

## Constitutional Future of Europe

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### Abstract

The 3rd millenium gives us the opportunity to construct activities on the field of the Constitution, giving that the level of constitutional development is achieved. The presentation of our futurological view of the Constituion will not be the product of imaginative assumptions, but the expectations we form based on the records of European constitutional experience so far. We certainly do not hide the fact that in our formulated standpoints the intuitive understandings of the future events in the constitutional field will also be included. At the same time, we are aware of the risks we take, because the primary standpoint we occupy is based on democratic development tendency in the field of the Constitution. Arguments in favor of that standpoint can be found in several unbiased facts which must be acknowledged, which provides the base of the acceptable scientific work with valid results. The forming of the constitutional reality of each individual country, considering all their specific qualities, is growingly under the influence of standardization established on the level of the European Union and the European rules outside the boundaries of European Union as well. It is obvious that we look at a complex constitutional puzzle formed by various parts, which does not stop us to present the existing and expected European Constitution (map consisting of individual constitutions of member states). For all these reasons, we are interested in recognizing the future development of the constitutionalism in Europe. It is therefore necessary to pay a special attention to the most vital, realistic and acceptable ideas about directions European constitutionalism should follow in the future. The unmeasurable and irreplaceable contribution which science can give, precisely consists of constructing and finding such ideas which can help main constitutional bodies to project new forms of constitution. In the great part of the article, the authors consider the idea of the European Constitution.

**Keywords:** Europe, European Union, Constitution, constitutionalism, European Constitution, future.

### 1. Introduction

It is necessary to precisely determine the scope of this research work at the very beginning with which we will achieve the effect of a principal and timely response towards the assigned theme.

Constitutional future of Europe assumes the projection of the position of the constitution at two levels. The first level is related to individual national constitutions with the possibility of identifying relevant common indicators of the situation in this field. The second refers to the level of European integration, so it is possible to split it to a firm institutional form, embodied in the European Union, and a European legal and political area which is, in the sense of institutional cohesion, politically "softer". These levels are mutually connected because they are interculturally dependent and influenced. The reshaping of constitutional reality of individual states is under the increasing influence of the standardization established at the level of European Union, as well as the European rules outside EU with the respect of individual cultural traits. It is obvious that we are facing a complex constitutional mosaic consisting of numerous versatile parts which will not prevent us from making an attempt to present the existing and expected constitutional map. Our interest in the current situation is motivated by our wish to discern the future direction of its development.

Besides a classical literary format from the domain of constitutional law, which is dedicated to these issues, we believe that it is necessary to focus our attention to specific vital, real and acceptable ideas related to the question what direction European constitutionality should pursue. The discovery and creation of such ideas represent an immeasurable and irreplaceable contribution of science allowing competent holders of constitutional power to indulge into prospective

constitutional projections. This year's celebration of a half century of Shuman's vision of Europe is a good opportunity to remind us that it has gradually become a reality. It was Shuman who warned us that Europe would not be made all at once, so we have to be aware that constitutional architecture represents a nice conceptual creation to which we need to dedicate much time and effort.

With respect to the outlined scope of our work, our attention is focused on the idea of the European constitution. However, we recognize this idea as one of conceptual sources that lay the basis for the establishment of hypothetic constructions related to European constitutional future.

## 2. European constitutional attempt

The idea of a European constitution dates back several decades. The acceleration of the process of European integration and close links of EU countries in political, safety, economic, cultural and educational aspects raised the question of EU constitutional future. Does such a complex community need a constitution or it can be satisfied with founding acts and agreements which are still in force today? The idea of a European constitution began to take root considerably before its manifestation at the beginning of the 21<sup>st</sup> century. Although a European constitution as a general legal act has never been adopted by EU, it has been emphasized in theory that EU law is essentially equivalent to a constitution, and therefore, such an order does not need a constitutional reestablishing. The facts from rich constitutional, both European and world history, show that EU law has a lot of similarities with the law that creates constitution. However, such a law is similar to the type of the constitution which is in the constitutional theory called the uncodified constitution. It is a type of constitution whose matter is dispersed into several acts with constitutional force. Such was the constitution of French Third Republic (1875-1940) whose faults were manifested in practice in the form of the utmost instability of the executive branch of government.

