

Berlin state constitutional court rules against Senate ban on referendums

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On October 6, the Berlin state constitutional court issued its verdict in two legal cases brought by the initiators of two popular referenda, which had been opposed by the Berlin state administration (Senate).

The court decided against the Senate, which is controlled by a coalition of the Social Democratic Party and the Left Party, describing the Senate's refusal to hold the referendums as a breach of the state constitution.

In March and August of last year, the Berlin Senate had prevented the votes from taking place. The Senate argued that the demands for such popular votes were inadmissible because the referendums themselves violated legal principles. This was the argument used by the Senate to prevent the further collection of signatures.

The first referendum was directed against the partial privatisation of the Berlin water supply system, which would have led to huge increases in water rates; the second referendum demanded a range of improvements in the care of children in Berlin nursery schools.

The judgment by the Berlin court is a clear setback to the Senate's plans to gag its citizens and means that both referendums can now be carried forward.

With regard to the Berlin water supply, the initiators of the referendum are demanding the disclosure of the secret contracts struck in 1999 by the Senate (at that time run by a coalition of the Christian Democratic Union and the SPD) and the companies RWE and Veolia. As a result of these contracts, 49.9 percent of the Berlin water supply was privatised. The consequences for the consumer were dramatic and included drastic reductions in personnel, neglect of the maintenance of the water supply system and an average rise in water rates of 25 percent.

Under the slogan, "We, the citizens of Berlin, want

our water back," the initiators of the referendum were able to gain 36,000 signatures demanding the privatisation process be reversed. The Senate reacted to the initiative, however, by declaring that the disclosure of the details of the contracts involved would contravene the secrecy principles applying to private business enterprises and stopped the referendum.

This line of reasoning has now been rejected by the Berlin court, which ruled that the Senate could only restrict the conduct of a popular vote when such a referendum interfered with the rights of a third party. The court also supported the initiators of the referendum regarding the demands they raised. The demand for disclosure of the contracts concerning the Berlin water companies is legal because water supply and sewage disposal are central elements of the state's duty to provide basic facilities to its citizens. It should also be noted that the coalition agreement drawn up by the SPD and Left Party following their election to power also called for the reversal of the privatisation of the city's water supply.

The second referendum to be stopped by Interior Senator Erhard Körting (SPD) was initiated by the state parents committee for child day care under the slogan, "Day-care centres for children + education = profit for Berlin." The Senate opposed the referendum, which has already been signed by 60,000 supporters, arguing that the demands raised were legally unviable and not applicable to the state's budget. In response, the parents committee accused the Senate of an "anti-social, arrogant and unconstitutional style of politics."

The official text of the initiative for the referendum called for improvement in conditions in the city's child care centres and nurseries, including more care workers per class and more training and time made available for care workers to prepare their work. Implementing the

demands of the referendum would have required the creation of jobs for an additional 2,450 care workers.

In addition, the initiators of the referendum called for an expansion of the range of children entitled to nursery and child care. According to their computations, the state would have to provide an additional €96 million to cover the changes demanded by the referendum. The Senate estimated that the improvements to child care education would cost €166 million.

The Senate described these demands as an inadmissible interference in the rights of the state government and parliament to set budgets. The court opposed this position and decided that referendums are also permissible even they have severe repercussions for a state budget. The legal framework of the state budget—i.e., the legislation of the Senate—does not stand above popular law as expressed in referendums. The court ruled that people and parliament have equal status as legislators.

The Berlin Senate now has four months to implement the demands raised by the initiators of the referendums. Otherwise, the initiators will be required to obtain 171,000 signatures by the end of 2010 to force a vote. The Senate fears that a revival of the referendums would unleash a broad social movement and is determined to prevent such a possibility at all costs. Instead, the state government is seeking an alternative solution in collaboration with public sector trade unions aimed at heading off a social mobilisation.

For their part, the trade unions are prepared to play along. The *Berliner Zeitung* quotes the teachers trade union (GEW) leader Marie Seggelke declaring: “It is time to leave legal action aside.” According to the trade union, the Senate has indicated it is prepared to make some concessions with regard to child care and nursery policy and is preparing to discuss measures to improve the situation at the next meeting of its youth committee.

However, none of these declarations should be taken seriously. Any promised improvements will be subject to budget restraints under conditions in which the Senate has already pledged to make further extensive spending cuts.

The judgment of the state constitutional court has an additional noteworthy political dimension. A number of political groups that call themselves left or socialist declare it is possible to pressure the Left Party into carrying out progressive politics. Such a claim is

completely baseless. Both the Left Party and the SPD react to pressure on the part of the population (in this case, in the form of referendum campaigns) with the suppression of basic rights and are even prepared to violate the constitution.

Confirming the anti-democratic stance of the Senate parties, Interior Senator Körting commented on the court judgment as follows: “When referendums, which are bound up with enormous costs for the state, are being continuously organised, then we have to think about restricting them again” (*Berliner Zeitung*, October 7).



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