

German's Constitutional Court issues nationalist ruling on European Union

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The Federal Constitutional Court (BVG) passed a judgment on Tuesday, which will have sweeping repercussions for the future development of Europe. The court in Karlsruhe laid down narrow limits for the powers of the European Union and stipulated that, on all important questions, the final word rests with the nation state, i.e., the two chambers of the German parliament and the court itself.

The court questioned the democratic legitimacy of the European parliament and denied the right of the European Court of Justice to make final judgments.

The BVG ruled on several appeals made against the Lisbon Treaty, which was drawn up to replace the failed European Constitution and grant more power to the European Union. Along with Ireland, Poland and the Czech Republic, Germany is the only EU member state which has so far not ratified the Treaty. The two chambers of the German parliament—the Bundestag and Bundesrat—agreed the Treaty, but the German President Horst Köhler then withheld his signature pending the judgment by the BVG.

The court has now decided that while the Lisbon Treaty is in principle compatible with the German constitution, it can only be ratified when the Bundestag and Bundesrat have thoroughly revised a supplementary law. The detailed parameters laid down by the BVG for the new supplementary law transforms the Lisbon Treaty into its opposite. The Lisbon Treaty grants the European Union and its institutions additional authority and extended powers of decision, while the BVG judgment limits the EU's authority. It specifies "key areas", which can only be decided upon in Germany not in Brussels.

The list of these key areas is detailed and long. It covers all political fields, "which mould the living conditions of the population and which in particular are dependant on cultural, historical and linguistic preconceptions". As examples the BVG specifies criminal law, police, the military, taxes, social politics, upbringing, education, media regulation and the treatment of religious communities. According to the judgment the German constitution forbids the transfer of power to the EU by the German government and judiciary in all these fields.

The BVG verdict also declares that the European parliament has no authority to decide on such questions. The verdict states that the European parliament is not "elected on the basis of equal universal suffrage" and is not authorized to "decide on political matters of

central importance". It does not represent the "sovereign people of Europe", but is rather a supra-national representative body of the peoples of the member states.

The BVG intends to function as court of ultimate resort to ensure that the European Union does not overstep its authority. That brings it into conflict with the European Court of Justice (ECJ), which regards itself as the highest authority on European legal questions. In future the German constitutional court will "breathe down the neck" of the European Union court and not regard itself as subordinate to the ECJ, was the comment by constitutional lawyer Rupert Scholz. The judges in Karlsruhe even recommend withdrawal from the EU, should it persist in extending its rights of sovereignty. According to the BVG judgment, "in the worst case, Germany must refuse its further participation in the European Union".

The constitutional court judgment represents an about turn in Germany's European policy, which for many decades was aimed at deepening and expanding European integration. In the process Germany had exerted a dominating influence in an indirect way, due to its size and economic weight. Now national interests have openly come to the fore. The *F.A.Z.* newspaper summed up the judgment with the words, "Karlsruhe can stress its friendship with Europe as often as it wants—the real message is: We are wearing the trousers."

The result of the judgment will be an intensification of national conflicts throughout Europe. If Germany, as the EU's largest member, grants highest priority to its national interests then the other 26 EU members are bound to follow suit. The BVG judgment strengthens a tendency, which has emerged ever more clearly with the deepening of the world economic crisis: the renewed outbreak of national egoisms and conflicts, which on two occasions had disastrous consequences for Europe in the twentieth century.

The judgment in Karlsruhe is immediately the result of the campaign conducted by Peter Gauweiler, a member of the German parliament situated on the right fringe of the Bavarian conservative Christian Social Union (CSU), which is allied with the Christian Democratic Union. Gauweiler defied the CDU/CSU parliamentary fraction and raised his own constitutional appeal against the Lisbon Treaty. He considers his stance fully confirmed by the court's judgment.

In his comment on the Karlsruhe judgment he declared that the constitutional court had vindicated the idea of "a Europe of

Nations”. This term was first coined in 1962 by French President Charles de Gaulle and has since become the calling card for right-wing Euro-sceptics and opponents of the EU. The phrase is also used by fascist parties, such as the German National Party (NPD) and the French National Front (FN).

