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The German parliamentary debate about the ratification of the European Constitution

Abstract:

In this paper I will present the discussion, the positions and the arguments of the German political parties as principal actors in case of a reform of the German Basic Law. (Last updated 19/05/2005)

Contents

| | |
|--|----|
| Analysis | 2 |
| What are the arguments of the political parties? | 8 |
| And the civil society? | 15 |
| The Länder position | 16 |
| Conclusions | 17 |
| Bibliography | 18 |

Analysis

The debate about the ratification of the European Constitution within a referendum or via parliamentary way, reflected the discussion about the current political situation and German historic heritage, which implies topics placed between reform projects and the historic background. The beginning of this discussion may be identified with the change from the Republic of Bonn to the Republic of Berlin.

For historical reasons, the German Basic Law has defended for 55 years the representative democracy, the reasons which were used to explain the absence of basic democratic elements were the negative experiences with these elements in the Constitution of the Weimar Republic, which facilitated the rise to power of the Nazis in the 1930s¹, however, this argument has been questioned by recently studies and critics of this line of argument note that only two referendums took place during the Weimar Republic, which existed from 1918 to 1933.

Although Article 20 II of the Basic Law rules out “All state authority is derived from the people through elections and other votes”², the Articles 29, 118 and 118a determine that the term “other votes” can only be applied whenever the national territory will be restructured.

The opinion about the legitimacy of a political system based on the representative democracy changed along the time and in consequence the interests which demanded the incorporation of plebiscite elements in the Basic Law were grown. During the seventies the claim for more direct democracy was promoted through a movement that fought for more democratisation of the German political process, today the leaders of this movement have made the walk through the institutions and are now in significant political positions in the Federal Republic.

The question of a referendum on the European Constitution was very close related to the question about the general introduction of direct democratic elements, like referendums or popular initiative in the Basic Law, not only in themes of foreign affairs, i.e. when the country's sovereignty is affected, but also in themes of internal politics.

Some German states already have provisions in their state constitutions allowing for the possibility of plebiscites. In this sense at the Länder-level and local-level already exist positive examples of the application of direct democratic elements; i.e. binding

¹ The Nazis twice used plebiscites for aggressive purposes - for the remilitarisation of the Rhineland in 1936 and the swallowing-up of Austria in 1938.

referenda (Volksentscheid) or petitions/non-binding referenda (Volksbefragung), the year 2003 was the year with the highest number of popular initiatives not only at regional level but also at local-level, of the history of the Federal Republic, concerning sometimes curious questions as the highest height a building can rise in the town of Munich.

With the Socialist-Green coalition, the German government is formed by two parties that are mainly in favour of plebiscite elements. “We are a governing coalition that has presented itself in favour of referendums generally,” said Green Party MP Antje Vollmer.

During the last legislative period different bills were proposed to reform the Basic Law with respect to the introduction of basic democratic elements. Firstly, the bill proposed by the Party of Democratic Socialism (PDS), which was turned down in February 2000³ by all parliamentary parties because of tactical reasons and disagreement in specific details and secondly, the bill presented by the Socialist-Green coalition in March 2002⁴, which was the first bill since 1949 that got the absolute majority but not the two thirds majority, which is necessary to change the Basic Law, due to the rejection by the CDU/CSU opposition and the partial “no” of the FDP fraction in the Bundestag.

Regarding the celebration of a referendum on the European Constitution, the Free Democratic Party (FDP)⁵ presented for the second time on 28th April 2004⁶ a proposal for a bill to reform the Article 23 of the German Basic Law⁷. The bill was identical to

² Article 20 II BL: All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive, and judicial bodies.

³ Bill, PDS, 14/1129, 09.06.99, reform of the Art. 20, 76, 79 y 93, BL.

⁴ Bill, SPD, 14/8503, 12.03.02, reform of the Art.. 76, 79 introduction new Art., BL.

⁵ The bill was signed by the MP Ernst Burgbacher, Rainer Brüderle, Angelika Brunkhorst, Helga Daub, Jörg van Essen, Ulrike Flach, Otto Fricke, Rainer Funke, Hans-Michael Goldmann, Joachim Günther (Plauen), Dr. Karlheinz Gutmacher, Christoph Hartmann (Homburg), Klaus Haupt, Ulrich Heinrich, Birgit Homburger, Dr. Werner Hoyer, Michael Kauch, Dr. Heinrich L. Kolb, Jürgen Koppelin, Harald Leibrecht, Ina Lenke, Sabine Leutheusser-Schnarrenberger, Markus Löning, Dirk Niebel, Günther Friedrich Nolting, Hans-Joachim Otto (Frankfurt), Eberhard Otto (Godern), Detlef Parr, Cornelia Pieper, Dr. Andreas Pinkwart, Dr. Max Stadler, Dr. Rainer Stinner, Jürgen Türk, Dr. Claudia Winterstein, Dr. Volker Wissing, Dr. Wolfgang Gerhardt und der Fraktion der FDP

⁶ Bill, FDP, 15/2998, 28.04.04.

