

Germany: Constitutional Court legitimises new elections

Partei für Soziale Gleichheit
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In a seven-to-one vote, the Constitutional Court in Karlsruhe ruled on Thursday that the early general election called by the government of Chancellor Gerhard Schröder complies with the German constitution. Nothing now stands in the way of the Bundestag (parliamentary) election scheduled for September 18.

The court's decision has far-reaching consequences. It legitimises a manoeuvre by the chancellor aimed at implementing policies that are opposed by the vast majority of the population.

The court rejected the complaint filed by Bundestag deputies Werner Schulz (Green Party) and Jelena Hoffmann (Social Democratic Party—SPD), which sought to have the premature dissolution of parliament deemed unconstitutional. Federal President Horst Köhler had dissolved parliament on July 29, after Chancellor Schröder tabled a no-confidence motion on July 1 with the deliberate aim of losing the vote. Schröder had justified the motion by claiming he no longer possessed a stable and reliable basis for his policies.

Schulz and Hoffman justified their complaint by pointing out that the chancellor had never lost the support of the majority of parliament. The day before the no-confidence motion, the SPD-Green Party majority had no problem passing approximately 40 laws. The question of confidence was therefore “false,” they argued. Moreover, the German constitution prescribes fixed terms and parliament has no right of self-dissolution.

They posed the rhetorical question of whether in future the chancellor would be answerable to parliament, or, on the basis of the arguments of Schröder and Köhler, the parliament would be answerable to the chancellor.

The Constitutional Court rejected the complaint as “unfounded,” and thereby substantially strengthened the power of the executive vis-à-vis parliament. Compared to its earlier judgements, the court has now clearly expanded the chancellor's room for manoeuvre. Through the introduction of the concept of a “confidence motion directed at dissolution,” the court has virtually handed the chancellor the power to dissolve parliament.

The Constitutional Court “has so strengthened the political role of the chancellor that future government heads will be permitted to make their, let us call them, feelings of distrust the most important political yardstick in the republic,” wrote *Spiegel On Line* in an initial analysis of the ruling. “If future chancellors feel that new elections would be politically opportune or unavoidable...they will not be stopped by *this* Constitutional Court.”

The editor for domestic affairs of the *Süddeutsche Zeitung*, Heribert Prantl, who has opposed Schröder's dissolution manoeuvre from the very beginning, declared, “Yesterday's judgment will go down in history because it gives a constitutional seal of approval to an autocratic style of governing.”

The judgement largely followed the arguments of President Köhler, who had said that it lay within the administrative discretion of the chancellor to determine whether or not he still possessed a stable majority.

“Such estimates have the character of a prognosis and are bound up with

highly individual perceptions and the weighing-up of the situation,” is how the vice president of the court, Winfried Hassemer, justified the court's decision, adding, “The nature of the erosion and unseen withdrawal of confidence cannot be easily presented and determined in legal proceedings.”

In this way, the dissolution of the Bundestag is being linked to purely subjective criteria, completely independent of actual parliamentary majorities as determined by elections.

In 1983, when the court was obliged to pass judgement in a comparable case concerning the dissolution of the Bundestag by the government of Helmut Kohl (Christian Democratic Union—CDU), it declared that mere “difficulties” in realising government policy were insufficient to justify posing a vote of confidence. Now it has explicitly dropped this restriction.

“A government's capacity to act is lost when the chancellor, in order to avoid losing parliamentary support, is forced to abandon an essential aspect of his political concepts and pursue another policy,” the judgement reads.

This reasoning undercuts the responsibility of the government to parliament, as laid down in the constitution. If the Bundestag majority does not agree with the policy of the chancellor, he can now dissolve parliament. In this way, he is handed a powerful lever to discipline parliament and intimidate fractious deputies.

The Socialist Equality Party rejects any idealisation of the German constitution (Basic Law). It was drawn up after the Second World War in order to rescue and secure a capitalist order that had been thoroughly discredited by the crimes of the Nazi regime. It is imbued with a thoroughly undemocratic spirit, aimed at minimizing the influence of the electorate over political processes. Significantly, it was never ratified by popular vote—either when it came into effect in 1949, or in 1990, following reunification with East Germany.

The constitution is based on the principle of a representative, or indirect, democracy, in which elected representatives of the people are sovereign and can make political decisions without the direct intervention of the electorate. It contains numerous clauses aimed at stabilising national institutions and preventing the electorate from exercising direct influence.

To prevent smaller parties from entering parliament, a 5 percent (of votes cast) clause was introduced. To prevent frequent changes of government and new elections, the constructive vote of no-confidence, according to which the toppling of the chancellor is possible only if a successor is selected at the same time, was incorporated into the Basic Law, and strict limits were imposed on the right of the president to dissolve parliament. A dissolution of parliament by the chancellor or his majority in parliament is allowed only under the most narrowly and strictly defined conditions.

It is not our task to defend these provisions, which are aimed at securing the bourgeois order, but the current dispute raises fundamental class questions to which neither we nor the working class as a whole can be indifferent. To understand the full significance of this judgement, one

must take into account the political context in which it arose.