Yet, the European Union needs a stable executive branch, that is the standardization and regulation of all executive authorities at one place, that is in one constitutional act. This is a necessary precondition, but not an only one, since there also should be institutional mechanisms for the rationalization of European parliamentarism and strengthening of political institutions of the executive branch. The repeated discussions on European constitution (we say "repeated" since such discussions also took place in the 1980s) from the beginning of the 21<sup>st</sup> century underline this constitutional deficit. "Whatever judgment on further contractual development of EU law may be, it seems that there remains a need for a European constitution that will harmonize the present and possible future provisions and that will give the principle EU law a singular and charter-positioning value of a national constitution. How can we otherwise interpret numerous attempts and activities aimed at creating a European constitution? It was back in 1984 when the European Parliament presented the draft of the European Constitution related to the establishment of the European Union. A group of German members of Parliament prepared a draft of the constitution of the federal union in 1988. The Institutional Committee of the European Parliament presented a working document of the EU constitution in 1993. Also, even before the Intergovernmental Conference in 1996, there were some resolutions referring to the EU constitution. From Spinelli's Committee in the European Parliament from the 1980s there have been a number of attempts and drafts to award EU countries with a common constitution presented in a single constitutional act." (Vorlander, 2002:4)

Thus, in December of 2001, the European Council, a body including the heads of states and governments of EU member countries, passed a decision on the establishment of the European Convention, a body whose purpose was to prepare a draft constitution of the European Union that would meet the needs of the enlarged European Union with more than 20 member states. The European Convention was a mixed body consisting of 105 members. The Convention had two vice-presidents: the former Italian president Giuliano Amato and the former Belgium Prime Minister, Dehaen. The Convention consisted of the representatives of the heads of the states and governments of, at that time, 15 EU member states, the representatives of, at that time, 13 EU candidate countries: Czech Republic, Poland, Hungary, Slovenia, Estonia, Bulgaria, Romania, Lithuania, Latvia, Slovakia, Cyprus, Malta and Turkey, 30 representatives of national parliaments of EU member states, 26 representatives of national assemblies of the candidate countries, 16 members of the European Parliament and two representative of the European Commission. Also present as the observers were 3 representatives of the economic and social committees, as the EU consulting bodies, 6 representatives of one of EU advisory bodies (in this case it was the Committee of the Regions), 3 representatives of the union, as the social partners and the delegate of the European Ombudsman. The Convention's Presidency consisted of the chairman, two members of the European Parliament, two members of the European Commission and two members of national parliaments of the member states, as well as, the representatives of the governments of Spain, Denmark and Greece (the three countries which were the EU presiding countries for a six-month period).

It officially started to work at the beginning of 2002 headed by former French president Valéry Giscard d'Estaing (the third president of the French Fifth Republic). At its meeting in Thessaloniki in July 2003, they submitted a draft text of the future EU constitution. The Convention held 26 plenary sessions from the moment of its foundation in February 2002 until July 19, 2003, that is the Summit in Thessaloniki. The Committee heard about 1800 suggestions and interventions. The Convention consisted of 11 working groups, while its Presidency met more than 50 times, submitting various written reports. The proposed draft text was accepted at this meeting related to the development of European integration in line with the goals adopted at the meeting of the European Council in Nice in 2000. The Laeken Declaration from 2001 states that the European integration was established in order to bring EU closer to its citizens, strengthen its democratic character, enhance EU decision-making capacities, particularly after its enlargement, improve the ability to act on the international scene as a coherent and unique force and to efficiently cope with the globalization challenges. (The Article 3. of Laeken Declaration).

