

Developments

Casenote – Euro Rescue Package Case: The German Federal Constitutional Court Protects the Principle of Parliamentary Budget

By Sebastian Recker*

A. Principle of Parliamentary Budget

In its *Aid Measures for Greece and Euro Rescue Package* case,¹ the German Federal Constitutional Court affirmed the Parliament's budget authority to provide financial aid measures to the European Monetary Union. The judgment conforms to the German Federal Constitutional Court's case law concerning the transfer of sovereign power to international organizations² and reaffirms that German participation in international organizations is linked to constitutive pillars of the German Basic Law. One of these pillars is the Principle of Parliamentary Budget. This principle provides that any financial aid package has to be approved by the Parliament of the Federal Republic of Germany (*Bundestag*) before guarantees can be given to other states by the Federal Government.³ In its holding, the German Federal Constitutional Court ruled that the aid measures for Greece and the euro rescue package were consistent with the Principle of Parliamentary Budget and German Basic Law.

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¹ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 7 Sept. 2011 (*Euro Rescue Package Case*), 2 BvR 987/10, available at http://www.bverfg.de/entscheidungen/rs20110907_2bvr098710.html; see also Press Release No. 55/2011, Federal Constitutional Court, Constitutional Complaints Lodged Against Aid Measures for Greece and Against the Euro Rescue Package Unsuccessful—No Violation of the Bundestag's Budget Autonomy (7 Sept. 2011), available at <http://www.bverfg.de/pressemitteilungen/bvg11-055en.html>.

² See BVerfG, 30 June 2009, 123 BVERFGE 267, 2 BvE 2/8 (Ger.); BVerfG, 7 June 2000, 102 BVERFGE 147, 2 BvL 1/97 (Ger.); BVerfG 12 Oct. 1993, 89 BVERFGE 155, 2 BvR 2134/92, 2 BvR 2159/92 (Ger.); BVerfG 22 Oct. 1986, 73 BVERFGE 339, 2 BvR 197/83 (Ger.); BVerfG 29 May 1974, 37 BVERFGE 271, 2 BvL 52/71 (Ger.); BVerfG 18 Oct. 1967, 22 BVERFGE 293, Case No. 1 BvR 248/63 (Ger.).

³ See *Euro Rescue Package Case*, 2 BvR 987/10, at para. 124.

B. Storyline

In May 2010, Member States of the Euro Group procured financial aid for Greece with bilateral loans. To facilitate German financial support, the German legislative body passed the Monetary Union Financial Stabilisation Act (*Währungsunion-Finanzstabilisierungsgesetz*).⁴ This law allowed the Federal Ministry of Finance to take out a loan for Greece amounting to €22.4 billion. In addition, the Heads of State and Government of the Euro Group authorized the European Commission to create a euro rescue package, which was enacted by the Economic and Financial Affairs Council. This euro rescue package was composed of two programs, the European Financial Stability Mechanism (EFSM) and the European Financial Stability Facility (EFSF). To authorize this rescue package under German national law, the German legislative body adopted the Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism (*Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus*).⁵ This act granted the power to provide loan collateral in the amount of 147.6 billion euros.

This legislation, however, encountered resistance from segments of the German population. Citizens filed constitutional complaints with the German Federal Constitutional Court that were accompanied by applications for temporary injunctions to prevent Germany from giving financial aid. In their point of view, the Monetary Union Financial Stabilisation Act, the Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism, and other European legal instruments and measures related to the financial aid packages were not authorized by the Basic Law. They alleged that German involvement in the aid measures bound Germany to prospective financial aid for other states as well.⁶ This constricted the Parliament's future budget policy and was not in accordance with the right to elect the Parliament of the Federal Republic of Germany under Article 38(1) of the Basic Law.⁷ Furthermore, these laws and

⁴ Gesetz zur Übernahme von Gewährleistungen zum Erhalt der für die Finanzstabilität in der Währungsunion erforderlichen Zahlungsfähigkeit der Hellenischen Republik [Act to Acquire Guarantees for the Preservation of Financial Stability in the Monetary Union Required Solvency of the Hellenic Republic], 7 May 2010, BGBl. I at 537 (Ger.).

⁵ Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus [Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism], 22 May 2010, BGBl. I at 627 (Ger.).

⁶ See *Euro Rescue Package Case*, 2 BvR 987/10, at paras. 42, 49.

⁷ See GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [Basic Law], 23 May 1949, Art. 38(1) ("Members of the German Bundestag shall be elected in general, direct, free, equal, and secret elections. They shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience.").

measures transgressed the plaintiffs' right to property under Article 14(1) of the Basic Law⁸ and Article 2(1) of the Basic Law⁹ because of its effect on the stability of prices.¹⁰ The temporary injunction to prevent the giving of a guarantee for loans to Greece was not issued by the German Federal Constitutional Court.¹¹ Even the application for a temporary injunction to prevent the euro rescue package was regarded as unsuccessful.¹²

C. Adjudication

The constitutional complaints regarding the right to property were already inadmissible. Irrespective of whether the stability of prices was even secured by the right to property, the plaintiffs did not account for any adverse effects on the value of money.¹³ Concerning Article 38(1), the constitutional complaints were at least admissible, but in any case unsuccessful. Article 38(1), together with the constitutional principle of democracy, Article 20(1), Article 20(2) and its protection from the so-called "eternity-clause," Article 79(3), granted the prohibition to relinquish budget autonomy.¹⁴ European legal instruments and measures were not public authority acts and therefore not admissible objects of a constitutional complaint.¹⁵ Only the Monetary Union Financial Stabilisation Act and the Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism were suitable objects of the constitutional complaints. Nonetheless, the German Federal Constitutional Court ruled both laws constitutional.¹⁶

From the German Federal Constitutional Court's view, the laws did not violate the Parliament's budget autonomy since the Parliament still had sole responsibility to decide total revenue.¹⁷ Any large amount of financial aid had to be approved by the Parliament,

⁸ See GRUNDGESETZ [GG] [Basic Law], 23 May 1949, Art. 14(1) ("Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.").