That did not prevent the leaders of all of the Bundestag parties from congratulating Gauweiler and praising the court decision. Chancellor Angela Merkel of the CDU spoke of “a good day for the Lisbon Treaty”. Interior Minister Wolfgang Schäuble (CDU) declared that the judgment helped democracy. The European spokesman of the Social Democratic Party (SPD) faction, Axel Schäfer and the leading candidate of the Greens, Jürgen Trittin, also praised the judgment declaring that it strengthened the Bundestag.

The most enthusiastic support for Gauweiler came from the Left Party, which had lodged its own appeal against the Lisbon Treaty. A remarkable spectacle played out in the German parliament when deputies discussed the judgment on Wednesday. Virtually every sentence uttered by the notorious right-winger Gauweiler was wildly applauded by the deputies of the Left Party. Left Party leader Gregor Gysi expressed his thanks to Gauweiler several times. The Left Party saw no reason why it should distinguish its own opposition to the Lisbon Treaty from that of Gauweiler. Instead the party celebrated the judgment as a victory for democracy. A statement by the party leadership declared that the BVG had given “a private lesson in democracy to the federal government and the majority of the Bundestag”.

Similar reactions came from liberal circles. Heribert Prantl, head of the domestic affairs department of the *Süddeutsche Zeitung* and bearer of many awards for his services to democracy, called the judgment a “great moment for Europe”. It was not directed against European integration, but stressed “the principles of democracy at the center of which is the will of the people”. It put an end “to Brussels’ high handedness”. According to Prantl, the judgment had been arrived at by “eight European democrats” rather than “eight European critics”. “The judgment condemns the Bundestag to more democracy,” he wrote.

Prantl and the Left Party are blind to the class issues involved in the dispute over the European Union. For both objection to “Brussels’ high handedness” is synonymous with strengthening national sovereignty. The European Union is undemocratic, while the Bundestag is the embodiment of popular sovereignty. This is despite the fact that every election reveals the growing alienation of the population from official politics. The positions taken by the Bundestag—on military deployment in Afghanistan, Hartz IV welfare payments and numerous other issues—are diametrically opposed to the will of the majority of the German people.

This attitude brings the Left Party and Prantl into an alliance with the most rightwing opponents of the EU, including—alongside Gauweiler—the British Conservatives, the Polish PiS of the Kaczynski brothers and other repulsive organizations whose opposition to the European Union is bound up with national chauvinism, racism and not infrequently anti-Semitism.

Prantl and the Left Party fail to notice that there is a notable gap in the long list of “key areas” laid down by the BVG—markets, companies and financial institutions are not subject to national

sovereignty. It is for this reason that the BVG has given the green light to the Lisbon Treaty in principle. Its judgment is not directed against the power of the financial and economic interests that determine policy in Brussels. Rather it is afraid that the aloof institutions in Brussels will prove incapable of containing increasing opposition from the working class. It is therefore strengthening the nation state and its instruments of repression, the police and the judiciary.

Economically, the nationalism underlying the BVG judgment is even more reactionary. European industry is profoundly interlinked. Millions of workers in Europe and internationally are bound together through the process of production. National borders have long since become an obstacle to the development of the productive forces. The unification of Europe is urgently necessary, but, as long as the productive forces remain in private ownership and oriented to increasing the wealth of a tiny few, unification in the interest of the European people is impossible. The struggle for profits and markets inevitably encourages national antagonisms that develop into crises and wars.

This is confirmed by the Lisbon Treaty, which further removes the constraints to the activities of the continent’s most powerful financial and economic interests, deepens the social divide in Europe, seals the borders against immigrants and builds up the police and surveillance.

The struggle against this treaty can only be conducted on a socialist basis. It requires the unification of the European working class. The fight for democracy is inseparably bound up with the struggle against social inequality. The aim of such a struggle is not the defense of national sovereignty, but rather the building of the United Socialist States of Europe.

This is the program pursued by the Fourth International and its sections, the Socialist Equality Parties of Germany and Britain.



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