

Germany's Federal Electoral Committee seeks to bar the Maoist MLPD from the upcoming parliamentary election

Justus Leicht
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A special meeting of the German Federal Electoral Committee was held on 10 December at the request of the Marxist-Leninist Party of Germany (MLPD), a Maoist organisation. The committee ruled that the party was unable to submit a valid notification for participation in the federal election because it had “no effective executive committee.” In practice, this is tantamount to excluding the MLPD from the election, expected to take place on 23 February.

The Federal Electoral Committee justified its decision with a technicality. According to the Political Parties Act, a party must elect its executive committee “at least every second calendar year.” However, according to its own statutes, the MLPD only elects its leadership every four years. Although this has been the case for decades, the party is, for the first time, to be prevented from participating in the election.

The decision is a fundamental attack on the basic democratic right to free elections and must be firmly rejected. The Federal Electoral Committee is taking anti-democratic methods to the extreme in order to prevent smaller parties without existing parliamentary representation from participating in the election.

According to German electoral law, parties lacking the representation of at least five members of parliament in the Bundestag or a state parliament over an entire legislative period are required to collect thousands of signatures to support their candidacy, as well as submitting numerous forms and documents to the Federal Returning Officer and various state and district officers in order to be admitted to the election.

Each federal state usually requires 2,000 signatures for an electoral list and a further 200 per direct candidate per constituency. To stand as a candidate nationwide, well over 30,000 valid signatures are required. All personal data of signatories must be provided, and all signatures must be checked by the registration authorities to ensure that the supporters are of German nationality, of legal age and eligible to vote in the respective federal state/constituency.

The early election date of February makes these already high bureaucratic hurdles almost insurmountable. The periods for providing the documents and signatures are being dramatically shortened, without the requirements being reduced. In addition,

the signatures have to be collected in cold winter weather and during the Christmas and New Year period, when many people are on holiday.

But all this is still not enough for the Federal Electoral Committee and the forces behind it in the state apparatus and the established parties. They are determined to use every pretext, no matter how flimsy, to harass and keep smaller parties out of the elections. This is behind the fact that a single deviation from official party law tolerated for decades is now suddenly being used to deny the MLPD its effectiveness or “ability to act” and exclude it from the federal election.

The premature end of the widely despised ruling “traffic light coalition” of the Social Democratic Party (SPD), Greens and neo-liberal Free Democratic Party (FDP) and the decision for early elections are not aimed at giving the electorate a say, but rather at ensuring that an even more reactionary government comes to power. This is incompatible with fundamental democratic rights and principles. The Sozialistische Gleichheitspartei (Socialist Equality Party) has warned against this danger from the outset and the attack on the rights of the MLPD by the Federal Electoral Committee confirms this. It must be overturned.

The Federal Electoral Committee, which decides on the admission of parties to the election, has no democratic legitimacy. It consists of the Federal Returning Officer and her deputy, both of whom are appointed by the Federal Minister of the Interior, as well as eight associate judges appointed by her and two judges from the Federal Administrative Court. The associate judges are representatives of the established parties who decide on the participation in the elections of their party-political competitors.

Seven members of the Federal Electoral Committee followed the application of the Federal Returning Officer Ruth Brand that the MLPD's executive committee could not effectively represent the party when submitting its notification of participation. Three voted against, with the Federal Returning Officer abstaining. Both judges of the Federal Administrative Court voted in favour of barring the MLPD, together with the representatives of the Christian Democratic Union, Christian

Social Union, the far right Alternative for Germany (AfD) and the Greens, while the representatives of the SPD and FDP voted against.

The decision is not only undemocratic, it is also legally untenable. According to undisputed information provided by the MLPD, the provision in the statutes to elect the executive committee every four years has not been changed since the party was founded in 1982—nor have the requirements of the German Political Parties Act to elect the party executive every two years.

The MLPD has participated in federal elections since 1987, and in all federal elections since 2005, without this technicality being any obstacle to participation. In 2021, the MLPD was reprimanded for the first time for holding its party conferences every four years instead of every two years.

Nevertheless, the party was admitted to the election by the Federal Election Committee in 2021 after lodging protests. In 2024, the MLPD stood a candidate in the European elections without objection. At that time, the Federal Returning Officer was already Dr Ruth Brand, who has only now disputed the “effectivity of the party’s executive.”

The Federal Returning Officer’s view is extremely far-reaching and anti-democratic. Between party conferences, the party executive is the highest body of a party; a party can only act through its executive, which represents it in and out of court. To deny a party executive its capacity to act is to declare the party itself is incapable of acting; in practice, it is the same as a de facto ban.

If a party is no longer allowed to participate in federal or state elections for six years, it will also lose its legal status as a party under Section 2 of the Political Parties Act and will then only be considered a political association. This makes a ban much easier. While a party can only be banned by the Federal Constitutional Court after legal proceedings, a ban for an “association” is possible merely by the order of the interior minister, which can only be challenged in court afterwards.

There is no legal basis for the opinion of the Federal Returning Officer. Section 18 (2) of the Federal Elections Act merely stipulates that the notification of participation must be submitted by three members of the executive committee and that proof of its “statutory appointment” as well as the statutes and programme must be attached. The fact that the MLPD’s executive committee was appointed in accordance with its statutes has not been disputed by the Federal Electoral Committee.

The paragraph expressly does not contain a requirement that the statutes must meet all the requirements of the Political Parties Act. It is not meant to. Where the Federal Electoral Law also provides for the examination of the requirements of the Political Parties Act, this is stated in the legal text. Accordingly, the Federal Electoral Committee must “determine party status” and “proof of party status in accordance with § 2 paragraph 1 sentence 1 of the Political Parties Act should therefore also be

attached” to the notification of participation.

The latter norm is extremely undemocratic; it purports that parties must “according to the overall picture of actual circumstances, in particular according to the scope and stability of their organisation, according to the number of their members and according to their public prominence, offer a sufficient guarantee of the seriousness of these objectives.” These vague and general criteria open the floodgates to arbitrary decisions regarding party status and thus the possibility of participating in elections. On these grounds the requirement was criticised by OSCE election observers back in 2009.

Requirements such as § 11 (1) of the Political Parties Act, which stipulates that the executive be elected every second calendar year, are, by contrast, so-called regulatory requirements. This means that only the way in which decisions are made is regulated, while the decisions themselves are not nullified by any violation of the regulation.

In civil law governing associations, to which Section 11 of the Political Parties Act expressly refers, the “inability to act” of associations and the associated legal uncertainty resulting from incorrectly appointed boards of directors is not desired. Therefore, incorrectly appointed boards of directors of companies are treated as if an error-free appointment had taken place until they are dismissed. This legal concept has been explicitly recognised by the Federal Court of Justice in the case of the incorrect appointment of members of a management board and representatives of stock corporations.

The ostensible purpose of Section 11 (1) of the Political Parties Act is to protect the democratic rights of party members in the party’s decision-making process; a complete “incapacity” of the party and its exclusion from federal and state elections is obviously incompatible with this and is not intended. Therefore, § 18 of the Federal Electoral Act does not give the Federal Electoral Committee the authority to examine the party’s statutes for compatibility with the Political Parties Act and make this a criterion for participation in the election.

This would also further intensify the discrimination against non-established parties. Only non-established parties, i.e., parties that are not represented in the Bundestag or a state parliament, have to submit a notification of participation and submit to the review by the Federal Electoral Committee.



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