The decision to prematurely dissolve parliament was Schröder's reaction to increasing popular resistance to his economic and social policies, which have led to 5 million unemployed and the rapid growth of poverty. The widespread opposition to "Agenda 2010" and "Hartz IV" expressed itself in large protests and a massive loss of votes and members for the SPD. This opposition threatened to spread to the SPD parliamentary faction, as Schröder himself vividly described when he introduced the vote of no-confidence on July 1 in the Bundestag.

"Since adopting 'Agenda 2010,' the SPD has lost votes in all the state elections and in the European election—in many cases even losing its place in state governments," he said. "That was a high price for pushing through the reforms. The fact we had to pay this high price—most recently in North Rhine Westphalia—led to fierce debates within my party and my parliamentary faction about the future course of the SPD. This also applies in a similar way to our coalition partner." Some SPD members, Schröder continued, had even threatened to join a "backwards-looking, populist left-wing party" under former SPD chairman Oskar Lafontaine.

Schröder thereby made it clear that he would rather hand government power over to the conservative opposition (Christian Democratic Union, CDU/Christian Social Union, CSU and the Free Democratic Party, FDP) than give way to pressure from his own voters and members. He is thereby following a well-trodden path of the SPD, which repeatedly transferred power to the right wing when it could not suppress or withstand the pressure from below.

This was the path adopted by Herrmann Müller, the last Social Democratic chancellor of the Weimar Republic, who surrendered power to Heinrich Brüning of the Catholic Zentrum (Center) Party in 1930 and supported the emergency measures Brüning introduced against the working class. In 1972, SPD Chancellor Willy Brandt was prepared to capitulate without a fight to Rainer Barzel (CDU) if he lost a vote of confidence occasioned by a scandal over the buying of votes. Three years later, he handed the government over to the SPD right wing under Helmut Schmidt. Finally, in 1999, Oskar Lafontaine quit the government and handed over the party leadership to Gerhard Schröder without a fight when Lafontaine came under pressure from big business.

The express aim of the early election to be held next month is to legitimise the enormously unpopular Agenda 2010. Schröder justified the vote of no-confidence to the Bundestag by saying, "If this agenda is to be continued and further developed—and it must—its legitimisation through an election is indispensable."

In precipitating new elections, Schröder has posed an ultimatum to the electorate: "Either you accept Agenda 2010 and everything that it entails, or you will have a government led by the right-wing Union parties that will push ahead with the 'reforms' in an even more ruthless fashion."

In this election, the vast majority of the population does not have the slightest possibility of registering its opposition to prevailing socio-political developments. While president Köhler justifies the dissolution of parliament by declaring that voters now have a chance to decide, in fact, they have been effectively disenfranchised by Schröder's actions.

With the ruling by the Constitutional Court, all national institutions have placed themselves behind this conspiracy against the population: the administration, the Bundestag, the president, and the highest court in the land. All the major political parties, and above all the SPD, welcomed the court's decision enthusiastically. The SPD domestic affairs spokesman, Dieter Wiefelspuetz, said the judgement would have significance and importance beyond today.

Indeed! The legalisation of the early elections and the expansion of the power of the executive by the Constitutional Court mean the ruling elite is now in a position to push through the next round of its attacks on social and democratic rights over ongoing and fierce resistance from within the working population. Regardless of the complexion of the majority

resulting from this election—a coalition of the Union parties and FDP, a grand coalition of the Union parties and the SDP, or (what is less probable) the continuation of the SPD-Green Party coalition—these attacks will be intensified.

The SPD and the Greens have made it unmistakably clear that they will not permit any diminution of Agenda 2010. And the Union opposition plans to abolish Germany's existing system of health insurance, based on contributions according to income, and introduce a uniform tax rate. This would dispense with more than 100 years of social welfare policy and effect the biggest redistribution of income and wealth—from the working class to the rich—in German history. Under these provisions, an unskilled worker would pay the same health insurance contribution and tax rate as an executive. In addition, a halving of taxes for the rich is to be financed by the taxation of premiums paid for night shifts and Sunday work, the taxation of holiday bonuses, and the abolition of travel allowances. Thus, the nurse working the night shift will be paying for the millionaire's tax cuts.

Such measures can be implemented only by an authoritarian regime, free from any democratic checks and balances. Such a regime now becomes a distinct possibility because of the SPD initiative, which has been confirmed by the Constitutional Court.

The ease with which the Constitutional Court has dispensed with legal norms that were considered inviolable for many decades shows that the ruling elite as a whole has decided to go in the direction of anti-democratic changes in the constitutional structure of the state. The greatest danger would be to underestimate its determination in this regard. Once previous legal standards are blown up, authoritarian forms of rule develop according to their own dynamic.

In the *Süddeutsche Zeitung*, Heribert Prantl, who is himself a jurist, correctly points out the sloppy argumentation employed by the Constitutional Court. "This is how judgments look when the result is arrived at first and the reasons are sought afterwards," he writes. "The court acts as if it is examining the matter. In reality, it is examining nothing."