⁷ Article 23 I, Basic Law:

With a view to establishing a united Europe, the Federal Republic of Germany shall participate in the development of the European Union that is committed to democratic, social, and federal principles, to the rule of law, and to the principle of subsidiarity, and that guarantees a level of protection of basic rights essentially comparable to that afforded by this Basic Law. To this end the Federation may transfer sovereign powers by a law with the consent of the Bundesrat. The establishment of the European Union, as well as changes in its treaty foundations and comparable regulations that amend or supplement this Basic Law, or make such amendments or supplements possible, shall be subject to paragraphs (2) and (3) of Article 79. (<http://www.iuscomp.org/gla/statutes/GG.htm#23>)

the bill presented previously on 4th June 2003⁸, which was turned down by a big majority of Socialists (SPD), Christian Democrats (CDU) and Greens with 528 votes against, 50 votes in favour and six abstentions - only the PDS-party supported the Liberals motion. The second bill was also voted down by an overwhelming majority of lawmakers in the Bundestag.⁹ The proposal was turned down even though the opinion polls showed that most voters were in favour.¹⁰ The central argument of both liberal parties proposals was that the European Constitution is an essential reform of the EU that determines the future development of the Union not only in their conception but also in their competences. In this sense the FDP asked for citizens to have the possibility to decide about the ratification of the treaty in a popular referendum. Their bill referred only to a referendum held about the topic of the European Constitution.¹¹

The European Constitution is supported in Germany by a broad consensus. The parliamentary discussion followed by the policy Statement of Federal Chancellor Gerhard Schröder in the German Bundestag regarding the agreement reached by the heads of state and government of the European Union on the European Constitution¹² was characterised by an agreement between the political parties in the Bundestag. Schröder's positive view on the Constitution has been echoed by all German politicians, not only from the ruling Social Democrats, but also the opposition conservatives and liberal Free Democrats, which was criticised by various mass media because of the absence of a critical discussion¹³, which on the contrary existed about the way to ratify the Constitution.

Until summer the observer could see in this sense a complicated constellation in the German discussion. The political leaders of the coalition, who committed each other at the beginning of the current legislative period to assure a reform of the Basic Law,

⁸ Bill, FDP, 15/1112, 04.06.03.

⁹ Parliamentary debate on 28.05.2004, Plenarprotokoll 15/112.

¹⁰ A poll published in July in the magazine Stern found that 70 per cent of Germans wanted a say on the EU Constitution. "Mehrheit der Deutschen für Volksentscheide und EU-Referendum", Die Welt, 01.09.2004

¹¹ „(1a) Die Zustimmung der Bundesrepublik Deutschland zu einem Vertrag, mit dem eine europäische Verfassung eingeführt wird, bedarf der Zustimmung durch einen Volksentscheid. Die Mehrheit bei dem Volksentscheid ist die Mehrheit der abgegebenen Stimmen, wenn sie mindestens ein Viertel der zum Bundestag Wahlberechtigten umfasst. Ein Volksentscheid wird auf Beschluss des Bundestages durchgeführt. Das Nähere regelt ein Bundesgesetz, das der Zustimmung des Bundesrates bedarf.“
Bill, FDP, 28.04.04, 15/2998 and 04.06.03, 15/1112.

¹² Policy Statement by Federal Chancellor Gerhard Schröder in the German Bundestag regarding the agreement reached by the heads of state and government of the European Union on a European constitution Berlin, Friday, 2 July 2004, at 9 a.m.

introducing popular elements and making possible more citizenship participation, were against the celebration of a referendum on the European Constitution. Speaking in a press conference after a meeting with Prime Minister Tony Blair in London on July 15, Chancellor Schröder said, “How others do this is the decision of the respective national government,” and in an interview with the weekly magazine Spiegel, Schröder underscored “The Basic Law does not allow for a referendum. We will have a parliamentary process”.¹⁴ Also Foreign Minister Joschka Fischer, defended his preferences to disconnect the reform of the Basic Law and the ratification of the European Constitution, refusing a popular referendum¹⁵, in this sense both prefer a quick parliamentary ratification, to send a positive signal to other countries.

The Christian Social Democratic Party (CSU), and the liberal party FDP supported in general the idea of a celebration of a referendum about the Constitution at the Union-level, although both parties are against plebiscite elements in the Basic Law.

