

THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE - THE EUROPEAN CONSTITUTION

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Abstract

The project for the Treaty establishing a Constitution for Europe was approved at the Intergovernmental Conference on the 18th of June 2004, after the shock wave caused by the terrorist attacks in Madrid (Spain) in March 2004, when the leaders of the European Union's finally came to an understanding regarding the European Constitution. On October 29, 2004, in Rome, one of the most important historical events of the last decades took place by signing the Treaty establishing a Constitution for Europe. Leaders of the EU member states have put their signature on this document during a ceremony that was held in the same place where, about half a century ago, the famous Treaties of Rome had been signed, constituting the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).

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1. INTRODUCTION (PRELIMINARIES)

Community law represents the unit of the legal rules recording the structures, the role and the functions of the European institutions as well as their connections with the national institutions in achieving progress and development of all the peoples of the European continent.

The Community law is characterized by the following:

- a distinct branch of the autonomic legal system, that relates to other branches of law
- the community law is closely related to the international law, the administrative law or the electoral law
- has its own institutions; a subject and a specific regulatory objective (The European Union institutions)
- represents the connection between the law and the international law

- it is a relatively new branch of the law, it began to take shape with the emergence of the idea of the European Union (1950-1960)
- the idea of the European Union underlying the Community law that includes: a socio-economic, political and juridical harmonisation.

The long process of the European Union's formation has been quite difficult¹, having periods of stagnation and even deep crisis, especially political ones. From the six signatory states of the three founding treaties - France, Germany, Italy, Belgium, Holland, Luxemburg - the European Communities have gradually came to 9, 12, 15, and finally to 27 Member States on the 1st of January 2007 and have set targets for accepting new states and achieving the objectives - first the economic and then the political ones. The revision of the Community Treaties was imposed, especially the institutional system reform. Under these terms the following were adopted one at a time: the Single European Act (SEA), which came into force in 1987, the Maastricht Treaty concerning the European Union which entered into force in 1993; The Amsterdam Treaty, which came into force in 1999 and, finally, the Treaty of Nice that was signed on 26 February 2001 and entered into force after approx. 2 years of debates, on the 1st of February 2003. This last treaty was meant to prepare the European Union both from an institutional and a legislative point of view, to face an almost double number of Member States.

At the end of the Nice Treaty a document was attached that we may say it marked the first step towards a future European Constitution. We speak about the famous "Nice Declaration" regarding the future of the European Union", which established in 2004 the convening of a new

conference to question the other major issues, such as: establishing and maintaining a more precise delimitation of the competences between the Union and the Member States, reflecting on the principle of subsidiarity; the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, according to the conclusions of the European Council in Köln; a simplification of the Treaties with the intention of making them clearer and easier to understand, the role of national parliaments in the European architecture.

There was also an emphasis on the need to permanently improve and monitor the democratic legitimacy and the transparency of the Union and its institutions, to bring them closer to the citizens of the member states.

From the interpretation of the "Declaration regarding the future of the European Union" one can see the intention for a new significant reform. If we also take in consideration the declarations of the Union leaders, during the analysed period (2000-2001), it is clear that their intention was to adopt a constitution for the European Union.

In this respect, the President of the European Parliament, Nicole Fontaine, said, at the summit in Feira (Portugal), in June 2000, that the European Union must equip itself with a Constitution and adopt a "Charter of Citizens' Rights." Therefore, addressing the Heads of State and Government of the States, Nicole Fontaine expressed his hope on equipping Europe with a Constitution, whose elaboration might be preceded by the restructuring and simplification of the treaties adopted so far.

The French Prime Minister, Lionel Jospin, was even more concise: "The Constitution would determine the organization and functioning of the European institutions. It would certainly not be enough to baptize a new treaty as "Constitution". Such a text would have no meaning, unless it would be the final point of the extensive reforms, and not the product of a mere rewriting of the current treaties. It is also important that this constitutional demarche to express a fundamental political act: the affirmation of a common project, the expression of a collective ambition. The approach will be driven primarily by the governments of the Member States, but it will also include the

contribution of the citizens. The Charter of Fundamental Rights will represent the core of the Constitution. Following the method of developing the model of the Charter, the Constitution preparation could also be entrusted, at the European level, to a Convention, bringing together representatives of different actors of EU: member states, national Parliaments, the European Parliament, the civil society. The final decisions could revert to the states and would be ratified by nations."

Nobody could foresee then how difficult the mission of adopting a European Constitution would be, and this difficulty hasn't been overcome even nowadays, when some members of the Community still refuse to ratify the Constitution, adopted eventually.

Regarding a Constitution of Europe (of a Europe that will gradually contain all the European states, including the least developed in Central and Eastern Europe), some specialists, lawyers or political scientists have even decided in terms of what should be included in such a document. It is necessary to illustrate the views of our famous Romanian experts in the field, Adrian Severin and Gabriel Andreescu. It was mentioned in this order of ideas that the European Constitution's project will have to define, in the first part, the set of common values meant to be the milestones of a social, fair and united Europe, fostering respect for diversity and equal opportunity for the individual and the group. This part of the European Constitution should have the Charter of Fundamental Rights as the main core, completed in the field of political rights and fully developed in terms of social, economic and cultural rights.

A second part of the Constitution will have to define the main European institutions: - A bicameral legislative - a directly elected European Parliament and a European Senate. The European Parliament will cover the main legislative activity at the federal level. The European Senate will take decisions upon those highly sensitive and vital characters for federal states subjects, which are adopted by consensus. The use of consensus must be transparent. When consensus has been blocked by one state, the European Senate may decide by qualified majority how to overcome this impasse by resorting to referendum in the

federal state which vetoed. Considering this kind of exceptional competences, the members of the Senate would be the heads of the federal states, elected by direct universal suffrage. The judicial system would consist of a Federal Supreme Court and local federal Courts (operating at the federation subjects' level) and a national judiciary multistage jurisdiction system. For specific causes, the two systems would intertwine and then it will have to be decided an individual right of appeal up to Federal Supreme Court.