As van Hama states, the adoption of EU constitution was aimed at finalizing the accelerated process of the transformation of the European Community from the trade association, *Gesellschaft* in German language, towards a political union, *Gemeinschaft* in German, as well as at finalizing the political process of growing of the European Union from the Union of states (*Verband*) towards a federal state union of European people (*Verbund*) (Van Hama, 2000). Dusan Sidjanski states that this would finally pave the path towards the "federalist future of Europe." (Sidjanski, 1996). The draft text of the future EU constitution, presented in Thessaloniki at the end of 2003 was to be finally harmonized at the Intergovernmental Conference, followed by the process of ratification.

As it usually happens in complex communities, such is the European Union, the first attempt of harmonization of the draft text failed, because of Spanish and Polish opposition contesting the proposed system of the distribution of votes in the future European Parliament. This resulted in a six-month prolongation during which the text was being modified and the new Treaty establishing the Constitution for Europe (also known as the Constitution of European Union) was adopted by the European Council in Brussels in June 2004, while the official ceremony of signing the document was held in October 2004. The ratification process started after the adoption of the final text of the European constitution. Thus, nine member states ratified this document in 2005: Austria, Greece, Hungary, Italy, Lithuania, Latvia, Slovenia, Slovakia, Spain and Germany whose Bundestag supported the ratification with majority of votes. Yet, the ratification process did not go without difficulties and deadlines were not respected. The national referenda, organized in France and Holland in 2005 had negative results, that is the ratification of the adopted Constitution of the European Union was not approved in these countries. This means that the document bearing the name the Constitution of the European Union was not a legally perfect document, and its destiny, as the element of a constitutional character, depends on future political decisions within the European Union (Slavnic, 2007:87). In practice, the unsurpassable obstacle was the requirement for a unanimous approval of the Constitution of the European Union. Also, the legal means – the approval of the Constitution by organizing the public referenda in EU member states proved to be an inconvenient and impractical method. The Treaty establishing the Constitution for Europe foresees that in order to come into effect, it needs to be ratified by all member states. Also, it allowed the possibility that if 4/5 of the member states ratified the Constitution, the Council of Europe would consider an alternative way of its coming into effect. In addition, according to this Treaty, the mere procedure of changing the Constitution of the European Union is as complicated as the procedure of its adoption. It can be changed only by a consensus of all member states on the recommendation of the Intergovernmental Conference. According to this, the changes of the principal constitutional act of the European Union come into effect after the ratification by all member states, the method of which is defined by individual national legislations. The preamble of the EU Constitution states: "Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their former divisions and, united ever more closely, to forge a common destiny." From this preamble we can conclude that the Constitution of the European Union does not plead to create a European state or a super state, or a European nation. The Constitution of the European Union, which, we hope, will be soon wholly ratified, will be a legally unique document that will substitute the Treaty establishing the European Community and European Union.

### 3. The contents of the document called the Constitution of the European Union

The Constitution of the European Union, as designed in the convention, has 448 articles. This fact alone, without the following protocols and declarations annexed to it makes it an exceptionally large document. The structure of this document includes the mentioned preamble and four numerated parts in which the text of the Constitution is grouped under titles, chapters and articles. We would like to note that the length and style of the provisions reflect the Anglo-Saxon legislative techniques. The document called "the Constitution of the European Union" begins with the preamble,

followed by the Part I (without the headline, but with 9 titles: 1. Definition and the objectives of the Union, 2. Fundamental rights and citizenship of the Union, 3. The Union competences, 4. The Union institutions and bodies, 5. Exercise of the Union competences 6. The democratic life of the Union, 7. The Union's finances 8. The Union and its neighbors, 9. The Union membership.

Part I, which does not have a title, includes the most important issues, that is *materials constitucionis*, and thus, by its content, can be considered as the part with principal, general provisions. Title I of the Constitution reflects the commitment to traditional, liberal and democratic values. It also includes a detailed list of the Union's goals where we can recognize some new elements incorporated under the influence of social theories (the theory of the state of well-being). Title II of the Constitution comprises the Charter of Fundamental Rights, which, being incorporated into the constitutional text, receives the constitutional force. The citizens of Europe are given the widest possible spectrum of civil rights and liberties with an efficient system of their protection. Title III is the largest part of the Constitution and is related to the Union's policies and activities. It includes a number of important provisions from still valid agreements on European Communities (this section is the largest, consisting of 342 articles). Title IV comprises general and closing provisions. It regulates the termination of European communities, that is, after the adoption of the Constitution, all the agreements on establishing the European communities cease to be valid. After the adoption of the Constitution, the European Union becomes the legal successor of the rights and obligations of the European communities that had been established before. In theory, this will practically mark the end of three pillars that carry the European Union according to the Maastricht Treaty.

