



Japan Local Government Centre, London

Monthly Report February 2010 (Germany) – Constitutional Court judgement on benefit rules

Under the last Social Democratic government, a wide-ranging reform of welfare benefits was introduced in 2005. Under these reforms which are called the 'Hartz reforms' after the chair of the commission who worked the proposals out, unemployment benefits and general welfare benefits were consolidated into one system. In effect this meant that many recipients had a reduced income, and it has in particular affected families with children. Payments for children under six are currently calculated at 60% of the adult rate.

This system has been contentious since its introduction, and a number of court cases have been going through the system. After court rulings by the Federal Social Court and the State Social Court in the Land Hesse, the final decision rested with the Constitutional Court in Karlsruhe, which is the final authority on issues that have a bearing on fundamental legal questions.

On February 9th, the Constitutional Court ruled that the way how payments are allotted to the 1.7 million children of unemployed people who currently receive payments under the system was unconstitutional. Therefore the federal government has to change the formula and introduce a new system. The court said that the current system did not comply with the 'fundamental right to guarantee a subsistence minimum that is in line with human dignity'.

The most important outcomes of the ruling are:

- the calculation of the payments under the system for children and in some parts for adults is unconstitutional
- the government must introduce a new system by January 2011; until then the old system can stay in place
- from now on, the people currently registered within the system and receiving payments (nearly seven million people) are eligible to apply for special assistance in circumstances of particular hardship

However, the court judgment did not say that the current level of payments was too low overall, which was what many people had hoped for. Fixed payment levels are also not a problem – the real problem lies in the calculation which has to be linked to reality and must be transparent; and in the case of children who have particular needs connected to their physical development as well as educational needs, may not be just a proportion of the adult payments. The court allowed for the possibility of applying for additional

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assistance in case of specific needs – which means even more expenditure for the already cash-strapped state.

In general, politicians have been welcoming the ruling, stating publicly that it clarifies the situation, although they complain that the time-scale for coming up with new methods of calculation and changing the system is very tight. Also, it was suggested that part of the effort to improve the situation for children could also be the provision of services such as sports courses and cultural events as well as free school meals, which are currently not a regular feature in German schools, rather than just an increase in payments.

The representative organisations of local government also all welcomed the decision, saying that clarification of the calculations will increase transparency, and rules concerning cases of specific need were sorely needed. However, it was also emphasised that the ruling did not mean that payments in general had to increase. Because central and local government already shoulder a high burden in the area of social welfare, any increase in the total could not be accommodated.

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