

# Preemptive Obedience: German Parliament Violates Constitution!

by Helga Zepp-LaRouche

*July 3—Mrs. Zepp-LaRouche is the national chair of the Civil Rights Solidarity Movement (BüSo), a German political party that has opposed the European Union and its Lisbon Treaty from the start. Her statement was translated from German.*

The German Federal Constitutional Court's long-awaited ruling on legal challenges to the Oct. 8, 2008 Act approving the European Union's Dec. 13, 2007 Treaty of Lisbon, and also to the "Act Extending and Strengthening the Rights of the Bundestag and the Bundesrat in European Union Matters," is a mixture of some very good, and some very bad elements. What is particularly bad, is that, in principle, the justices approved the Monster of Lisbon, despite the fact that the Irish "no" vote (and before that, the French and Dutch voters' "no"), had already nullified the treaty, according to the treaty's own provisions.

It is, on the other hand, highly significant that they declared the treaty to be valid only in the interpretation formulated by the Constitutional Court itself. And that interpretation includes, for example, the definition of the EU as a federation of countries retaining their national sovereignties. The court ruled that a revision of Germany's Basic Law [i.e., its constitution], as far as it concerns the principle embodied in Article 1 and Article 20, is impermissible, and stressed that European integration may not result in the system of democratic rule in Germany being undermined. And—equally important—the Constitutional Court reserves its right to review the constitutionality of the function of the European Union's institutions.

With this ruling, the Constitutional Court has defended the Basic Law, thus interrupting the dynamic underway since the adoption of the Maastricht Treaty in 1992, by which the EU has been increasingly transformed into a bureaucracy which is at the same time imperial and economically self-strangling, thanks to

the Stability Pact. That aspect of the ruling is quite good. But other, extremely serious problems remain.

The court ruled that the Bundestag [lower house of parliament] violated the constitution when it passed the "Act Extending and Strengthening the Rights of the Bundestag and the Bundesrat," because the rights of participation of the Bundestag and the Bundesrat in EU institutions have not been elaborated to the constitutionally required extent.

In acting as it did, the Bundestag did not strengthen its rights, but instead yielded to governmental pressure, simply handing over essential rights to protect the general welfare, to the EU bureaucracy in Brussels. Without the timely mobilization by the Civil Rights Movement Solidarity (BüSo), along with the constitutional challenges, and were it not for the still-undecided outcome of developments in Ireland, Poland, and the Czech Republic, we would be on the way to an oligarchical dictatorship run by Brussels—including military deployments over which the German government would have absolutely no say!

## How the Treaty Was Passed

The fact that the court in Karlsruhe found that the Bundestag's passage of this law was unconstitutional, throws a dramatic spotlight on the condition of democracy in Germany. Let us recall some recent history.

On Dec. 13, 2007, the EU heads of state, meeting in Lisbon, signed an EU "Treaty," which was 95% identical to the EU Constitution that had been rejected in 2005 by referendums held in France and the Netherlands. Leading legal experts in many countries expressed the view that the Lisbon Treaty would transform the European association of sovereign nation-states into a federal state, in which governmental authority would no longer emanate from the nation's people, as is required by Germany's Basic Law. That would involve a far-reaching amendment to the

*The Federal Constitutional Court, which placed constitutional restrictions on Germany's participation in the Lisbon Treaty.*

*Helga Zepp-LaRouche addresses the BüSo convention in Frankfurt-Sossenheim on May 17, 2009. The LaRouche movement in Germany campaigned against the European Union's anti-nation Maastricht Treaty before 1992, and today is opposing the Lisbon Treaty, a supranational monster.*



Bundesverfassungsgericht



EIRNS/Stuart Lewis

constitution, requiring a referendum.

The heads of state apparently shared French President Nicolas Sarkozy's view that such referendums would result, in every country where they were held, in a "no" vote. So, they sought to obtain ratification directly through national parliaments as quickly as possible, without much public notice. As anyone can verify with an Internet search, during the period between the December 2007 EU summit and the Bundestag's vote in April 2008, not a single substantial article or report appeared in the so-called leading news media, which

might have given the public an inkling of the broad scope of the Lisbon Treaty's provisions.

Almost by chance, this author discovered this operation, and the fact that the Treaty on which the Bundestag was supposed to vote existed nowhere in writing; instead, only the changes to the rejected EU constitution were available. In a presentation in Munich on Feb. 13, 2008, I called for opposition to the Treaty, and set in motion a Europe-wide campaign to expose its real nature.

