

German Court Ruling Is Setback to Privatizers

by Rainer Apel

On July 27, the district court in Konstanz, Germany, made an important ruling in the case of the July 1, 2002 air crash that occurred over Überlingen, and killed 69 children aboard a Russian-Bashkirian airliner and the two pilots of a colliding FedEx freight plane. The court determined that Germany must pay compensation to the relatives of the victims, as well as to the airlines affected. Even more important in its implications, the court ruled out the German government's argument that the Swiss Skyguide control was to blame, because it was in charge of that section of airspace in the Swiss-German border region. Air control, the court stated, belongs to the "genuine sovereignty tasks of the state."

The court ruled that the German practice of handing over control functions to agencies of another, neighboring state, is against the German constitution: "The sovereign task of securing air space has never been effectively transferred to Switzerland." Therefore, air sovereignty remains with Germany. Moreover, the accident occurred in German airspace, near the Bodensee Lake.

On the surface, it seemed that the Swiss flight control agency Skyguide was to blame, for the wrong guidance it gave, putting the two planes on a collision course. During the post-accident investigation, there was evidence the control tower of the agency was not manned properly during the period of the air crash, and the control job was done in a rather sloppy way. These hints confirmed the doubts of the critics who had previously opposed the Swiss-German air control cooperation agreement of 2001, on grounds that such a transfer of sovereignty would imply a lowering of safety standards.

The 2001 letter of agreement signed between the German Flight Control and the Swiss Skyguide, outsourcing and assigning part of the southwest German airspace to the Swiss controllers, was never ratified by the Swiss parliament, because it left open several questions concerning Swiss jurisdiction on other issues, such as prevention of airflight noise. The court ruled that treating the agreement as if it were ratified, during 2001 and 2002, posed a high risk for air traffic in that region, without clarification of responsibilities.

The German government's arguments are not enhanced by the fact that valid air-control sharing agreements are in place, with other neighboring countries such as Czechia.

Unions Fight Airflight Privatization

The court ruling was immediately welcomed by the labor union of the German air control personnel, whose spokesman, Marek Kluzniak, called the ruling a blow against the government's planned privatization of air control. Originally, the government had intended to privatize 74.9% of air control by Fall 2006. That timetable is now off, not only for the Germans, but also for the European Commission in Brussels, which had pressured Germany to comply with the EU agenda for deregulation and privatization of airflight operations.

Included among the German critics of this privatization is the Anti-Monopoly Commission, usually an instrument of the privatizers and deregulators. In a memorandum ordered by the government, the commission stated that if the government kept no more than 25.1% of air control in state hands, crucial safety and control functions could no longer be guaranteed. In particular, air control also involves police and customs functions which cannot be transferred to private agencies, the commission argued. If there were to be any privatization, it should not involve more than 49.9%, leaving a majority of 50.1% in the hands of the state, the memorandum said. Other critics, like the labor union of the air control personnel and the public services union, oppose even minimal privatization, on grounds that the role of the state must not be decreased if it will affect vital functions of society.

The labor union resistance against airflight liberalization is part of the general resistance of labor movements across Europe, to the EU Commission's plans for deregulation and privatization of all services inside the European Union. The Commission's draft deregulation guideline was defeated in the European Parliament in mid-February, after several weeks of labor action in numerous countries, culminating in a mass rally of 50,000 in Strasbourg, Feb. 14, near the European Parliament.

The Commission withdrew its original draft, replacing it with a watered-down version that was acceptable to the European Parliament three months later, but central aspects of deregulation of state service functions and labor market laws have so far been protected from the Commission. The court ruling on the Skyguide case also helps the opposition against deregulation and privatization in the rest of Europe.

The findings of the Anti-Monopoly Commission also influenced, in particular, German President Horst Köhler, who so far has refused to sign the new legislation that the government prepared for the planned privatization of air control. Without the Presidential signature, legislation cannot go into effect. Köhler holds that too many questions about the implications of the legislation for German sovereignty have not been sufficiently answered yet, and that the legislation has to be worked over, thoroughly. Köhler's reluctance to sign had raised doubts before about the government's original autumn timetable. Now, the Konstanz court ruling provides Köhler with new arguments that should enable him to reject any privatization on constitutional grounds.