In a different review it was proposed to establish the position of the President of Europe, whose tasks were to represent the Union. Considering all these opinions, or better said suggestions, and if we consider that, starting from other suggestions, The European Charter of Fundamental Rights was finalized in December 2000, there is almost a certainty in terms of a materialization and the idea of a much needed European Constitution for the proper organization of the Union as well as to unite in a single document the currently existing regulations of the European Union. So it happened and after only 3 years the project became a reality.

2. THE ELABORATION AND THE ADOPTION THE CONSTITUTION²

The European Union entered into a new stage of its evolution on the 28th of February 2002, when the works of the Convention regarding the future of Europe were opened in Brussels. As established in 2002, the conclusions of the Convention, whose work will be completed in June 2003, "will be presented to the Intergovernmental Conference in 2004 and will serve in the drafting of a new Union treaty or, maybe, even as a European Constitution". The final decision in this regard had to be taken at the level of the heads of state. Created according to the decisions of the European Council in Laeken, in December 2001, the Convention was composed of 105 members. Each of the 15 EU member states at that time and the 13 accession candidate countries have nominated one representative from the governments and, respectively, two from the national Parliaments.

The European Parliament was represented by 16 euro-deputies and, the European Commission, by the Frenchman Michel Barnier, commissioner for Regional Affairs and by the Portuguese Antonio Vitorino, commissioner for Home Affairs. The Forum, with a presidium consisting of 12 members - coming exclusively from the EU states - was led by the former French head of the state Valery Giscard d'Estaing and the two vice presidents - the Belgian Jean-Luc Dehaene and the Italian Giuliano Amato, both ex-prime ministers.

France was the best represented at the Convention, by 12 members, while Sweden, Greece, Luxembourg and each of the 13 candidate countries had only six members (the figures also include the alternate members). The three main challenges - according to the document in Laeken - that tomorrow's Europe will need to face, were related to the greater proximity of the community bodies and the citizens, to ensure efficient institutional structures in the context where "The 15" will become "The 27 or 28" and also the imposition of Europe as the main actor on the international economic and political stage. The works of the Convention - which have relied on a comprehensive dialogue with the civil society, have been focused on identifying solutions for a better distribution and defining of the European Union powers to simplify Community instruments (directives, decisions, opinions, recommendations, etc.) to increase institutional transparency and democracy in Europe. Within the reminded context, the desideratum became reality in the second half of 2003, when the project of the European Constitution reached its final form.

3. THE COMPLETION OF THE CONSTITUTION

Members of the European Convention completed, in the first half of 2003, "The Treaty establishing a Constitution for Europe Project". Thus, the project was adopted by the Convention by consensus on the 13th of June and 10th of July 2003, and on the 18th of July 2003 it was presented to the President of the European Council in Rome, about one month after the first two parts

of the Project were presented at the Thessaloniki European Council on the 20th of June 2003. The Convention's Chairman, Valéry Giscard d'Estaing, asked the heads of the states and government of the European Union countries to strive to keep "intact as much as possible" this final form. "Let us not return to arbitrages sought and found" - he said, pointing out that any subsequent change would require new negotiations that will prolong the process of adopting the European Union's most important document - the Constitution. "To change this Constitution - he mentioned - to modify its balances involves the risk of its deformation with the dislocation of our work so far (...) and the public opinion and perhaps even historians would say that a tremendous opportunity was missed".

Following a period of stagnation, heated debates regarding the Treaty establishing a Constitution project for Europe, were vigorously resumed during 2004, especially after 1 May 2004 when 10 more countries became EU members. Also, a particularly important role was played by the shock wave caused by the terrorist attacks in Madrid (Spain) in March 2004, events that led the Foreign ministers of the EU member states to finalize, during the summit in Brussels on the 25-26th of March 2004 a Declaration Project containing ten measures for combating the terrorist's scourge, including the naming of a coordinator of counterterrorism and the early adopting of a "Solidarity Clause" included in the Constitution Project, under which the EU states will provide mutual assistance including through military means in case of terrorist attack. Also in 2004, the European Union leaders have finally come to an agreement regarding the Constitution, and thus, it has been approved during the Intergovernmental Conference on 18 June 2004.

4. THE SIGNING OF THE CONSTITUTION

On October 29, 2004, took place in Rome one of the most important historical events of the last decades by signing the Treaty establishing a Constitution for Europe.

Leaders of the EU member states have put their signature on this document during a ceremony that was held in the same place where, about half a century ago, the famous Treaties of Rome had been signed, establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).

At the signing ceremony, the Dutch Prime Minister, Jan Peter Balkenende, whose country holds the EU Council Presidency, made a statement that will probably go down in history:

"Our signatures are not an end but a new beginning."

The Dutch leader's words are quite true, the ratification process of the Constitution being quite difficult and problematic and at least 11 Member States have scheduled a referendum on this issue in the next two years. All EU member states must agree on this document for it to enter into force. Former head of the European Commission, Romano Prodi, underlined in his speech that the European constitutional text goes beyond current European treaties: "The innovative content of the social rights, which are now being recognized as primary legislation and new social clauses introduced in the Constitution represent clear steps ahead."

The importance of signing the Constitution was emphasized by the Italian Prime Minister, Silvio Berlusconi, the Italian President, Carlo Azeglio Ciampi, who welcomed the signed document as "a turning point in the history of humanity."

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Endnotes

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