In autumn this constellation had changed. One part of the executive committee of the SPD argued for the first time at the end of July, in the context of the debate concerning the signature of the Constitution, in favour of a constitutional reform to pave the way for a referendum about the subject. Even though the majority of the executive committee of the party was uncertain and more against than in favour of a referendum, in this line the leader of the SPD Franz Müntefering affirmed in a letter to the socialist MPs the rejection of the party.¹⁶

At the end of the summer the chairman of the party announced the establishment of a working group to discuss the theme and that a new bill should be presented to the German parliament that would enable both citizen’s initiative referenda and referenda called by the government.¹⁷ While before and during the summer 2004 the SPD was in principle against a public referendum it took during the autumn a more positive position about a possible referendum, saying that the chances for a German referendum were no longer “completely unlikely”.

¹³ Karl Müller, EU-Verfassung im Deutschen Bundestag, Zeit-Fragen, Nr.27, 12.07.2004.

¹⁴ “Schröder will EU-Verfassung noch 2004 ratifizieren”, Der Spiegel, 15.07.04.

¹⁵ “Fischer lehnt Volksentscheid über EU-Verfassung ab”, Handelsblatt, 25.07.04. “Fischer sagte in dem Interview, [...] : “Wir sollten die Verfassung ziemlich schnell ratifizieren und möglichst vorneweg gehen.” Er sei aber offen für eine Grundgesetzänderung, die Volksentscheide generell ermöglichen würde.

¹⁶ “Müntefering: SPD gegen EU-Referendum”, FAZ, 27.07.04.

“Union liebäugelt nur mit EU-Referendum”, FTD, 30.08.04.

¹⁷ “Volksentscheid über neue Verfassung der EU?”, Hamburger Abendblatt, 30.08.04.

Finally in October 2004, the Socialist-Green coalition concurred to present changes to the German Basic Law and agreed in a meeting on 3 November on a draft bill to ratify the Constitution. The proposal has not been introduced into the Bundestag, but the coalition parties have invited the opposition to discuss the text. Mr Müntefering said, “If such a law is successfully passed in autumn, then it may be that a referendum would be possible in March or June 2005”, he invited the Liberal FDP and the Christian Democrat CDU/CSU opposition parties for talks over the possible change.

The speaker of the CDU in legal affairs, Norbert Röttgen, replied immediately, saying “we don’t want to speak about this theme”¹⁸ At a later date, the Chancellor underlined on the day of signing the European Constitution saying that the Government is prepared for a reform of the Basic Law allowing referendums in case the opposition agreed with this legislative changes.¹⁹ On the 10th November 2004 the Christian Democratic Union leader Angela Merkel responded by mail refusing an extra-parliamentarian dialogue about the theme, this was immediately interpreted by the coalition as a rejection of the bill.²⁰ “If nothing more happens, then it will be clear that this bill will not be able to see the daylight in time to pass the European Constitution by referendum”, said Mr Müntefering.²¹ Despite these proposals, the government has already accepted to prepare the way for a ratification of the Constitution via parliament.

The referendum bill provided two different ways to convocate referendums, on the one hand bottom-up elements such as Volksbegehren, Volksinitiativen, where 400,000 citizens should be able to initiate new laws to be presented in the Parliament, and on the other hand top-down elements as the convocation of a referendum after a decision of the federal government supported by two thirds of the Bundestag and the Bundesrat.²² The referendum bill would provide referendums only on topics where elements of the country's sovereignty are affected. The law has to be approved by two thirds majority in

¹⁸ “Union lehnt Verhandlungen über Volksentscheid-Gesetz ab”, Handelsblatt, 26.10.04.

¹⁹ “Ein Traum ist jetzt Wirklichkeit”, Der Spiegel, 29.10.04.

²⁰ “Merkel: Kein Gespräch über mehr „direkte Demokratie”, FAZ, 10.11.04.

²¹ “Likelihood of EU poll in Germany decreases”, Euobserver.com, 10.11.04.

²² “Rot-Grün nimmt neuen Anlauf für Volksentscheide”, FTD, 25.10.04.

In the first stage of the process, the Lower House of Parliament is required to address any initiative presented by the citizenry, provided at least 400,000 signatures have been collected. If the question is not addressed within eight months, the citizens can demand a plebiscite. The signatures of five percent of eligible voters (approximately three million people) must be collected within six months. Once the signatures have been presented, a referendum must take place within six months, and at least twenty percent must turn out to vote. If the question concerns an amendment to the Constitution, at least forty percent have to vote.

both houses, which can be reached by a coalition between SPD, the Green, the FDP and the CSU but at the same time this coalition sounded impossible and far away from the German political logic.

