Court declares German state budget unconstitutional

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On Tuesday, the Constitutional Court for the state of North Rhine-Westphalia (NRW) declared that the supplementary budget drawn up by the state administration, a coalition of the Social Democratic Party and the Greens, was unconstitutional. The decision is unprecedented in Germany and has implications reaching far beyond NRW.

The state administration headed by premier Hannelore Kraft (SPD) agreed the supplementary budget in December last year, supported by the votes of the Greens and the Left Party. According to the government the €2.4 billion supplementary budget was necessary because the previous conservative administration (Christian Democratic Union and Free Democratic Party) headed by Jürgen Rüttgers (CDU) had incorrectly calculated the state's legal financial obligations, particularly funds allocated to municipalities. In addition, the SPD-Green government had allocated an additional €1.3 billion to bail out the state's ailing bank, the Landesbank WestLB.

The SPD-Green administration justified its reworked budget, which increased the level of new debt to €8.8 billion compared to the previous conservative budget of €6.6 billion, by referring to potential repercussions for the macro economy should it not be implemented. According to the state constitution, new borrowing should not exceed the sum of the investment. Article 83 of the constitution permits an exception in the event of damage to the macro economy.

The CDU and Free Democratic Party (FDP) then appealed against the supplementary budget in the state constitutional court. In January the court's judges and its president, Michael Bertram, issued an injunction to stop additional new loans and expressed its initial doubts about the constitutionality of the budget at its first hearing in mid-February. The state government responded by promising cuts of €400 million to reduce the deficit to €8.4 billion. Meanwhile, this figure has been further reduced to €7.1 billion as a result of higher than expected tax revenues. However, even this figure is well in excess of the state's outgoing payments of €5 billion.

In their judgment, the constitutional court judges raised doubts about any damage to the macro economy, declaring that no firm evidence of any such damage had been presented. At the same time, no case had been made that the proposed new supplementary budget would effectively counter any macro-economic damage.

Judge Bertrams referred to, amongst other bodies, the Advisory Council of the Federal government—a nonelected body of pro-business professors—which declared, based on economic growth rates, that the state should stop all measures aimed at economic stimulus.

The judges were not content, however, merely to reject the supplementary budget as a whole. They also threw out the individual items of expenditure, thereby lining up unconditionally with the jubilant conservative opposition.

The ruling of the Constitutional Court of North Rhine-Westphalia represents a serious attack on the constitutionally guaranteed separation of powers. The right to adopt a budget is one of the key competencies of an elected parliament. This right has now been effectively annulled by a state court. At the same time, the judgment serves to render illegitimate the state election in May 2010, which threw out the conservatives and awarded a majority to the SPD and Greens.

Should this ruling be generally accepted—and this apparently is the intention of the judge—then the task of parliamentary majorities in future will be limited to be carrying out the orders of financial experts, business lobbyists, or the federal government, which will prescribe budgets. Democratic policy-making would be a thing of the past and elections no longer necessary.

Writing in the *Süddeutsche Zeitung*, home affairs editor Heribert Prantl referred to a "small coup-d'état" and continued, "The constitutional court in Münster...no longer makes policy by merely controlling policy based on the separation of powers. They make policy by contravening the political actions of a government—by tearing up the budget bookkeeping, and thereby depriving the government of the money it needs to implement its policy."

This disenfranchisement of democratically elected bodies

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by the judge is not, however, totally unexpected. In 2009 the federal conservative coalition of the CDU-CSU/SPD inserted a so-called debt brake into the country's constitution on the initiative of then Finance Minister Peer Steinbrück (SPD). The measure commits federal and state governments to balance their budgets without new borrowing. The federal government is committed to balance its budget by 2016, and the states by 2020. In the meantime nearly all of the country's 13 states have inserted similar type debt brakes into their constitutions.

At the time we wrote, "The inclusion of the debt brake into the constitution means the grand coalition no longer has room for maneuver, financially. As a result socially necessary investment in education and infrastructure is rendered impossible. The debt brake is being used primarily for political purposes. It provides the pretext to impose rigorous austerity measures in the face of massive resistance. Following an election, the SPD and conservative Union will declare that the promises they made in the election campaign cannot be realized due to the debt brake."

The debt brake has since had devastating consequences at both a federal and state level. Between 2000 and 2009, the debt burden of states increased by more than 50 percent. This is overwhelmingly a result of tax cuts to big business and the rich, combined with massive handouts to local banks in the wake of the 2008 finance crisis. In order to comply with the debt brake, some states have had to reduce their expenditure by almost 20 percent.

A large part of state budgets, however, consists of expenditure for legally binding services or transfers of finances from the federal budget to the municipalities. In addition the states must pay annual interest payments to the banks—a sum totaling €4.5 billion in NRW in 2010. The debt brake can therefore only be met by drastic reductions in social investment and cuts in spending on public sector workers. In NRW, out of a total budget of €56 billion, the state pays out €21 billion in personnel costs for its 320,000 employees and officials.

In principle, all of the political parties in North Rhine-Westphalia are agreed that massive cuts be made in the coming years. The SPD-Green coalition led by Hannelore Kraft has explicitly "set as its aim budgetary consolidation and respect of the debt brake in 2020." And in a press release last Thursday the finance department in NRW proudly announced that following its budget plans for 2011, NRW "will once again be the state with the lowest per capita expenditure."

The conflicts between government and opposition, which led to the latest court ruling, are not about whether cuts should be made, but rather how best to implement them. The Left Party, which supports the SPD-Green administration in the NRW parliament, is also in principle willing to accept and implement budget cuts. It has done so repeatedly in Berlin, where the party has shared power with the SPD for the past 10 years.

A few days ago, Premier Kraft threatened to appeal to voters if the constitutional court revoked the supplementary budget. Now, however, she rules out new elections. On Monday she told the Berlin *Tagesspiegel*, "Basically, we are not seeking new elections, because this government has been elected for five years, and we have created our coalition for five years."

This is despite the fact that the SPD and Greens are reckoned to have good chances of coming out on top in a new election. Both parties fear, however, a campaign in which they would be expected to speak out against the very cuts they decided to implement a long time ago.

The CDU and FDP also have little interest in elections in which they could expect to suffer even greater losses than in May last year. They have, however, threatened on many occasions to request the dissolution of parliament if the supplementary budget is declared unconstitutional and will have a hard time reneging on their pledge.

The Left Party, which has faithfully lined up behind the minority government of Social Democrats and Greens from the start, fears it could lose votes and its seats in parliament in a new election. A statement of Left Party leaders and parliamentary representatives declared, "Repeat elections are no solution."

Regardless of whether new elections take place in NRW this year, all of the political parties are united in their determination to uphold the ruling of the constitutional court and resolve the budget crisis at the expense of the population.

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