During this mobilization, it also became clear that many members of the Bundestag had not read the Treaty at all, much less studied it carefully, but simply yielded to the pressure of the government and of their parliamentary caucuses. On April 24, 2008 the Bundestag ratified the Treaty with 515 "yes" votes against only 58 "no" votes and one abstention; and on May 23, the Bundesrat [upper house of parliament] did the same. Shortly thereafter, constitutional complaints were filed, first by Christian Democratic representative Peter Gauweiler, and then by the Left and the Environmental Democratic Party (ÖDP).

### **Constitutional Duty Neglected**

The second panel of the Constitutional Court has now found unconstitutional the law enacted by parlia-



*German Chancellor Angela Merkel and Foreign Minister Frank-Walter Steinmeier sign the Lisbon Treaty, Dec. 13, 2007. The treaty was signed by all EU heads of government, and has since been ratified by 23 out of 27 EU nations, but cannot go into effect without unanimity. An Irish “no” vote in a 2008 referendum has blocked it. The fight continues.*

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ment for broadening and strengthening the powers of the Bundestag and Bundesrat, “insofar as the Bundestag and the Bundesrat have not been accorded sufficient rights of participation in European lawmaking procedures and treaty amendment procedures.” In other words: Rather than expanding and strengthening the powers of the Bundestag and Bundesrat, it gave up these powers, and delegated them to Brussels! The Court recognized the unconstitutionality in respect to Basic Law Article 38, Section 1, which says: “1) The delegates of the Bundestag will be chosen by general, direct, free, equal, and secret vote. They are the representatives of the entire people, not bound by orders or instructions and subject only to their own consciences.”

How are we to judge members of the Bundestag who so lightly give up their primary duty, namely, to be representatives of the people? The answer to this rhetorical question is obvious: What has happened is a monstrosity, but it throws light on political relationships in Germany, where many delegates either directly serve the interests of financial circles and institutions, or, if they occasionally champion the general welfare, would never carry it so far as might endanger their careers.

But the unthinking submissiveness of the majority of delegates vis-à-vis the EU bureaucracy also reflects the admission that the European nations lie under the influence of the financial structures of the British Empire. For these financial interests not only deter-

mine—still, in spite of the financial crisis—the neoliberal financial policy of the EU; it is also due to their control that the former Red-Green [Social Democratic-Green party] coalition in Germany carried out the deregulation of financial markets in 2004, which first enabled the unconstrained operation of the “financial locusts” and the casino economy. Thus the members of the Bundestag felt, consciously or unconsciously: “If we are under the yoke of an EU dictatorship in any event, then why should we still pretend that we have any powers at all? And certainly this goes for the absurd conception that we are representatives of the people and must defend their rights. In any case, that does not correspond to reality, so it also doesn’t make any difference whether we spoil the Basic Law.”

We really have to thank the Karlsruhe justices that this violation of the constitution has been rejected. With the Karlsruhe judgment, the Bundestag must now incorporate the findings of the Constitutional Court, which are set down in detail in the 150-page opinion, into a new outline of an accompanying law. It is admittedly ominous, that within about one hour of the pronouncement of the judgment, the government coalition partners had set a parliamentary debate for Aug. 26 and beyond that a vote as early as on Sept. 8, on the new accompanying law which, after all, must precisely reflect the 150-page detailed opinion, which, this time, would have to be read and understood by all delegates. This haste still betrays the original intention.



EIRNS/Karsten Werner

*Organizers from the Civil Rights Solidarity Movement (BüSo) in Dresden, Germany on May 28, 2008. The banner reads, “No to the EU Dictatorship! We demand a referendum on the EU Treaty!” The BüSo has played a catalytic role in rallying opposition to this disastrous treaty. At the megaphone is BüSo candidate Marcus Kürth.*

## The Court’s ‘Competence’ Proviso

The Constitutional Court also really could have criticized the proceedings of the government, although it was not to be expected that it would have done this, given the enormous impact that would have had. The justices have admittedly created new facts in the case, because they have determined that the Treaty applies only in the construction specified by them. Thus it is emphasized, that Germany’s accession into a European federal state would require a declared abandonment of the sovereign national statehood guaranteed by the Basic Law, and the creation of a new constitution. But the EU would remain a league of sovereigns founded on international law, which would be permanently sustained by the legal treaty intention of sovereign states.