Finally, the Social Democratic Party decided on January 13 against holding a national referendum and to decouple the EU Constitution ratification and the legislative proposal to change the fundamental law, instead, “the Constitution will be ratified by parliament”, said Franz Müntefering.²³ He said furthermore, since the majority opposition party CDU had no signalled interest in introducing direct democratic elements in the fundamental law. Legislation on allowing referendums under the Basic Law would be submitted when the Constitution was approved by German parliament. German and French heads of parliament, Wolfgang Thierse and Jean-Louis Debré, agreed at the beginning of February to provide symbolic help ahead of French referendum. In order to increase the chances of a French “yes” in the referendum, the German parliament wanted to ratify the charter just before the French referendum.

The process of ratifying the Constitution in the Bundesrat started on 18.02.2005 and in the Bundestag on 24.02.2005²⁴. Politicians from all political groups in the German parliament spoke out in favour of the European Constitution in the first parliamentary debate on this subject. German Foreign Minister Joschka Fischer, from the Greens, said, “I hope one of the very important countries takes a clear, quick and correct decision”.²⁵ Although the Constitution received a broad support in both chambers, the main claims that parliamentarians made to the government were concerning conditions on the ratification of the Constitutional Treaty. While the Bundestag claimed regarding the content of the national implementation law, representatives from the German Länder, which claimed in other occasions for more direct democratic elements in the German political system, demanded more participation of the regional level in European affairs.²⁶

After the French President, who was faced with a declining gap between "yes" and "no" votes, established the date for the French referendum, on 08.03.2005, the Social Democrat (SPD) deputy Angelica Schwall-Dueren told the media that the Bundestag wanted to ratify the Constitution on 12 May. With this forwarded date, published just

²³ “SPD-Fraktion lehnt Volksabstimmung zur EU-Verfassung ab”, Der Spiegel, 14.01.05

²⁴ “EU-Verfassung: Politiker aller Fraktionen plädieren für Vertragswerk”, Der Spiegel, 24.02.2005.

²⁵ „Politiker aller Fraktionen für die EU-Verfassung“, FAZ, 24.02.2005.

²⁶ German Bundestag, Protocol of the 160. plenary debate regarding the European Constitution, 24.02.2005, Drucksache 15/4716.

one day after a bilateral informal meeting between the French President and the German Chancellor, the German parliamentarians wanted to conclude the ratification in the Bundestag before the referendum in France on 29 May was held, in order to encourage a positive outcome in its neighbour country.

On 12.05.05 the German Bundestag voted 568 in favour with 23 against and two abstentions to the ratification of the treaty, with this result the two thirds majority threshold needed was easily reached.

Nevertheless critics remarked the little public debate on the issue in the pre-ratification period. The vote on 12 May followed a more than 3-hour session during which speakers hailed the historic step that the Constitution represents for Europe without discussing its contents and as the magazine Spiegel remarked without enthusiasm.²⁷

The Bundesrat, will ratify the treaty at the end of May, this timetable was already questioned as some opposition parties and the regional representatives in the territorial chamber connected their support with more parliamentary participation on EU affairs.

What are the arguments of the political parties?

There are different opinions not only between the political parties but also politicians of the same parties were divided on the referendum question.

The ruling **German Social Democratic Party (SPD)** – 249 parliamentary seats – is mainly in favour of introducing plebiscite elements in the Basic Law, with the aim of improving the confidence of the citizens in the political system and to elevate the legitimacy of the system. “It's a huge chance to inspire a new understanding of the EU in the population,” said Sigmar Gabriel²⁸, Lower Saxony's SPD's parliamentary group leader.

The SPD has made it clear in various occasions that the party is against a special clause for EU matters but in favour of a change of the Basic Law to make possible referendums in different areas. The argument of the SPD is that former big steps in the European integration, like former enlargements, treaties changes and the decision to introduce the Euro were not subject to a referendum, for this reason it doesn't exist the urgency to reform the Basic Law now, to hold a referendum on the Constitution, knowing on one side the repercussions of a reform of the Basic Law and on the other side that the result of a referendum would be uncertain while the “yes” in the

²⁷ “95 Prozent Zustimmung, Null Begeisterung“, Der Spiegel, 12.05.2005.