#### **4. The constituted goals and principles on which the Union was founded according to the draft of the Constitution**

The Article 1. of this Constitution describes the European Union as a union of European citizens and states, open to all European states which respect its values and are committed to promoting them together. With the Treaty establishing the Constitution for Europe, the member states entrust their authorities to the European Union for the purpose of achieving the common goals and the European Union coordinates the policies of all member states. The Constitution also defines the values on which the Union is based, that is the values common to all member states – pluralism, tolerance, justice, solidarity and non-discrimination. These values respect human dignity, freedom, democracy, equality, rule of law, as well as human rights. The free movement of persons, services, goods and capital, and freedom of establishment are guaranteed within and by the Union, in accordance with the Constitution. The Union's bodies have a clear task to prevent any discrimination on grounds of nationality.

The Union's aim is to promote peace, its values and the well-being of its nations and it offers its citizens an area of freedom, security and justice, as a unique market where competition is free and undistorted. The European Union is the economic area consisting of the states with unequal economic power. In the economic sense, the Union's bodies have a clear task to work for the sustainable development of Europe. Long-term development of the European Union is based on the balanced economic growth, market economy, which should not neglect the social component, the highly competitive economy aimed at full employment and social enhancement, and the highest level of environmental protection. As for social context, the goal of the Union is to combat social exclusion and discrimination. Here the European Union should promote the idea of a state of social justice, promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child and vulnerable groups. In international relations, the Union will uphold its internally defined values, including respect for the principles of the United Nations Charter of Fundamental Rights.

#### **5. Relations between the Union and the Member States**

As for the relations between the Union and the Member States, we would like to emphasize that they are principally defined through the Unions' obligations related to the respect of their national identities, inherent in their fundamental structures, inclusive of regional and local self-government. It should also respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. Pursuant to the principle of sincere cooperation, the Union and the Member States are obliged to mutually respect and assist each other in carrying out tasks which flow from the Constitution.

The Member States are obliged to refrain from any activity which could jeopardize the attainment of the Union's objectives. Since the United Nations Charter on Fundamental Rights is the constituent part of the Constitution, this means that the Union has assumed the responsibility to recognize all the rights, freedoms and principles set out in this Chapter.

Also, the Constitution states that the Union should accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. This results in the fact that the rules from this Convention and the rules from the EU Constitution will constitute basic legal principles of EU law. As for citizens, every national of a Member State is a citizen of the Union. The citizenship of the Union is additional to national citizenship and does not replace it. The list of the rights that the citizens of the European Union enjoy includes: the right to move and reside freely within its territory, the right to vote and to stand as candidates in elections to the European Parliament, the right to the protection of the diplomatic and consular authorities, the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Union's official languages.

We would like to emphasize that a special working group was established to define the text of the EU Constitution related to the issue of legal entity any this group proposed two solutions to this question. The first solution envisaged that the European Union should be given the status of a legal entity, parallel with the ones that the European Community and European Atomic Energy Community already enjoyed. The second solution proposed that the European Union should be a unique legal entity that will replace the existing communities' entities. Eventually, this solution prevailed with the justification that the proposal including parallel legal entities would not contribute to the clarification and simplification of the Union's role in international relations, especially when dealing with joint agreements that need to be signed by the Union and existing European communities. Thus, by the provisions of the Article 6. of the First Title, First Section, the European Union has been explicitly recognized as a legal entity.

