

Germany: Hartz IV welfare legislation ruled unconstitutional

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On February 9, the German Constitutional Court (BVG) in Karlsruhe declared that the current welfare calculation rules for adults and children are unconstitutional. That does not mean, however, that the long-term unemployed and their families in Germany can hope to get more money.

The nation's highest court pointed to the "lack of transparency" in benefit payment calculations, and ordered a revision of the system by the end of the year. Large numbers of families have appealed against the current system of payments because it is haphazard and results in benefits that are far too low to cover even the minimum costs of living that are supposedly guaranteed by the German constitution.

However, the High Court agreed only with the first point of the complaint, namely the question of how the rates are justified and calculated. "The shortfall in constitutionality arises in the legality of the approach to the interpretation of the regulations," said High Court President and Chief Senate Magistrate Hans-Jürgen Papier in his judgement address. But he did not give any exact figure for a minimum living income. Instead he insisted it was for "the lawmakers," i.e., parliament, to establish this level.

The estimation of these levels, he went on to say, "should be justified on the basis of sound empirical evidence, as opposed to the random arbitrary estimates that run contrary to realistic judicial inquiry." The reality, however, is that these "random arbitrary estimates" were deliberately instituted by the former Social Democratic-Green Party coalition government led by Gerhard Schröder (Social Democratic Party, SPD). The aim of the Schröder coalition was clear: to drastically reduce benefits for the unemployed. The SPD and the Greens presented this policy euphemistically as an "incentive to seek work."

When the Hartz IV welfare payment scheme was introduced five years ago, the unemployment benefit rate of €345 per month was based on official national spot-samples of income and consumption. These measured the average spending of single persons in the lowest 25 percent of the income scale. The paltry amounts were then further reduced, on a purely arbitrary basis.

For example, the amount for essential groceries was reduced by 4 percent, health care costs by 9 percent, and the "culture and leisure" allowance by 45 percent! In addition, all payments for electricity, private transport and so-called "luxury articles" such as "glider planes" (!) were completely withdrawn. We can safely assume that low-paid workers—hairdressers, shop assistants, cleaners, care workers, etc.—are unlikely to be in the possession of "glider planes."

Because the national spot-surveys are conducted every five years, the Schröder government ignored indicators of the rising cost of living and instead used pension levels as the yardstick for justifying income support levels. But there is no connection between the two. "The current calculation formula works only to the advantage of the national treasury," wrote the *Frankfurter Rundschau*, "because most pensions do not usually increase by much."

What the High Court has completely rejected in its ruling is the Hartz IV justification for the calculation of child benefits. These are simply based on the amount for adults, that is, young people get 80 percent of the adult rate and children under 14 get 60 percent. This leads to the absurd result that small children and babies get €11,90 for tobacco and alcohol, but nothing for nappies! In addition, they have an allowance of just 62 cents for toys and €3.83 for cinema and theatre visits.

Allowances for education, sport and music were

completely removed from the calculations. Furthermore, “exceptional hardship cases,” such as chronic illness, or situations where separated parents live a long way from each other and therefore have to pay higher travel costs to visit their children, are no longer recognized in the Hartz IV regulations. The High Court also criticized this aspect.

According to the Constitutional Court, the principle of basing calculations on the income and consumption spot-sample data does not in itself violate the basic constitutional laws, but the arbitrary nature of their interpretation does. The gist of the ruling by the Constitutional Court is not that welfare payments are necessarily too low, but rather that the means of estimating payment levels is insufficiently transparent.

A number of politicians have used the discussion surrounding the ruling by the constitutional court to go onto an offensive against welfare payments in general. The leader of the Free Democratic Party (FDP), Guido Westerwelle, expressed his vehement opposition to the BVG judgement, declaring that the ruling was “socialistic.”

Westerwelle is the current German foreign minister and the FDP is a partner in the coalition government led by Chancellor Angela Merkel (Christian Democratic Union, CDU). A leading member of the CDU, Hesse State Premier Roland Koch, had already denounced the existing welfare regulations. Other party members, such as the chairman of the CDU employees group in the German parliament, Peter Weiß, have insisted that any reform to the existing system under the CDU should not lead to any increase in payments.

Amongst those warning against any increase in the miserly Hartz IV payments was the Social Democratic mayor for the Berlin district of Neukölln, Heinz Buschkowsky. Neukölln is one of the poorest districts in Berlin and has a large proportion of immigrants living in poverty. On a number of occasions Buschowsky has hit the headlines with his demagogic denunciations of the unemployed and the poor.

While the judgement by the BVG will do nothing to improve the situation for the millions dependent on Hartz IV payments, the court ruling does point to the absolutely criminal nature of the legislation introduced by the Schröder government. Far from assisting in the creation of new employment prospects, the SPD-Green Party legislation was crucial in establishing a huge pool

of cheap wage labourers in Germany.

In this respect, the legislation was highly successful. According to official figures, 1.2 million of the total of 6.7 million recipients of Hartz IV payments are employed—300,000 of them working full-time. Furthermore, this huge pool of the working poor is consciously used by employers to depress the wages of all German workers. This is the devastating social balance sheet of the SPD-Green coalition that governed between 1998 and 2005.



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