²⁸ “Germans Mull Vote on EU Constitution”, DW-World.de, 30.08.04.

parliamentary way seems clear. The debate regarding European integration has always been an elite issue in Germany and there has been no referendum at the federal level, the popular attitude is difficult to foresee. Furthermore the party is more interested in ratifying the European Constitution quickly than in spending time trying to introduce legislative terms enabling referendums in Germany. In the same way the Member of European Parliament, Klaus Hänsch, argued that a referendum would not strengthen a European consciousness in Germany like those in Ireland, Denmark and Sweden have shown.²⁹

In case of a reform of the Basic Law, according to the SPD, referendums should only be used for international treaties that needed to be ratified. In this sense referendums could be convoked about foreign affairs themes only when elements of the country's sovereignty are affected, further enlargements would be excluded. In various occasions Jutta Limbach, the former President of the German Constitutional Court, oposed to the official position of her party and demanded a referendum to ratify the Constitution and for the accession of Turkey to the EU. She argued that the Germans were sufficiently mature to become a part of the political decision process and can not be only seen as passive observers while in other countries public referendums are going to be hold.³⁰

The party declaimed demands from opposition parties which complained more participation of the national but also regional parliaments in the formulation of the national position in European affairs, saying this would limit the activities of the government in Brussels underlining that existing parliamentarian control mechanism are adequate.³¹

While Martin Bury party member and Minister of State at the Federal Foreign Office spoke about the birth of the United States of Europe,³² the parliamentarian group does not see the Constitutional Treaty so perfect and proposed in its implementation Bill increasing the obligation of the government to inform the parliament on European legislative acts.³³

²⁹ Institut für Europäische Politik in co-operation with the Trans European Policy Studies Association and the Centre International de Formation Européenne, EU-25 Watch, No. 1, December 2004.

³⁰ "EU-Beitritt der Türkei - Limbach für Volksentscheid", Süddeutsche, 21.12.2004

³¹ "Bundestag will EU-Verfassung rasch ratifizieren" Handelsblatt, 24.02.2005.

³² Martin Bury in the German Bundestag, Protocol of the 160. plenary debate regarding the European Constitution, 24.02.2005,

³³ Gesetzentwurf der Abgeordneten Michael Roth (Heringen), Günter Gloser, Dr. Angelica Schwall-Düren, weiteren Abgeordneten und der Fraktion der SPD sowie den Abgeordneten Rainer Steenblock, Volker Beck (Köln), Ulrike Höfken, weiteren Abgeordnete des Bündnisses90/Die Grünen: Gesetzes über

The **Alliance 90/The Greens**, - 55 parliamentary seats – this party is for principle reasons and for his own tradition in favour of the implementation of direct democratic elements in the Basic Law, in contrast to the position of the SPD, the party argues for less complex ways to convoke referendums or popular initiatives and about broad themes, which can include the adhesion of Turkey.³⁴ A vast majority in the party defends the idea of a referendum on the Constitution, to increase the democratic legitimacy of the document and to constitute an european dialogue, Green Party MP Antje Vollmer said “At a time when scepticism is growing among the population about centralistic tendencies, making referendums possible would be a way of gaining trust. [...] This must also apply to holding a referendum on the EU Constitution.”³⁵ In this sense the party interprets the Constitution not just as a treaty in the same line like Amsterdam and Nice, which means the Constitution elevates the efficiency, the transparency and the democracy of the Union.³⁶ At the same time the party refuses the idea of a “special case European Constitution” like the proposal of the liberal party, arguing that such an idea came from the parliament and not from citizens and could be considered as a form of populism. In the election campaign for the european elections the Greens promoted the idea of a wide european referendum celebrated at the same day, this idea, however disappeared from their rhetoric. The green parliamentarian group introduced together with the SPD group the implementation law and supported in the parliamentarian debate the social democratic argumentation line.³⁷

As already mentioned the **Free Democratic Party (FDP)** – 47 parliamentary seats – presented two identic bills and nowadays the liberal party is the only party that was carrying an active campaign for a referendum on the European Constitution. Although only a minority of the liberal MPs is in favour of direct democratic elements in the Basic Law, the party presented itself with a strong unity on this theme, not only in the Bundestag but also in the media, being also the only party that defends a reform of the Basic Law just for the “special case European Constitution”. In this sense the party argues in favour of referendums for historical decisions like the European

die Ausweitung und Stärkung der Rechte des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union, 22.02.2005.

³⁴ “Ich bin für direkte Demokratie”, Focus, 11.10.04.

³⁵ “German EU referendum dilemma”, BBC News, 28.10.04.

³⁶ Webpage of the Alliance 90/The Greens, <http://www.gruene-fraktion.de>

Constitution.³⁸ In the parliamentary debate on 24.02., the liberal MP Werner Hoyer negated the constitutional quality of the treaty establishing a Constitution for Europe and demanded again a public referendum to ratify the text.³⁹ MP Leutheusser-Schnarrenberger expressed her apprehension about the fact that a too density commitment of the government to the parliament could be a handicap for the federal government in Brussels.⁴⁰

The position of the **Party of Democratic Socialism (PDS)** is, in some points, similar to the green's position with regard to direct democratic elements in the Grundgesetz, the party argues similarly for plebiscite elements in the Basic Law, but as I mentioned before, their bill was turned down by all parliamentary parties. In the current legislative period, the PDS is only represented by two MPs in the Bundestag, but participates in several regional governments, in this sense the party will have some influence on the question in the vote in the Bundesrat. Party members expressed in the past their preference for an wide european referendum, but with 25 separate referendums on the same date, on 08.05.05. This party is the only one that expressed that the European Constitution is antidemocratic, antisocial and militaristic, in this sense the party refuses the text and advocated for a referendum on the Charter to carry on a "No" campaign.⁴¹

As unique member of parliament, Gesine Löttsch (PDS) defeated the Constitution, criticizing the decision to ratify the Constitution via the parliamentary way and demanded a referendum on the text in the parliamentary debate on 24.02.2005.

