



FEPS

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Ruling of the German Constitutional Court on the Lisbon Reform Treaty

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This study was carried out in the aftermath of the German Constitutional Court deliberations on the constitutionality in German law of the Lisbon Reform Treaty.

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1) Introduction

On 30th June 2009 the German Constitutional Court assessed the compatibility of the Treaty of Lisbon with German law. The Constitutional Court judged that there are no decisive constitutional objections to the Act Approving the Treaty of Lisbon. At the same time, the Court urged the German Parliament to take responsibility for the process, to undertake preparations and discussions and to vote on the bill that must accompany the ratification process so as to clarify the role of the Parliament in the process of the EU integration.

2) Judgement of the German Constitutional Court

The Court ruled that the aforementioned Treaty is compatible with basic German law. It pointed out in its interpretation that the Treaty would not lead to the formation of an EU State. Under the Treaty, the EU would still remain an association of sovereign states to which 'the principle of conferral applies'. The judgment implies that within the current circumstances a new accompanying law is necessary to ratify the Treaty of Lisbon. However in the future, any new Treaty would require German citizens to decide on its acceptance or rejection. The explanation given is that the constitutional organs cannot transfer themselves the powers they were given abroad.

The Court ruled that the German Parliament chambers shall be secured a stronger say in all EU affairs, which means that the appropriate rights of participation in European lawmaking shall be granted to both Bundestag and Bundesrat. The court demanded that MPs to make efforts to clarify the clause whereby EU leaders, when acting unanimously, can decide to move an area from unanimity to QMV. The ruling states that the ultimate power for such a decision should rest with the parliament.

According to the Court's recommendation both chambers need to pass an accompanying law and to vote on the changes, This will take place at the end of August/beginning of September allowing the Treaty to be ratified before the German parliamentary elections on 27th September 2009. It is also important to note that included in this schedule is an aim to have a decision taken prior to the referendum on the Treaty in Ireland.

3) EU Press Commentary

Most of the European digital media (e.g. EuroActiv and EUObserver) saw the ruling of the Federal Constitutional Court as an important step in the ratification process of the Lisbon Treaty. It has been assumed that the ruling equals a guarantee of ratification, especially considering that the further steps are the responsibility of Parliament, where the majority of the MPs come from government coalition parties. In this light, media attention shifted immediately to Ireland and its 2nd referendum, as well as the challenging cases of Poland and the Czech Republic. Indeed the presidents of both Poland and the Czech Republic have declared their aim to be the last ones to sign the Treaty.

4) German Press Commentary

The German media have taken a different, and more critical, view and the tone of the journalists and experts interviewed on the topic is far less optimistic and welcoming of the entire procedure and its medium-term outcome. FAZ (Frankfurter Allgemeine Zeitung) takes the ruling as an opportunity to examine more closely the integration process and discuss possible future scenarios for the European Union. However, they underline that the integration process is underway, and the Court's ruling has pointed out the principles that require more attention and may influence the nature of further decisions. Among them there are democracy and democratic legitimacy that must be exercised through people's effective representation which is the national parliament. In that sense, the ruling does not allow the national chambers to transfer to the EU any rights that would limit the German institutions' influence or self-determination. This especially applies to aspects of social and economic policies, culture, judicial and military sectors. This is interpreted by another German Paper, Die Zeit, as a "clip around the ear", pointing out that the German Parliament has so far failed to take responsibility and thus an active role in the EU integration process. Its coverage is instead critical towards the Lisbon Treaty.

5) Meaning of democracy

Firstly, the question of democracy in the European Union is raised, drawing on how democracy is understood as a European value and what the contemporary reality is. The ruling focuses on the citizens' right to a democratic self-determination, which is an inalienable right according to the state's constitutional identity. The main principle retaining the constitutional power of citizens to determine public authority with regard to persons and subject matters through a general election remains. This therefore gives indispensable rights to national parliaments. They should, by this understanding, have a clear role in the integration process, as the *vox populi*, and freedom to determine national policies in economic and social matters. This understanding, however theoretical at this point, can at least be interpreted as a possible threat, even to already existing agendas and policies at EU level. It will be possible to answer the question of whether there was any danger after seeing the further procedures undertaken by the German parliament.

6) Quest for sovereignty

Secondly, the question of sovereignty was raised, a point related to the issue of democracy. Accordingly to the judgement, there is no uniform 'European people'. The EU continues to constitute a union of rule founded on international law, permanently supported by the agreement of the sovereign member states. This supports the first point by saying that therefore the true people's representatives – members of parliament – have to be given a clear role in progressing the integration process. That is also to guarantee the democratic public opinion-formation in a context of the future of Europe. This is a challenging approach that confronts the recent rise of right wing across Europe, which campaigned in the name of more power in the member states. This requires more attention from those supporting European social democracy. People are concerned about the welfare, employment and social security of themselves and their societies. Clearly, the ruling highlights the doubt about how much these concerns are truly

represented by the EU institutions. As such, this naturally matches with last years' debates on the democratic deficit in the EU.

7) Lessons for the European Parliament

A third point relates to the Court's view of the European Parliament, which met with much criticism from European analysts. This is the Court's assessment of the European Parliament itself. It states that *neither as regards its composition nor its position in the European competence structure is the European Parliament sufficiently prepared to take representative and assignable majority decisions as uniform decisions on political direction. (...) It therefore cannot support a parliamentary government and organize itself with regard to party politics in the system of government and opposition in such a way that a decision on political direction taken by the European electorate could have a politically decisive effect.* The Court sees a possibility that eventually the democratic deficit that is created in such a setting can be overcome through the work of the EP itself. However, it is by no means ready to acknowledge such ability at this point. Looking at the history of the EP starting from the first assembly in 1952 and then through the first direct elections in 1979 until today, it is apparent that the parliament has been developing and gaining its own space within the EU institutional system. Step by step, it has been expanding its work and therefore demanding more concrete rights. The Lisbon Treaty is naturally a next step towards a larger role for the EP. The ruling of the German Federal Court could become an obstacle to the further progress of this institutional development of half a century. This could potentially put into question the future of the only directly elected institution of the EU.

8) Conclusions

These three question marks: democracy, sovereignty in the union, and the construction of the European institutional framework are undoubtedly challenging matters and should be debated vigorously. This is especially important for the social democrats that in the last elections were not fully capable of convincing their electorate to go and vote exercising their civic rights on the EU level. This in combination with restrictions that German Federal Courts rules – such as narrow interpretation of self-determination, which it understands as the sole and indispensable right of the national legislator to decide upon social policy, economy, culture, military policy and juridical system – can in fact present an obstacle rather than a step forward, if the decision of the Court is interpreted in this way. Much is now in hands of the parliamentarians, who need to decide in a rather short time on these vital matters. Their approach and their political will has already been criticised as lacking a sense of responsibility in the context of the EU, and will be tested one more time on the eve of the upcoming elections.

Nevertheless, even when the judgement is commented on positively by German politicians, it represents a “clash” which affects the ongoing European integration and the future of a political Europe.