## 6. Conclusion

The above presented chronological analysis of the efforts dedicated to the adoption of a specific act, the Constitution of the European Union is not just a technical presentation of facts and reminiscence of one phase in the development of European integration. The authors view it as a significant endeavor to realize the idea of a strong community of people and nations living in this European political area. Of course, the journey leading to the full realization of this idea is arduous. Taking into consideration the historical development of the European integration processes, it seems acceptable to apply the formula of fundamental rule of economic motives in integration processes to the constitutional domain: it represents the following equation "preference x institutions = results" (Hinich & Munger, 1997). Apparently, this elementary equation calls for the need of the existence of an institutionalized form of integrative processes that have started in the second half of the 20<sup>th</sup> century and continued to the modern times predicting the future of Europe in the 21<sup>st</sup> century.

Thus, the appearance of the first forms of European integration, that were the predecessors of the following integration phases, represented a clear sign that the era of conflicts between nations started to disappear. Just as Shuman Declaration recommends "that coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany" (Bulletin of the European Communities 13, 1980). We would like to underline the need for the elimination of pointless constitutional differences between states related to basic preconditions for the existence of democratic constitutional states. The idea of a unique European Constitution now seems to be a suitable means to underline the advantage of the vision of European unity. "If we link this vision to the process of governance and constitutional structure, the final model of the Community and constitutionalized agreements stand as equivalents in the European localized context, of the utopian model of "world government" in the classic international law. The future Europe in this form will indeed constitute a final death to the nationalism of member states, and in this way, the final attainment of original goals, through a political union in the form of a federal system of governance" (Weiler, 2002:113).

Development of European constitutionality to this date, especially in the second half of the 20<sup>th</sup> century points to certain conclusions and observations that we may derive. It is undisputable that at the level of Western European countries, a certain degree of stabilization of democratic constitutional orders have been attained, especially in the countries that suffered from the Fascist occupation. Afterwards, the force of democratic wave of constitutionality has eventually succeeded to radically eliminate the negative constitutional tendencies within the borders of former communist systems. In this way, the situation with European constitution has reached the line of harmonization of democratic constitutional standards at the level of European political area. There remains the obligation to continue further stabilization of relatively young constitutional democracies in former European communist countries. The analysis of the constitutional prospects cannot be solely based on the interpretation of constitutions outside their wider social ambient. The constitutional future of Europe depends on the economic and political future of the European Union, and that is why it was necessary to summarize the current situation with the reference to the idea of the European Constitution. The celebration of a half century from the institutional beginnings of the European model of unity is a good opportunity to summarize the achievements in this field and represents a solid ground for the perception of the future events.

At first sight, the economic crisis that occurred in some European countries seems to threaten further development of the idea of the European Constitution. However, the authors point to the fact that the critical period in the development of European integration caught Europe without a clearly defined idea how to achieve a stronger constitutionalization, which is a good opportunity to raise the question whether this deficiency is one of the causes that has slowed down the efficiency of multinational European political family in resolving the major problem it has been facing. We believe that it is the scientific forum who is responsible to provide competent answers to such questions, so we hope that this work will be a modest contribution that will incite further research efforts in that direction.

## References

- Hinich, H.J., Munger, M. L., (1997). *Analytical Politics*, Cambridge: University Press.  
The Article 3 of Laeken Declaration – available at: [www.ue.eu.int](http://www.ue.eu.int)  
Sidjanski D., (1996). "Federalist future of Europe", Belgrade: Prosveta, Evropa press.  
Slavnic L.J., (2007). *Constitutional Law*, Novi Sad: Privredna akademija, p. 87.  
Bulletin of the European Communities 13 (1980), p. 14-15.  
Van Hama, P., (2000), *Identity Beyond the State: The Case of the European Union*. [Online] Available [www.ciao-net.org/wps/vap01/index.htm](http://www.ciao-net.org/wps/vap01/index.htm), Copenhagen Peace Research Institute, (June 2000).  
Vorlander, H. (2002), *The Idea of European Constitution*, Zagreb: Politicka misao, p.4.  
Weiler, J., (2002). *The Constitution of Europe*, Belgrade: Filip Visnjic, p. 113.