On 12.05.2005 both MPs voted against the ratification of the Constitution.

Both conservative parties **CDU (Christian Democratic Union)** and the **Christian Social Democratic (CSU)** – 247 parliamentary seats – are traditonally sceptical about the introduction of plebiscite elements at federal level and never supported initiatives in this sense. In this line the leaders of the biggest German opposition party CDU have

³⁷ The last reference was publicated at the webpage of the Alliance 90/The Greens' on 26.07.04.

³⁸ Speech of Guido Westerwelle in the German Bundestag, 28.05.04.

³⁹ Werner Hoyer in German Bundestag, Protocol of the 160. plenary debate regarding the European Constitution, 24.02.2005.

⁴⁰ Leutheusser-Schnarrenberger in German Bundestag, Protocol of the 160. plenary debate regarding the European Constitution, 24.02.2005.

⁴¹ Gesine Löttsch, in Tagesordnungspunkt 27, Plenarprotokoll 15/119, 02.07.04.

“Aus der Sicht der PDS gibt es drei Ablehnungsgründe: Erstens. Die Verfassung wurde mit jeder neuen Verhandlungsrunde undemokratischer. Zweitens. Die Verfassung wurde mit jeder neuen Verhandlungsrunde unsozialer. Drittens. Die Verfassung wurde mit jeder neuen Verhandlungsrunde militärischer.”

reaffirmed their reluctance to change the German Basic Law to that effect. Angela Merkel has pointed out on numerous occasions that Germans' own constitution promotes representational democracy, that leaves little room for plebiscites. The CDU defends the parliamentary ratification but demands more competences for the Bundestag in the moment of new enlargements⁴² and more clarity between the competences of the German and the European Parliament.⁴³

The CDU is against an only referendum on the European Constitution in Germany arguing that firstly the introduction of popular referenda would endanger the democratic system and threaten the Parliament's legitimacy and secondly complex questions cannot be reduced to a simple 'yes' or 'no' vote.

In the same way the Christian Democrats accused the coalition to built up an obstruction to ratify the Constitution with the bill, playing with the uncertainty of the referendum result, whenever the acceptance of the Constitution by the parliament won't be a problem. In general the bill of the coalition was interpreted by the Christian Democrats as an attempt to distract the internal attention from other topics. Matthias Wissmann, chair of the CDU's European committee, said "It's a tactical trick, the SPD hopes for enough resistance among its own party and in the opposition that the suggestion doesn't find the needed majority and can say 'Well, we tried.'"⁴⁴ The political leaders of the party warn also about the possibility of a serious political crisis in case of a popular rejection.

On the other side the CDU is in favour of holding a referendum on whether to allow Turkey into the EU.⁴⁵ On this topic the German conservatives have the same position as their French counterpart, "... [On the question of Turkish membership and in supporting the Constitution] our positions are absolutely identical" said Sarkozy, the French conservative leader, on a CDU/CSU party meeting at the beginning of January to which he had been invited.⁴⁶

Nevertheless at the regional level some Minister Presidents, like the Premier of Federal State Saarland Peter Müller, the President of North Rhine-Westphalia, Jürgen Rüttgers,

⁴² "Ja zur Verfassung - mehr Bundestagsrechte", resumen de prensa, 29.10.04, www.cdu.de.

⁴³ Angela Merkel en Tagesordnungspunkt 27, Plenarprotokoll 15/119, 02.07.04.

⁴⁴ "Wissmann: SPD-Vorschlag zu Referenden ist 'taktischer Kniff'", Berliner Zeitung, 31.08.04.

⁴⁵ "German EU referendum dilemma", BBC News, 28.10.04.

⁴⁶ "Stoiber und Sarkozy machen Front gegen türkischen EU-Beitritt", Die Welt, 06.01.05.

and the Minister President of Thuringia, Dieter Althaus, argued in the past for more plebiscite elements in the German political system.⁴⁷

In the plenary debate regarding the ratification of the Constitution on 12.05.2005 Angela Merkel acknowledged that there was some worries within her party that the Constitution would erode the power of national governments. “I will say yes with all of my heart, even if I am not happy about everything,” she said in the Bundestag.

