

(English version)

**Question for written answer E-002624/24
to the Commission
Tomasz Froelich (ESN)
(21 November 2024)**

Subject: Threats to freedom of expression and party privilege in Germany due to views expressed by the UN CERD Committee

In 2023, the UN Committee on the Elimination of Racial Discrimination (CERD) published a report on the implementation of and compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Germany. In it, the CERD expresses concern about the rise of far-right parties, among which it includes the AfD, whose programme is said to be based on a national-ethnic concept. It is alleged that the AfD also rejects the principle of equality. In addition, reference is made to the rise in racist violence.

The CERD encourages Germany to exclude political parties that promote racial hatred and discrimination from elections ⁽¹⁾.

In Germany, it is the Federal Constitutional Court that has the competence to ban political parties. The prerequisite for such a ban is the will to abolish the free democratic basic order and an aggressive, militant attitude towards it. The dissemination of ideas considered anti-constitutional is not enough ⁽²⁾.

1. What is the Commission's assessment of this interference by a UN body with the constitutional order of Germany?
2. Does the Commission believe that the CERD recommendations could jeopardise the principle of freedom of expression and party privilege under Article 21 of the Basic Law?

Submitted: 21.11.2024

**Answer given by Mr McGrath on behalf of the European Commission
(10 March 2025)**

Article 21(1) of the EU Charter of Fundamental Rights provides that 'any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.' Article 11 of the Charter recognises the right to freedom of expression, which is not absolute and may be subject to restrictions.

The Commission ensures, within the remit of its competence, the respect of fundamental rights enshrined in the EU Charter of Fundamental Rights, including the right to freedom of expression ⁽¹⁾ and the right to non-discrimination ⁽²⁾.

However, according to Article 51(1) of the Charter, its provisions are addressed to Member States only when they are implementing EU law.

In this case, the legal framework at issue seems to be the United Nations (UN) Convention on the Elimination of All Forms of Racial Discrimination and the German Constitution.

The Commission is only competent when it comes to the application of EU law and will not comment on statements from a UN body or on the competences of a national constitutional court.

¹ ¹Committee on the Elimination of Racial Discrimination, International Convention on the Elimination of All Forms of Racial Discrimination: 'Concluding observations on the combined twenty-third to twenty-sixth reports of Germany', 20 November to 8 December 2023, paragraph 15 and paragraph 16(g).

² ²Federal Constitutional Court, procedure for the banning of a political party

⁽¹⁾ Article 11 of the Charter of Fundamental Rights of the European Union.

⁽²⁾ Article 21 of the Charter of Fundamental Rights of the European Union.