This light-minded and cynical attitude of the ruling elite towards its own legal norms is an international phenomenon. In the interests of short-term political ends, usually dictated by big business, basic legal norms that have long maintained the stability of bourgeois society are being tossed aside.

The rise of the Bush government in the US can be understood only in this light.

In 1998-1999, a right-wing conspiracy was carried out with the aim of removing an elected president (Bill Clinton) from office by impeaching him for a trivial sex scandal. The US Supreme Court provided an essential impetus to the conspiracy by ruling unanimously that Clinton could be brought into court, while still in office, on a civil matter (the Paula Jones sexual abuse claim) that predated his election and had no bearing on his official duties.

One year later, the same court enabled Bush to steal the presidential election by suppressing a recount of votes cast in the state of Florida.

In 2003, right-wing Republicans financed and spearheaded a recall election that ousted the Democratic governor of California, Gray Davis, and replaced him with Arnold Schwarzenegger, a Republican.

In all of these cases, a small right-wing minority was able to impose its policies thanks to the support of the Supreme Court and the capitulation of the Democratic Party. The result is the current Bush government, which has been able to unleash war where it sees fit, trample on democratic rights, and promote a degree of social inequality unparalleled in any other modern industrial country.

It would be utterly irresponsible to think that such a development could not take place in Germany.

Behind the figure of the opposition candidate for chancellor, Angela

Merkel, the careerist daughter of a Brandenburg priest, forces are assembling who are keen to introduce American conditions to Germany as rapidly as possible. Significant in this regard is the prominent place in Merkel's recently announced "competence team" of finance expert Paul Kirchhof.

Kirchhof has even more radical proposals for revisions of Germany's tax system than CDU finance expert Friedrich Merz, who was forced to resign last year. Merkel's own sympathy towards Bush is based not only on agreement on foreign policy issues, but also on agreement in the fields of domestic and social policy.

With the early dissolution of parliament and their own attacks on democratic and social rights, the SPD and Greens have paved the way for such right-wing forces, despite the fact that these forces lack significant popular support for their political ideas.

It is significant that out of a total of 601 deputies only 2 had the courage to take legal action against the dissolution of the Bundestag. They were then subjected to enormous pressure and harassment by their own colleagues, in a manner that is unique in the history of the Bundestag.

In the event, only one of the panel of eight constitutional judges, Hans Joachim Jentsch, sided with the plaintiffs. He justified his dissenting opinion with the argument that the judgment weakened the position of the Bundestag. It permits a chancellor to instigate a new election "over a 'false' issue of confidence if he considers it necessary for the confirmation by acclamation of his policies and to overcome internal party resistance," he argued.

The constitutional challenge raised by Schulz and Hoffman, however, was characterised less by their concern over democratic rights than by their fears of increasing instability of state institutions.

Their petition described early elections as a shift away from a "representative" to a "plebiscite" or "direct" democracy, in which political decisions must be legitimised directly by the people. Schulz accused the chancellor of "fleeing from his responsibility." Writing in the *Frankfurter Allgemeine Sonntagszeitung* July 29, he stated: "A vote on the government's course, i.e., democracy according to public opinion, contradicts our constitution."

Again and again, their petition refers to the origins of Germany's Basic Law and recalls that the text drawn up in 1949 sought to break with the Weimar constitution by securing an "obligation to political stability and continuity." Not a single government coalition was able to last its full term of office during the period of the Weimar republic. The Reich president dissolved parliament on numerous occasions, and the chancellor of the Reich was frequently toppled by feuding parliamentary factions that were neither able nor willing to agree on a successor.

Schulz and Hoffmann feared that the dissolution of the Bundestag created a dangerous precedent that would undermine state institutions in the event of future crises. Prantl argued along similar lines in an earlier edition of the *Suddeutsche Zeitung*, writing that it was preferable to disgrace the chancellor, president and parliament and accept an immediate political crisis by stopping the new elections, rather than allow the long-term weakening of state institutions.

The constitutional judges also seem to have initially shared this point of view—as the vice president of the court, Hassemer, indicated in a personal remark before issuing the court's judgement. In the perception of the public, the court was being forced to choose between "a rock and a hard place," he said. It could either bend the Basic Law or instigate a state crisis by stopping "election machinery" that was already up and running.

One can only interpret these words as meaning that, in its consultations, the court concluded that it was not so much an issue of defending traditional structures that had provided political stability in times of economic growth as strengthening the executive in order to prepare for future social conflicts.

The judgement by the Constitutional Court makes clear that the circuit

breakers built into Germany's Basic Law to avoid a return to Weimar conditions have blown on the first occasion they were put under serious strain.

Working people must prepare for a return to the type of social conditions and authoritarian forms of rule that characterised the last years of the Weimar republic. They can defend their democratic and social rights only by acting as an independent and revolutionary social force. This requires the building of a new international socialist party. The Socialist Equality Party is standing candidates in the election to further precisely this end.



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