While the Christian Democrat party has expressed much strong reservations, the Bavaria based Christian Social Union, a twin party of the CDU, is more supportive. Edmund Stoiber, who is the leader of the party and Minister President of Bavaria, defended in various occasions his positive position to referendums on important European matters, with respect to the European Constitution he said when the United Kingdom and France will hold a referendum Germany has to follow them. He said: “If all the peoples of Europe could vote on the same day, it would be a great way to bring the EU closer to the people”.⁴⁸ Following the Bavarian Constitution he proposed a reform of Article 23 Basic Law, introducing the element of a Federal Law, which would have to be approved by a two thirds majority in both houses of parliament and subject to a referendum.⁴⁹ His position splits the conservative camp and he is in an open conflict with the CDU.

Seven MP’s of the CSU had already launched in December a position paper against the Constitution, saying the treaty does not prepare the Union for further enlargement rounds, especially these MPs considered the Constitution not sufficient to accommodate an accession of Turkey.⁵⁰ At the same time they argued the Constitution reinforces centralistic tendencies and does not offer clear limitations among community, national and regional competencies. At a party meeting at the beginning of this year 18 of the 58 party’s MP have already supported the position paper.⁵¹ Peter Gauweiler head of the CSU opposition to the Constitution, presented on 25 April a legal complaint to the constitutional court against the parliament's proposed ratification of the Constitution, arguing that the German parliament cannot give more rights to the EU than it has itself in this sense the Constitution, according to Gauweiler, has to be approved via a popular referendum. However, the complaint was rejected by the Bundesverfassungsgericht

⁴⁷ “Saarland-CDU für Volksentscheid über europäische Verfassung”, Handelsblatt, 19.07.04.

⁴⁸ “Vorschlag für Volksentscheide ‘in ganz besonderen Fällen’”, FAZ, 25.07.04.

⁴⁹ “Vorschlag für Volksentscheide ‘in ganz besonderen Fällen’”, FAZ, 25.07.04.

⁵⁰ “Wachsende Ablehnung in CSU gegen EU-Verfassung”, FAZ, 06.01.2005.

allowing the parliamentary ratification on 12 May. Despite this rejection he threatened to put another complaint to the constitutional court after the ratification of the Constitution by the Bundesrat on 27 May

In January the dispute between both opposition parties and the government got heavier. The Constitutional Treaty envisages the strengthening of national parliaments which has to be transmitted into national legislation. The CDU/CSU made on various occasions clear that they will only agree to the EU Constitution if more participation rights are given to the Bundestag and to the Bundesrat. On 25.01.2005 the party-coalition presented a Bill for a national implementation law (Begleitgesetz) trying to bind governmental votes in Council negotiations to a previous parliamentary vote. The Bill makes especially reference to the participation of the national parliament in European affairs before the communitarian legislation procedure has started, to the obligation of the government to inform the Bundestag and the Bundesrat and to the right to complain about the violation of the subsidiary principle.⁵² The proposal also provides the necessity of a two-thirds majority of both chambers in future transfers of national competences on the European level. Summarising, the party wants to strengthen the parliamentary competences in the preparation and negotiation stage of EU-legislative acts.⁵³

In the first parliamentary debate Wolfgang Schäuble, the party speaker for foreign affairs, announced that the CDU will approve the constitution after careful consultations. He criticised that the Federal government does not endeavour enough for a common European position, instead the government coalition prefers to build axes which is contrary to a Common Foreign and Security Policy. He also criticized the unclearness in the Constitution regarding the cultural roots of Europe.⁵⁴

⁵¹ "Wachsende Kritik in der CSU an EU-Verfassungsvertrag", Süddeutsche, 06.01.2005.

⁵² Bill of CDU/CSU Fraktion: "Entwurf eines Gesetzes zur Ausweitung der Mitwirkungsrechte des Deutschen Bundestages in Angelegenheiten der Europäischen Union", 25.01.2005, Drucksache 15/4716.

⁵³ Bill of CDU/CSU Fraktion: "Entwurf eines Gesetzes zur Ausweitung der Mitwirkungsrechte des Deutschen Bundestages in Angelegenheiten der Europäischen Union", 25.01.2005.

⁵⁴ German Bundestag, Protocol of the 160. plenary debate regarding the European Constitution, 24.02.2005.

And the civil society?

Apart from the parliamentary debate, it exist a lively discussion in the civil society, supported by grass-roots organisations like “Mehr Demokratie” (More Democracy) which has campaigned for the right to citizen-initiated referenda and the introduction of direct democratic elements in the Basic Law for various years. The organisation is making an information campaign in favour of a referendum on the European Constitution in Germany. They also managed an internet platform to simulate a referendum for Germans and held in a village a test referendum.

