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Federal Constitutional Court confirms solidarity surcharge

In its judgment published today, the Second Senate of the Federal Constitutional Court confirms the solidarity surcharge in its current design and rejects the complaint brought by the six members of the liberal Party FDP.

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Background: Pros and cons

In its judgment IX R 15/20 of 17 January 2023 **the Supreme Tax Court** decided that the solidarity surcharge for 2020 and 2021 was not yet unconstitutional. According to the court, the federal government has conclusively demonstrated that there still is an increased financial demand for the sake of preserving the welfare state principle as provided in the German Basic Law.

In their constitutional complaint, **the appellants** argued that the continued levy of the solidarity surcharge, which was originally based on the costs of reunification, became unconstitutional when the Solidarity Pact II expired on February 31, 2019. They also criticize the unequal treatment of different income groups caused by the Act on the Reduction of the Solidarity Surcharge 1995.

Decision (in brief)

In essence, the court emphasizes the ongoing requirements for additional demand and that the creation of equivalent living conditions must continue to be ensured.

The additional financial requirements of the federal government due to reunification had not yet clearly ceased to exist when the Act on the Reduction of the Solidarity Surcharge was enacted in 1995 with effect from January 1, 2020. Even today, it is not (yet) possible to determine that the additional needs of the federal government attributable to the accession of the then new federal states to the federal territory - albeit reduced - have obviously ceased to exist.

However, the Senate also emphasized that a supplementary tax such as the solidarity surcharge should not be levied indefinitely. The legislator has an “obligation to monitor”. Such a levy could become unconstitutional as soon as the previously determined additional requirement ceases to apply - but this is not (yet) the case with the solidarity surcharge.

More details to be found **here** (Press Release No. 30/2025).

Keywords

solidarity surcharge