Furthermore, the Basic Law allows neither the Legislative body nor the Executive power to claim constitutional priority, and thus to encompass the fundamental properties of the Constitution. It is extremely interesting that the justices stress that any change in the Basic Law that affect the fundamental principles laid down in Article 1 and Article 20, is impermissible, since these are protected by a so-called perpetual guarantee. The Court thereby contradicts the “common terms” listed under Title 1 of the Lisbon Treaty, which in Arti-

cles 1-6 purport to be the EU guarantees of human dignity, freedom, democracy, etc. These values belong to the inalienable constitutional principles of the German Basic Law, which do not stand at the disposal of politics. Karlsruhe has likewise affirmed this for Article 20, which establishes the character of Germany as a social state, as well as the right of resistance whenever anyone seeks to change this character.

Also very important is the clarification by the Constitutional Court justices, that “the Basic Law does not grant the German state bodies powers to transfer sovereign powers in such a way that their exercise can independently establish other competences for the European Union. It prohibits the transfer of competence to decide on its own competence (*Kompetenz-Kompetenz*).” What the justices mean by this neologism is nothing else than what the EU Treaty calls the “simplified procedure for change,” by which the EU Commission wants to pile on capabilities for ever-greater jurisdictional competencies, without any further controls—a measure which German legal expert Prof. Karl A. Schachtschneider has called “the enabling law.”

It will also be interesting to see to what extent Karlsruhe was in earnest, in saying that the Constitutional Court holds the controlling jurisdiction. Because an

opinion of the Juridical Administration of the [EU] Commission of June 22, 2007 had said: “Under the jurisdiction of the [European] Court of Justice, the priority of European Commission law is one of the cornerstones of Community Law. The fact that the principle of this priority will not be included in the future Treaty does not in any way alter its existence, or the existing jurisdiction of the Court of Justice.” The stuff of conflict is definitely preprogrammed here, and it remains to be seen whether the justices perform their watchdog function in the coming storms as well.

### A Dangerous Flaw

Even if the Constitutional Court has doubtless affirmed important principles of the Basic Law, the primary weakness lies in a different aspect. For example, the justices spoke about the trade policies of the EU, and the dislocation effected by the Treaty in jurisdictional competence in the matter of conclusion of international commercial agreements—and, connected with that, the breaking of legislative cooperation between the Bundestag and Bundesrat—when the world economic and financial system has been for nearly two years now in an ever more dramatic, climactic breakdown crisis. Since the outbreak of this crisis, Brussels has had little to say. Completely lacking, is a reflection that not only the neo-liberal economic and financial policy of the European Union, but the neo-liberal paradigm itself, have broken down. The Maastricht criteria, for example, are long since out the window, and they are not somehow going to return, because this system is unsalvageably bankrupt.

What the justices have said about democratic principles sounds very good. Perhaps they really don't know that democracy in Germany is far less optimally ordered than one could guess from their statements. For, many people do not feel themselves to be represented by any authority; rather, they experience daily that there is no one to whom they can turn. The irresponsible behavior of the members of the Bundestag who voted for the above-mentioned accompanying law, makes clear only one aspect of this state of affairs. The fact that the media didn't report on it, prior to its enactment, is another. If the voters learn anything from this affair, then they will not re-elect a single one of those delegates who so frivolously abandoned their sovereign powers to Brussels. The candidates of the BüSo will let no such thing happen.

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## Interview: Dietrich Murswiek

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# High Court Insists on National Sovereignty

*Professor Murswiek is a professor of constitutional and administrative law, as well as German and international environmental law, at the University of Freiburg, Germany. He represented parliamentarian Dr. Peter Gauweiler in his case against the Lisbon Treaty, which the Federal Constitutional Court, in Karlsruhe, decided on June 30 (see accompanying article). EIR's*



Klaus Mellenthin

*Claudio Celani and Rainer Apel interviewed him on July 1, on the details and significance of the high court ruling. The interview was translated from German.*

**Celani:** The ruling by the Karlsruhe court was immediately received in many media, but also by the government in Berlin and by the EU Commission in Brussels, as a triumph for the Lisbon Treaty. Do you also see it that way?

**Murswiek:** No, this assessment is totally false, for two reasons. The Treaty could only be approved by the Constitutional Court under specified conditions. First, the German accompanying law has been declared contrary to the Basic Law,<sup>1</sup> and the Constitutional Court

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1. The *Grundgesetz*, or Basic Law, is Germany's constitution. When it was drafted and approved in 1949, the word *Verfassung* (constitution) was not used, since it was in effect only for West Germany (Soviet-occupied East Germany would soon have its own constitution); was subject to approval by the Western occupying powers; and was regarded as provisional, subject to change and ratification in a future reunified Germany. After reunification in 1990, the Basic Law remained in force, with slight changes. Major modifications were made in 1994, 2002, and 2006. The “accompanying law” to which Murswiek refers is the German law that would have adapted the nation's legal system to the Treaty—ed.