Nevertheless a large majority of Germans already agree with more direct democratic elements at the federal level. Almost 86 per cent supported this, 78 per cent agree with a referendum on the European Constitution.⁵⁵

The German population has always been very pro-european, nevertheless the support for the European Constitution, although above the European average with 54% favourable and 17% opposed to the text, is low in comparison to the traditional positive view on the European integration process.

⁵⁵ “Mehrheit der Deutschen für Volksentscheide und EU-Referendum”, Die Welt, 01.09.2004.

The Länder position

The views of the 16 federal states (Bundesländer), represented in the second chamber Bundesrat, does not play a dominant role in the public debate, although as already mentioned the federal territorial chamber has to ratify the Constitution by a two-thirds majority vote. A first discussion on the theme was held on 18.02.2005, when Foreign Minister Joschka Fischer called the assembly to send a "positive signal" to Europe by finishing its work before the summer recess. On the same occasion the Minister President of Baden-Württemberg, Erwin Teufel (CDU), called the Constitution as an important step in the right direction, underlining the control mechanism for the parliaments and the subsidiary principle, but not as an ideal outcome of the constitutional process and demanded that the first aim in the ratification process is not a fast favourable vote but a satisfactory result.⁵⁶

Nevertheless all regional representatives will support the Constitution, but as mentioned the representatives of the CDU/CSU want to increase the internal participatory rights of the Bundesrat in EU affairs before ratifying the constitutional treaty and not afterwards, as the government had planned. The territorial chamber wants to increase its influence ahead of EU-decisions on subjects, which affect its competences and the individual right for each region to sue the communitarian institutions in case of a violation of the subsidiary principle.

The Foreign Minister promised to accommodate the different positions but warned the Länder not to curtail the federal activities in Brussels.⁵⁷ In a meeting at the end of April 2005 between the German Chancellor and representatives from the Länder, the Chancellor promised the subnational level that their competences at the EU level would be widened and that the upper house would be involved in the choice of judges for the European Court of Justice. After the meeting the most critic president of Bavaria, Edmund Stoiber (CSU), recommended that the upper house should vote in favour of the Constitution.

⁵⁶ German Bundestag, Protocol of the 160. plenary debate regarding the European Constitution, 24.02.2005,

⁵⁷ "Fischer wirbt für Verfassung", Frankfurter Rundschau, 21.02.2005.

Fischer in German Bundestag, Protocol of the 160. plenary debate regarding the European Constitution, 24.02.2005,

Conclusions

In Germany it exists a broad acceptance to the Constitution, the way how to ratify it, was very discussed, finally in May the ratification via parliament was held with an overwhelming majority.

In an analysis we can differentiate between two political discussions. Firstly, on whether to ratify the Constitution via parliament or via referendum and secondly, the discussion under which conditions the Constitution could be accepted by all parties in both chambers. On the one side the bill of the governing coalition to enable a referendum can be interpreted as an effort to comply with an electoral promise. But on the other side the issue of whether to change the Basic Law to hold a referendum on the European Constitution can be seemed as a tactical game in which the governing SPD, which has often spoken out against an EU referendum, has put the ball firmly in the opposition's court. With 78 per cent of Germans supporting a referendum on the Constitution, the proposed bill of the coalition could be seen in fact as a tactical move by the SPD to put the blame on the CDU if the constitutional change doesn't take place. Calling December as the limit to reach an agreement elevated the pressure on the opposition parties, knowing it would take one to one-and-a-half years to change the Basic Law. The bill was also a topic to split the alliance between both conservative parties CDU and CSU, which were divided on the topic, this helped the SPD to get a better result in the polls at the end of 2004.

The discussion about a reform of the Basic Law has a great transcendence and was important in the internal affairs in Germany, in this sense the arguments focused on internal questions. Although arguments with a foreign dimension, like to consolidate the German negotiation position by convocating a referendum, were secondary. Once decided to ratify the constitution via parliament, the expected favourable vote in the German parliament was instrumentalised as "psychological support" for the Union in general and for France in especial. The strong support for the internal project of the French government is not altruistic, firstly it is connected to an ally, which is needed more than ever in times of negotiation on Agenda 2007 and for the reform of the Stability and Growth Pact, secondly a negative result in the French ratification would affect German interests. But also internal questions during the ratification process played a decisive role, the ratification was especially used as an instrument to achieve regional interests and to improve the presence of the Länder in European affairs. Finally

the discussion shows the different positions of the political parties in the case of the Turkey question.

Bibliography

The paper is based on the analysis of various German national newspapers, polls carried out by different institutes, party statements and minutes of parliamentary discussions on the subject.