fair trial) and Article 13 (right to an effective remedy) that it did not have any effective remedy at national level to protect its rights against such information being given to the public.

The decision was given by a Committee of three judges, composed as follows:

André **Potocki** (France), *President*,
Angelika **Nußberger** (Germany),
Mārtiņš **Mits** (Latvia),

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

Decision of the Court

The applicant party argued that the case-law of the highest domestic courts, the Federal Administrative Court and the Federal Constitutional Court, rendered any remedy at the national level useless.

The Court noted that the AfD had cited decisions in which those courts had indeed held that informing the public of suspicions of endeavours that were hostile to the constitution was in principle permissible under the Act on the Protection of the Constitution and the Basic Law.

However, these courts had obviously exercised strict scrutiny in assuming that in the circumstances of one of those cases in particular those conditions had not been met. By failing to use the available domestic remedies, the AfD had not provided sufficient opportunity for that scrutiny to be exercised in its case. The Court also noted that the decisions cited by the applicant party had concerned differently drafted provisions and periods. The AfD had therefore failed to provide case-law related to the provisions applicable in its case.

Finally, events subsequent to the lodging of the complaint, in particular the Cologne Administrative Court's decision of February 2019, were valuable proof of the effectiveness of the applicable remedies. The Court could not therefore establish that the remedies provided for by the domestic system had not offered sufficient prospect of success.

The Court was not satisfied that there were no accessible and effective remedies or that there were special circumstances dispensing the AfD from its obligation to pursue those remedies. Accordingly, the complaints under Articles 10 and 11 as well as Article 14 in conjunction with Articles 10 and 11 had to be rejected for non-exhaustion of domestic remedies.

As to the complaint under Articles 6 and 13, the Court noted that the AfD had had domestic remedies available to it and hade made use of them. This complaint therefore had to be rejected as manifestly ill-founded.

The decision is available only in English.

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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.