

Will the Court Rule for, or Against A Future for Germany and Europe?

by Rainer Apel

July 13—Despite mounting public pressure not to ratify the European Stability Mechanism (ESM) and Fiscal Pact treaties which transfer even more sovereignty from the member-states to the neo-imperial European Union bureaucracy, the national parliament (Bundestag) of Germany, with an 85% majority, passed the two treaties on June 29.

With that, the main battlefield against the ESM moved to the Constitutional Court in Karlsruhe, which held a first public hearing on the legal complaints July 10, because the judges had to rule first on several plaintiffs' requests for injunctions, made to prevent President Joachim Gauck from signing the treaty, keeping it on hold, and to prevent the government from any transfer of money to the ESM bailout fund.

For a period of several hours before the June 29 session, it looked as if there would be a delay of the debate and vote, because many Bundestag members (MdB)—in the government parties as well as in the opposition—were skeptical about the outcome of the EU Summit in Brussels, which had just been concluded. Most of the media, that afternoon, reported that Chancellor Angela Merkel had dropped all remaining reservations against the ESM becoming a bank or mega-fund, with the power to bail out banks directly, without having to consult with the relevant governments. The ESM was designed as a permanent fund, outside of any political or legal control, with an appointed board of governors, and with the privilege to soak as much money from the capital markets in Europe as it deemed necessary for the coming mega-bailouts.

As there was unrest among many Bundestag members, Merkel was faced with the threat of not receiving the two-thirds majority of votes she needed for the ratification of the ESM; but the opposition Green Party had already arranged with Merkel's Christian Democrats not to postpone the parliamentary session, therefore the

vote was rammed through—also with the votes of the opposition Social Democrats. The only party voting against the ESM was the left-wing Linke, which took the case straight to the Constitutional Court, immediately after the vote, as did several individual dissident MdBs from the other parties.

The court case in Germany received wide attention throughout Europe, notably in Ireland and Austria, where the opponents of the ESM intend to take the issue to their own constitutional courts; and in Italy, where the opposition is still in the early phases of preparing similar court action.

Independent Irish Member of Parliament Thomas Pringle notified the High Court on June 26 that he would file a request for an injunction to restrain completion of the ratification of the ESM treaty, on grounds that it breaches EU law, the EU treaties, and the Irish Constitution. Pringle argues that ratification of the ESM treaty is not, as the Government claims, "necessitated" by Ireland's membership in the EU, since both the ESM and the fiscal pact are treaties under international law, and not EU treaties.

In Austria, the national parliament, which also passed the ESM on July 4 (orchestrated also there with the treasonous Greens selling out the opposition, and joining the government camp), the two opposition parties, FPÖ (Freedom Party) and BZÖ (Alliance Future), had already announced before the vote, that they would take the bailout fund to the Constitutional Court of Austria.

In Italy, Sicily-based anti-ESM activist Lidia Undiemi wrote a passionate statement entitled: "The Defense of Constitutional Values Starts in Germany: Let Us Join It!" Undiemi said that the fight in the EU is not between Germany and Italy, or elsewhere, but between peoples and the oligarchy; that is why the constitutional challenges in Germany are important, because parts of the

institutions are thus defending the people. So far, no such legal action to defend the people of Italy has been launched, Undiemi charged, adding that “It is not an exaggeration to say that at a national institutional level, the defense of the Italian people against the ESM and Fiscal Compact treaties is currently being led by German representatives.”

Public Hearing in Karlsruhe

On July 10, the nine-hour public hearing at the Constitutional Court in Karlsruhe on the legal challenges to the ESM, provided ample opportunity for the plaintiffs to explain their views, and to expose the government and the EU institutions for their anti-democratic and economically ill-founded policies. The fact that the hearing was public, and that the Court had made clear beforehand that it would take the complaints seriously, and not (as the government wished) throw them out, had the government on the defensive, even though Finance Minister Wolfgang Schäuble, in his testimony, reiterated the usual arguments for the ESM, and repeated his warnings of a collapse of Europe, if the bailout policy were not continued.

It became evident rather soon in the hearing that the government had never permitted a platform for posing alternatives to the bailouts, nor invited a sufficient number of critics of the ESM to balance out the pro-ESM experts at the Bundestag hearings. This emerged through the process of questions being raised on the timetable; on the hectic scheduling of the Bundestag session just two days before the planned ESM going into effect on July 1; on the short time period for preparation for the debate and all challenges; and from the government’s testimony—all providing strong evidence of what the government did, even in violation of the June 19 Court ruling on behalf of parliament’s right to appropriate and abundant information.



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The renowned law professor Karl Albrecht Schachtschneider appealed to the Court to rule against any further degradation of national sovereignty by EU institutions.

The plaintiffs who testified at the hearing fired heavy broadsides against the government: MdB Peter Gauweiler (Christian Social Union) pointed to a long list of government violations of the parliament’s right to information, compiled by dissident Christian Democrat MdB Klaus-Peter Willsch; Peter Danckert (Social Democrat) told the court that if there were any discussions in the Bundestag committees and plenary sessions, they took place only on paper: Never were questions that went deeper into the secrets of the ESM ever answered; never were the members allowed to vote yes or no; no discussions were ever permitted that would challenge the bailout policy as such.