⁹ See GRUNDGESETZ [GG] [Basic Law], 23 May 1949, Art. 2(1) ("Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.").

¹⁰ See *Euro Rescue Package Case*, 2 BvR 987/10, at para. 37.

¹¹ BVerfG, 125 BVERFGE 385, 2 BvR 987/10 (Ger.).

¹² BVerfG, 126 BVERFGE 158, 2 BvR 1099/10 (Ger.).

¹³ See *Euro Rescue Package Case*, 2 BvR 987/10, at paras. 110, 112.

¹⁴ *Id.* at paras. 103, 104.

¹⁵ *Id.* at para. 115. This was already assessed in *Chemical Weapons Storage*, BVerfG, 77 BVERFGE 170, 2 BvR 624/83 (Ger.).

¹⁶ See *Euro Rescue Package Case*, 2 BvR 987/10, at paras. 94, 119.

¹⁷ *Id.* at paras. 124, 127.

therefore assuring sufficient democratic legitimation.¹⁸ Regardless, Section 1(4) of the Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism¹⁹ had to be interpreted in conformity with the German Constitution. This included the Federal Government's obligation to obtain prior approval from the Parliament's Budget Committee before giving guarantees under the Act.²⁰ The decision concerning admissibility was reached by seven votes to one. The adjudication towards the refusal of the constitutional complaints was decided unanimously.²¹

D. Insights and Outlook

The Parliament has the definitive right to set the budget, so why are citizens, by way of individual constitutional complaints, allowed to petition the German Federal Constitutional Court to review it? Would the proceeding of compatibility of legislation with the Basic Law by the Parliament not be more effective in securing parliamentary rights? Certainly, such an arrangement would be more convenient. But the Parliament did not perceive its responsibility for integration. Neither the Federal Government nor the *Land* Government, nor one fourth of the Members of the *Bundestag*, raised a claim pertaining to the compatibility of legislation with the Basic Law under Article 93(1) no. 2.²² Therefore, the German Federal Constitutional Court had to stretch to find a basis for adjudicating a claim pertaining to the compatibility of legislation with the Basic Law under the name of an

¹⁸ *Id.* at paras. 137, 140.

¹⁹ See Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus [StabMechG] [Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism], 22 May 2010, BGBL I at 627, § 1(4) (Ger.):

Vor Übernahme von Gewährleistungen nach Absatz 1 bemüht sich die Bundesregierung, Einvernehmen mit dem Haushaltsausschuss des Deutschen Bundestages herzustellen. Der Haushaltsausschuss hat das Recht zur Stellungnahme. Sofern aus zwingenden Gründen eine Gewährleistung bereits vor Herstellung eines Einvernehmens übernommen werden muss, ist der Haushaltsausschuss unverzüglich nachträglich zu unterrichten; die Unabweisbarkeit der Übernahme der Gewährleistung vor Herstellung des Einvernehmens ist eingehend zu begründen. Der Haushaltsausschuss des Deutschen Bundestages ist darüber hinaus vierteljährlich über die übernommenen Gewährleistungen und die ordnungsgemäße Verwendung zu unterrichten.

²⁰ See *Euro Rescue Package Case*, 2 BVR 987/10, at paras. 94, 119.

²¹ *Id.* at para. 142.

²² See GRUNDGESETZ [GG] [Basic Law], 23 May 1949, Art. 93 (1), no. 2 (Ger.) ("The Federal Constitutional Court shall rule: in the event of disagreements or doubts concerning the formal or substantive compatibility of federal law or Land law with this Basic Law, or the compatibility of Land law with other federal law, on application of the Federal Government, of a Land government or of one fourth of the Members of the Bundestag . . .").

individual constitutional complaint. It had to invoke the citizens' right to elect the Parliament to reassess compliance with the Principle of Parliamentary Budget.²³ In doing so, the German Federal Constitutional Court gave citizens compensation for their loss of influence, which occurred with the transfer of sovereign powers. Even though the Court ruled the laws constitutional, it showed a general willingness to encourage citizens' rights, especially when the *Bundestag* does not represent its citizens by carrying out its responsibility for integration.

²³ Current developments show the Parliament's recollect on its responsibility for integration. In response to the German Federal Constitutional Court's judgment, the Parliament stipulated the Principle of Parliamentary Budget into the Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism. *Cf.* Gesetz zur Änderung des Gesetzes zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus [StabMechG], 9 Oct. 2011, BGBL. I no. 51 at 1992 (Ger.), available at http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBI&bk=Bundesanzeiger_BGBI&start=//**%5B@at tr_id=%27bgb111s1992.pdf%27%5D.