

Tough questions on Lisbon at German court

DEREK SCALLY in Karlsruhe

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JUDGES AT Germany's highest court have indicated they have doubts about the compatibility of the Lisbon Treaty with the postwar constitution, the basic law.

At the second and final day of oral hearings at the constitutional court in Karlsruhe, the eight presiding judges asked government counsel pointed questions about the democratic consequences of ratification.

Berlin's main argument is that, after seven years of negotiations that began with the EU constitutional treaty, the Lisbon Treaty is the best way to equip the 27-member union for future challenges.

German critics are asking the court to reject a treaty they say empowers Brussels to strip MPs in the Bundestag – and, by extension, German citizens – of constitutionally guaranteed decision-making rights.

After hours of intense argument yesterday, Germany's best legal minds reduced the row to a discussion about who – member states or EU institutions – Lisbon grants the bigger piece of a symbolic salami.

“The question isn't who has the biggest piece or the quality of the meat but who is wielding the knife?” said Bavarian MP Thomas Silberhorn, a treaty opponent.

Five of the eight judges must approve the ratification Bill for Lisbon to come into force, but just as many continued a line of critical questioning yesterday that suggested they are not convinced by government assurances.

Indeed several judges appeared to enjoy the apparent discomfort their critical questioning caused the government side.

Justice Herbert Landau queried whether German MPs would, under Lisbon, enjoy the same influence they are guaranteed in the German constitution.

Later, when a Lisbon opponent complained about the lack of political will in the EU to give the European Parliament greater powers, Justice Lerke Osterloh remarked: “Does the [German] constitution not offer the possibility to create those possibilities where the political will is lacking?” One justice referred to the EU's “forced acquisition” of competences while another raised the idea of “bringing the decision before the people”.

Treaty opponents were questioned about why they thought German democratic rights would not be adequately protected by previous court rulings on earlier EU treaties.

Lisbon opponents professed themselves satisfied with the judges' approach yesterday.

“With their questions, the judges have brought things to a head,” said Bavarian MP Peter Gauweiler, one of four applicants in court. “The question we want answered is: what does Europe want? This case is the end of the deception.”

His legal counsel, Prof Dietrich Murswiek, conducted an energetic attack on the treaty yesterday, arguing that its flexibility clause gave Brussels far-reaching powers to get involved in national issues, after the “expansive” European court had prepared the legal ground.

Prof Murswiek suggested that Lisbon could give the Luxembourg court competence over not just the current EU treaty, but all areas of all treaties.

Government counsel dismissed these claims, saying the European court was “not some monster pursuing a political path”.

“The court only deals with issues of cross-border law,” said Prof Christian Tomuschat, for the federal government.

A series of German MPs and MEPs testified that, in their view, the treaty would strengthen and not diminish their parliamentary powers.

Now, after little public debate and a low-key parliamentary vote, the guardians of Germany’s postwar constitution have retired to consider their final word on the Lisbon Treaty.

Their verdict, expected in early summer, will shape for years to come the relationship between the EU and its largest member state.

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