



Volume 8. Occupation and the Emergence of Two States, 1945-1961

Federal Constitutional Court Verdict Banning the Communist Party of Germany (KPD) and the Concluding Justification (August 17, 1956)

On August 17, 1956, the Federal Constitutional Court issued a verdict banning the Communist Party of Germany. The verdict spelled an end to the proceedings against the KPD, which had begun five years earlier when the Federal Government submitted a petition requesting a ban on the KPD on the grounds that it was unconstitutional. The present verdict makes reference to the court's verdict of October 23, 1952, which banned the neo-Nazi Socialist Reich Party (SRP) on the grounds of its unconstitutionality.

I. Verdict of the Federal Constitutional Court Banning the KPD (August 17, 1956)

In the Name of the People!

In the proceedings regarding the petition by the Federal Government to establish the unconstitutionality of the Communist Party of Germany, the Federal Constitutional Court – First Senate – on the basis of hearings conducted from November 23, 1954, to July 14, 1955, has ruled by verdict that:

- I.
 1. The Communist Party of Germany is unconstitutional.
 2. The Communist Party of Germany will be dissolved.
 3. Creating substitute organizations for the Communist Party of Germany or continuing existing organizations as substitute organizations is prohibited.
 4. The assets of the Communist Party of Germany will be confiscated for the benefit of the Federal Republic of Germany for purposes of the common good.

- II. In the federal states [*Länder*], the ministers (senators) of the interior are entrusted with carrying out the decision under I. 2. and 3.; in this respect they have immediate authority to issue directives to police authorities.
The confiscation of assets is entrusted to the Federal Minister of the Interior, who may call on the states' ministers (senators) of the interior for assistance.

III. Deliberate violation of this decision or of measures taken in executing this decision is punishable with at least 6 months in prison, according to §§ 47, 42 of the Law on the Federal Constitutional Court.

In the Name of the Law

The errors and misunderstandings regarding these hearings that have arisen in the public mind induce me to make a few clarifications before announcing the essential grounds for the decision:

The Constitutional Court cannot initiate proceedings itself. In every case, a petitioner needs to make the request. A petition to ban a political party can be filed by the Federal Government. It is within the government's political discretion and exclusive political responsibility to decide whether it wants to and should file the petition. The court's decision must be based on purely legal principles; it is thus prohibited from taking political expediency into consideration.

According to Article 21, Paragraph 2 of the Basic Law, parties which, by reason of their aims or the behavior of their members, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality.

Thus, in these hearings, the court only had to decide whether the aims and behavior of the KPD engendered the legal situation described in Article 21, Paragraph 2 of the Basic Law. The court had to examine whether these aims were compatible with the fundamental ideals of our democracy. The doctrine of Marxism-Leninism as a political philosophy is not the subject of these legal proceedings.

The court and also the individual judges received an extraordinary number of communications requesting that the proceedings be stopped and that participation in a ban be avoided. In many instances these communications contained massive threats. Such influences may be effective elsewhere. The Federal Constitutional Court cannot be swayed in its judicial decisions by any kind of outside influence – no matter where it may come from. The Federal Constitutional Court is liable only to the law and bases its decisions exclusively on law and justice.

Source: Gerd Pfeiffer and Hans-Georg Strickert, eds., *Outlawing the Communist Party*, translated by Wolfgang P. von Schmertzling. Cambridge, MA, 1957, pp. 1-3. Translation edited by GHI staff.

II. Concluding Justification for the Federal Constitutional Court Verdict Banning the KPD (August 17, 1956)

Third Section

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II.

The unconstitutionality of the KPD is to be established by verdict.

According to Article 46, Paragraph 3 of the Law on the Federal Constitutional Court, once a party has been declared unconstitutional it is to be dissolved and substitute organizations are to be banned. The court made use of this provision in its verdict of October 23, 1952 (Federal Constitutional Court Decision 2, 1 [71]), without further discussing the constitutionality of this provision. Legal scholars have raised doubts regarding its compatibility with the principles of a constitutional state and the separation of powers. The court does not share these doubts. The dissolution of the party is not an independent executive act but a legally prescribed, normal, typical, and appropriate consequence of declaring the party unconstitutional. If this declaration puts an end to the party's privileged legal status vis-à-vis other organizations, then it is only appropriate that the same legal consequences that apply to unconstitutional associations under Article 9 of the Basic Law should apply here as well. The liquidation of the party organization, which is reserved for executive authorities, is not the content, but rather the consequence of the verdict of the Federal Constitutional Court.

The liquidation of the KPD must be expressed in a verdict. It extends to all its statutory organizations. The liquidation must be combined with a ban on creating substitute organizations or continuing existing organizations as substitute organizations.

The liquidation does not extend to organizations that depend on the party but do not belong to it, especially the so-called "front" organizations. These organizations do not partake of party privileges according to Article 21 of the Basic Law, and insofar as they violate the constitutional order, they fall under Article 9, Paragraph 2 of the Basic Law.

The declaration of the party's unconstitutionality means, as the Federal Constitutional Court established in its verdict of October 23, 1952, that [KPD] representatives in legislative bodies on the federal and state levels lose their mandates (cf. Federal Constitutional Court Decision 2, 1 [72ff]). There is no need to issue an order of execution clarifying the consequences of this loss, since the KPD is represented only in the parliaments of Bremen and Lower Saxony, and these states already have laws on the consequences of the loss of a mandate.

The decision about confiscating the assets of a dissolved party has been placed at the dutiful discretion of the Federal Constitutional Court in accordance with Article 46, Paragraph 3 of the Law on the Federal Constitutional Court. The legislators assumed that no confiscation of assets would be necessary if the dissolved party either had no noteworthy assets or had such a straightforward financial situation that rapid liquidation appeared possible. In all other instances, however, especially if the financial situation is not clear, the assets must be confiscated in order to avoid a situation in which the organs of the dissolved party maintain the party's cohesion under the pretext of asset liquidation. Because of these considerations, the court could not be swayed to refrain from assets confiscation, not even out of respect for the possible readmission of a Communist party in preparation for the reunification of Germany. If and when the time comes, the responsible authorities will have to decide what measures will need to be taken to ensure that the readmitted party suffers no inequality of opportunity on account of the consequences of the confiscation of its assets.

The decision takes effect with its pronouncement. The police authorities must take all measures necessary to carry out this verdict, without being impeded by rules other than those that hold general validity in a constitutional state. In order to ensure consistency of execution, the interior ministers of the states are charged, on the basis of Article 35 of the Law on the Federal Constitutional Court, with enforcing the decisions included in this verdict under I. 2. and 3.

Source: Gerd Pfeiffer and Hans-Georg Strickert, eds., *Outlawing the Communist Party*, translated by Wolfgang P. von Schmertzling. Cambridge, MA, 1957, pp. 225-27. Translation edited by GHI staff.