Christian Democrat Manfred Kolbe charged that the government never, especially

not before the June 29 debate and ratification, provided anything written on the changes made to the original ESM text; that the issue was rammed through the parliamentary session in only two hours, without Bundestag members knowing exactly what they were voting on; and what one read in the press after the June 28-29 EU summit was quite different from what the government had told the Bundestag.

Who Will Pay?

In the afternoon session of the Karlsruhe hearing, a high point was provided by Prof. Hans-Werner Sinn’s testimony, that all the various government guarantees—from the rescue packages, the EFSF (European Financial Stability Facility), the ECB (European Central Bank), and the planned ESM, and the Target 2 program of the inter-central bank transfers—have already added up to EU2.2 trillion! Who would pay when the hour of truth arrived? Savings accounts, depositors, pension fund recipients, and the taxpayers, Sinn said. Because it is their money and their property which has been taken hostage to the bailouts that have already oc-

curred, or are planned for the immediate future. The banks are keeping that money to themselves without passing it on to the real economy—which, if at all, will be kept going only by the EFSF, ECB, and ESM in the future, again through loans and bailout programs, which are from taxpayers' money.

Bundesbank President Jens Weidmann, in his testimony, largely agreed with Sinn, only disagreeing on one crucial point: Weidmann wants to prevent a Eurozone disintegration or collapse; Sinn doesn't. Sinn said the world has seen more than 50 state defaults since 1945, which did not make the world go under; therefore, a Greek default or the default of the Eurozone as it is now, would not be the end of the world, either. But Weidmann delivered another serious blow against the government, saying that all the talk about market panic in the event of the ESM being delayed, did not make sense, because "the financial markets have already priced in such a delay; therefore, nothing will happen."

Another high point of the hearing in the afternoon session arrived, when plaintiff Karl Albrecht Schachtschneider, a renowned professor of public and international law, during his testimony, made a passionate appeal to the court not only to rule against the ESM, but to draw a line against any further scrapping of democracy and sovereignty by EU institutions, once and for all. To underline that, Schachtschneider cited the famous phrase of Germany's Classical poet Friedrich Schiller: "It is the the scourge of the evil deed, that it is forced to forever give birth to evil," a quote that has been a trademark of the German LaRouche movement (BüSo)'s campaign against the financial oligarchy's attempts to construct a neo-imperial Europe, for the past 20 years.

Mum on Glass-Steagall

Another trademark of the LaRouche movement—the commitment to put an end to all the bailouts by reintroducing a Glass-Steagall standard for bank reorganization—accompanied by the creation of a system of productive credit—unfortunately, was not addressed during the Karlsruhe hearing. It could have been addressed, especially because Professor Sinn had, just a few days before the hearing, published an open letter signed by more than 170 German economists, which called for a bankruptcy reorganization law, as one of the alternatives to endless and useless bailouts of ailing banks and funds.

Talking to representatives of the plaintiffs' camp on the sidelines of the hearing, two *EIR* correspondents found significant openness to discussing Glass-Steagall, and, in particular, high interest in the fact that Glass-Steagall is on the agenda of the U.S. Congress (Rep. Marcy Kaptur's H.R. 1489), about which the German mainstream media have not published a single word, while in Austria, the FPOE has made ample use of anti-ESM and anti-bailout documentation of the German LaRouche movement, including a BüSo video.

As for the schedule of the court proceedings in Germany after the July 10 hearing: Court president Prof. Dr. Andreas Vosskuhle said that in order to decide responsibly on the injunction requests—which were the main subject of the hearing—it would require more than three weeks; furthermore, a responsible dealing with the main challenges would require more than three weeks, in fact, more than three months; the minimum standard would be nine months, if not a year. The court felt itself in a dilemma as far as the timetable was concerned, Vosskuhle said; therefore, many aspects had to be investigated, such as what would happen "if" an injunction were handed down, or ruled against; whether a ruling on the injunction would invalidate the main ruling; what the situation would be if the court, in the end, found that parts of the ESM, and not the whole treaty, were in violation of the German Constitution. Vosskuhle's remarks point to further delays for the ESM, beyond the month of August.

Call for a National Referendum

In their testimonies, all of the plaintiffs made the point that the issues raised by the ESM were of such gravity, that the citizens should make the decision through a national referendum, according to Art. 146 of the Constitution, and that a court ruling should state exactly that. The pro-ESM camp fears such a referendum: All recent opinion polls have shown that up to 74% of Germans oppose the transfer of sovereignty to the European supranational institutions, whereas only 22% would favor that. Also, the Austrian opposition to the ESM has launched a campaign for a national referendum there against the "insanity of the ESM." The pro-referendum mobilization in Germany, in which the LaRouche movement has played a prominent and conceptually leading role during the past several years, will be the second main battlefield against the ESM in the coming weeks and months.