

German court clears the way for military deployments without parliamentary approval

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With last Wednesday's decision, the Federal Constitutional Court in Karlsruhe, Germany further weakened the requirement of parliamentary approval for foreign deployments of the military. The ruling strengthens the powers of the executive branch to organize and carry out unauthorized foreign deployments.

In principle, parliament must agree to any deployment of armed forces in a foreign country. Paragraph 5 of the Parliamentary Participation Act states that only when faced with an "imminent threat" may the government make such a decision alone. Even then, however, it must acquire the agreement of parliament at the earliest possible date.

Up to this point it had been unclear whether subsequent parliamentary agreement would still be required if the deployment had already ended before a parliamentary vote. Now the Supreme Court has ruled that the government may act alone in such cases and does not have to seek the agreement of parliament. Decisions by the government in the case of an imminent threat have "the same legal effect as a deployment decision arrived at together with parliament under normal circumstances," reads the court opinion.

The ruling lays the foundations for further worldwide military interventions of the German military, free from any parliamentary control. Not surprisingly, express agreement came immediately from the ranks of the military. Attorney and reserve army Major Robert Glawe praised the ruling in the *Legal Tribune Online*, saying it was a "decision in favor of the soldiers," who now no longer have to be sent to other countries on a legally uncertain basis. It had shown the limits of an "extensive parliamentary control."

The ruling goes back to a complaint of unconstitutionality made by the parliamentary fraction of the Greens on August 11, 2011, after the black and yellow coalition government of the Christian Democratic

Union/Christian Social Union and the Free Democratic Party ordered evacuation measures as part of "Operation Pegasus" in Libya. The Greens were not opposed to the evacuation, but insisted that such an undertaking required parliamentary consent.

"Operation Pegasus" was a large-scale military operation for the evacuation of foreign nationals from Libya. The Operations Command of the military positioned the frigates "Brandenburg" and "Rheinland-Pfalz" as well as the taskforce supply ship "Berlin" and the fleet service boat "Oker" on the east coast of Libya. Up to 1,000 soldiers were placed on standby. The operation, which consisted of deployments of German and British forces, removed 262 people, including 125 Germans, from Libya between February 26 and March 3.

The subject of the federal court's decision was the evacuation of 132 people, 22 of them Germans, from the desert city of Nafloorah in Eastern Libya. On February 25, 2011, only a few days after the start of the NATO war against Libya, in which Germany was at least officially not a participant, Chancellor Angela Merkel (CDU), Defense Minister Karl-Theodor zu Guttenberg (CSU) and Foreign Minister Guido Westerwelle (FDP) decided to carry out the evacuation. They informed in advance the fraction heads in parliament and the representatives of the fractions on the defense committee. An agreement of parliament was, however, not obtained. Among those evacuated were the employees of the BASF subsidiary Wintershall, which operated oil production facilities in Libya.

The evacuation was carried out by 20 soldiers, 12 paratroopers and eight military police who, in the "code of conduct for soldiers of the task forces in the military evacuation operation LIBYA" issued by the operations command, were explicitly authorized to use weapons against people and property for the enforcement and security of the military evacuations.

It is hardly surprising, then, that the federal court established that the case concerned a deployment of armed soldiers, to which the parliament would have had to agree. In this specific case, according to the federal court, a subsequent agreement of parliament would not have any legal effect if the deployment was already over. Moreover, it was also “not the job of parliament to rule on the legitimacy of executive actions.” This right was granted to the constitutional courts alone—“upon request.”

The ruling of the Federal Constitutional Court follows a familiar pattern. It has always been the task of the court to interpret constitutional provisions in the interest of German imperialism—or to bend them in favour of those interests.

As a response to the monstrous crimes of the German Wehrmacht in the Second World War, Germany was initially prohibited from using its armed forces for aggressive purposes. Article 26 of the constitution explicitly prohibits aggressive war. But as early as the 1950s, the pacifist pretenses began to fall away, and the law was changed.

Further changes followed in the 1960s. As part of the emergency laws of 1968, the grand coalition of Kurt Georg Kiesinger introduced Article 87a into the constitution. Along with domestic military deployments, it legitimized the deployment of armed forces for reasons other than defense, as long as the law expressly permitted it.

In the aftermath of the reunification of Germany, this process has been stepped up considerably. At the beginning of the 1990s, the coalition government led by Helmut Kohl (CDU) deployed the German military for foreign operations of the United Nations and NATO forces. Soldiers were sent without approval from parliament to participate as part of the armed UN “peace missions” in Somalia and Cambodia and the German air force participated in the NATO surveillance flights over Bosnia-Herzegovina.

In 1992, the Social Democratic Party, which was then in the opposition, swung over to the new foreign policy course. But in the case of “Pegasus,” like the Greens, it called for a legal clarification.

The consequences are well known: The Federal Constitutional Court ruled in July 1994, in the so-called “Out-of-Area” decision, that foreign deployments of the German military were constitutionally allowed, but only with the consent of parliament.

This decision broke the ice for all future foreign deployments of the military. Only 10 days after the ruling,

the first mandates were granted for deployments in the Adriatic and in Bosnia-Herzegovina. This was followed by the systematic expansion of deployments, especially under the SPD-Green government of Gerhard Schröder and Joschka Fischer, above all the participation in the Kosovo War in 1999 and in Afghanistan in 2001. Today, German soldiers are active in Liberia, Mali, the Western Sahara, Sudan, South Sudan, Somalia, the Horn of Africa, Lebanon, Iraq, Turkey, in combat aircraft over the Baltics and on warships in the Mediterranean.

The latest decision of the Federal Constitutional Court is part of the return of German militarism to the world stage and conforms to the demands of the ruling class to “commit itself earlier, more decisively and substantially in matters of foreign and security policy,” as foreign minister Frank-Walter Steinmeier put it at the Munich Security Conference last year. Parliamentary approval has long been a thorn in the side of the German elite when it comes to the implementation of these goals.

In April 2014, a commission was formed under the chairmanship of former defense minister Volker Rühle (CDU) dedicated to the “review and safeguarding of parliamentary law in the mandate of foreign deployments of the military.” A report submitted by the commission in July already recommended a “legislative clarification of the definition of deployment.” Among the matters to be clarified are, “which practically relevant types of deployment do not involve an armed operation and do not require the consent of parliament?” According to Rühle and Co., training missions and humanitarian missions do not require parliamentary consent.

With its latest ruling, the constitutional court goes a step further. It clearly states that, under certain conditions, even an armed operation no longer requires the approval of parliament.



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