

German Court Ruling Undermines Democracy

by Rainer Apel

Sept. 7—The Constitutional Court of Germany today gave a green light to the EU bailouts that have occurred so far, while stating that any future rescue packages need to be approved by the Bundestag’s Budget Committee, and that the transnational guarantees should not be so large as to jeopardize national budgetary autonomy. The Court rejected the two legal challenges by the “five anti-euro professors” (Wilhelm Hankel, Wilhelm Noelling, Albrecht Schachtschneider, Dieter Spethmann, and Joachim Starbatty) and by Bundestag member Peter Gauweiler (Christian Social Union), on the grounds that the plaintiffs had not provided enough evidence of their charge that the bailout policy violates the Constitution.

Four of the plaintiffs had filed suit previously before the Constitutional Court, challenging the constitutionality of the euro itself in 1998, before it went into effect the following year. They charged that it violated at least four articles of the Basic Law: Article 14 (guarantee of property), Articles 20 and 28 (guarantee of the social welfare system; Article 38 (sovereign, democratic rule). Article 38 specifies, Professor Hankel said at the time, “that no German government can have a mandate to govern against the nation.” The European Monetary Union (EMU) would deepen the economic crisis and expropriation of social rights and savings, the plaintiffs declared.

The Court ruled against them and the euro came into being, with the disastrous consequences we see today.

In 2010, they launched another challenge, this time against the Eurozone bailout of the banks that had loaned money to Greece.

At the World Economic Forum in Davos, Switzerland, on Jan. 28, 2011, Hankel challenged the advocates of the euro, saying he was “coming from a country which is still suffering from the tragic mistake of some 80 years ago, when a government tried to make public savings and to pay public debt—that was the last government before Hitler came to power.” He added that the Eurocrats’ drastic budget cuts and the sacrifice of

national currencies to the euro takes away the pillars—budget and currency—on which a sovereign state must rest. The euro system is doomed to failure, Hankel said.

The Court, after repeated delays, finally announced its decision this week.

‘Black Day’ for Germany

The Court decision makes it impossible to move ahead with the supranational eurobond option for the Eurozone in the weeks ahead. But it does not set out any clear criteria for limits to the bailouts in the future.

Although the judges said they did not want to decide on economic, financial, and European policies, they also stated that the guarantees extended by the government to the Eurozone were of no concern—although they amount to EU170 billion, which is half of the German national budget! And even worse, they confirmed the “legislature’s assessment” that, even in the event all the guarantees had to be paid out, it would still be possible to “refinance” such losses through “increases in revenue, cuts in spending and longer-term bonds.” In others words, the Court authorizes the government to loot the citizens for the sake of the banks.

And although the Court warned against future transnational guarantees, it approved those already extended through the European Financial Stability Facility. The way the EFSF functions is that countries that are still solvent have to assume the loan guarantees of a country that is deemed no longer able to provide its share. Only 15 months ago, the German share was EU123 billion; now it’s up to EU211 billion. With the expanded powers for the EFSF demanded by the German Finance Ministry, that figure would go up to EU253 billion.

Finance Minister Wolfgang Schäuble’s plan is to keep secret the amount of sovereign bonds purchased by the EFSF, and only inform a special committee in the Bundestag of them. None of this committee’s sessions would be made public, and its members would be forbidden to inform even other members of the parliament of contents—like the secret oversight committee created in 2008 for the national German bank bailout fund SOFFIN.

National sovereignty and the rule of law were further undermined by the Sept. 7 ruling of the Constitutional Court. One of the plaintiffs present in Karlsruhe, Professor Schachtschneider, called the ruling a “black day” for Germany and Europe.