From the Constitutionalisation of Europe to a European Constitution

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The idea of a closer European Union, as a kind of league of princes and in sharp delineation from the Islamic Ottoman Empire and, to a lesser extent, also Russia and the orthodox Eastern church, began to find expression from as early as the 15th century in plans for a confederation put forward by rulers such as Henry IV of France. Beyond that, and usually more vaguely, eminent thinkers such as Johann Amos Comenius, Jean Jacques Rousseau and Immanuel Kant articulated the idea of European unity. Henri Saint-Simon, also one of the early utopian socialists, envisaged all of Europe as a constitutional monarchy with a bicameral parliament. Conservatives like François René Chateaubriand developed their own visions as well as representatives of the liberal-democratic national movements, for example Giuseppe Mazzini - indeed the differentiation of the large cultural and social space west of the Urals into modern nations is a typically European phenomenon - , the bourgeois peace movement and of course socialism in all its currents. The SPD, for instance, in its Heidelberg Programme of 1925 advanced the slogan of the 'United States of Europe'.

It was at this time, under the shadows of the First World War, that the idea of European unification began to play a larger role in realpolitik terms. In 1930 Aristide Briand, then France's left-liberal foreign minister, first presented other governments with his plan for a European federation, inspired by the pan-European movement of Count Richard Coudenhove-Calergi. Due to the beginning world economic crisis and the protectionist measures taken by nation states on the one hand, and the unbroken traditions of national power politics and the corresponding thought patterns of all involved on the other, Briand's plan did not progress beyond initial discussions.

A decisive turning was reached with the Second World War, when the larger part of the European continent was occupied by Hitler's Germany which attempted to unite a fascist Europe under its own leadership. In all the occupied countries, the heads of the resistance, from the national-conservative to the social democratic-socialist wing but with the exception of the communists, formulated the programmatic demand for a European unity which appeared essential for security and economic reasons. Only by overcoming traditional power politics and unrestricted national sovereignty in favour of a supranational federal authority would Europe and the nations contained within such a European Union be able to assert themselves against the new world powers.

The goal of establishing Europe as a 'third force', also in terms of its social order, between the USA and the Soviet Union which social democrats in particular saw as part of the unification perspective lost all chances of its realisation when the British Labour government, to which great hopes had been attached, refused to play the leadership role expected of it. In view of Stalin's brutal imposition of exploitation and conformity in the Soviet sphere of power on the one hand, and the determination of the US to uphold their economic and strategic interests on this side of the Atlantic on the other, a decidedly democratic-socialist policy of European independence was faced with enormous obstacles anyway. A 'Socialist Movement for the United States of Europe', founded in June 1947, could not expand this narrow room for manouevre.

From as early as the late 1940s onwards, efforts at European unification, inevitably confined to Western Europe, became an element in the East-West conflict and American hegemonialism, although this began to change in parts from the 1960s. To begin with, the USA clearly saw more advantages than risks in a closer union of Europe, with or without Great Britain, and unambiguously supported the early projects: from the coal and steel community via the (failed) European Defence Community with its concomitant unified political structures to the European Economic Community of the Six agreed in 1957.

The latter's gradual expansion into a union which is soon to incorporate almost the entire non-Russian Europe, and its institutional consolidation, has from the beginning, and always anew, posed the kind of fundamental questions with which the unification process is still coming to grips and which inevitably stand at the centre of a 'European Constitution'. As a matter of fact, the unification process has always contained both intergovernmental and supranational elements, with the former usually dominant. Even De Gaulle however, with his attempt to bring the European communities under the control of a French-led confederation of states, could not and probably would not completely eliminate the supranational element.

By contrast, attempts such as the one first undertaken

in 1962 in a draft written by an ad-hoc group for the governments, to give the constitution of Europe a predominantly federal character, have so far failed due to the resistance of the individual states. The constitutional treaty of 29 October 2004 is therefore above all characterised by the equal weight given to the two structural principles and its avoidance of any finality on the question while simultaneously keeping open the possibility of a further development of the Union, especially with regards to the powers of the parliament which have already been significantly expanded since the 1980s.

Historical preconditions of the constitutional state in Europe

The gradual emergence of a 'European Constitutuion' is unthinkable without the specifically European traditions of the constitutional nation state which in turn builds on much older historical traditions. The basic principle of Europe's historical develeopment since the Middle Ages is pluralism: between the variegated and relatively small-scale, and mostly aristocratic, units as well as within the various communities where the emerging processes of politics favoured functionally differentiated systems over autocracies. This characteristic 'pluralism' usually expressed itself in violent terms, in sometimes very bloody wars and civil wars which permeated European history and were only exceptionally interrupted by prolonged periods of peace. The military, war and power expansion, moreover, constituted one of the major forces behind the technological-economic formation of Europe until the middle of the twentieth century. The social hegemony of the nobility on the basis of the thousand years dominance of the feudal-agrarian mode of production, complemented by cooperative elements of various strengths in peasant communities, limited the monarchies as the agents of pre-modern state formation as much as the relatively autonomous European towns and cities as centres of trade and commerce. The social and occupational differentiation in the medieval and early-modern city required a much higher level of regulation compared with rural society, especially with regards to the law, administration, and finance, and the necessity to involve a considerable number of people in political decisions.

The traditional autonomy rights of the nobility and the urban citizenry, combined with the early codification of property law, represented insuperable obstacles against an arbitrary and violent appropriation of the surplus product by the monarchs and required the participation of the 'estates'. The political assemblies of the estates, dominated almost everywhere by the nobility, despite their social limitations established a tradition of representation against the rulers which was important for the future constitutionalisation. Even in the epoch of

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'absolute' monarchy - that is one limited only by divine and natural law - and in the most 'absolutist' states the intermediary powers of the estates remained much more important than has been commonly assumed. In their own understanding, the claims to autonomy and participation of the estates included, in certain conditions, the right of resistance to a law-breaking authority, perhaps even violent resistance. The modern declarations of human rights are grounded in the Europe-wide discourse of resistance in the early modern era.

One of the most fundamental historical preconditions of the constitutional state in Europe was the role of the Christian, especially the catholic, churches as a unifying factor in the ancient European political culture. The church had absorbed the cultural heritage of antiquity, including that of Roman law, which served to legitimate the monarchical central power arising in the late middle ages. There was no direct road from a feudal society based on legal inequality and territorially fragmented empires to a modern constitutional state which, while divided into socio-economic classes, required a citizenship defined by legal liberty and equality. It was only the rise of the sovereign state in the form of absolute monarchy during the 17th and 18th centuries which pushed back the intermediary powers of the estates to such an extent that a politically more uniform society of subjects came into existence while on the opposite side the executive functions of the ruler became increasingly differentiated and transferred to the bureaucracy. The relationship between a society of subaltern subjects and the monarchical state power became both more direct and more abstract, and against the background of a clearly accelerating social and economic dynamic since the mid-18th century demanded a new set of administrative and juridical rules.

Alongside the originally dominant medical and geographic uses of the word 'constitution' it was common to consider fundamental treaties and laws such as the British Magna Carta of 1215 or the Roman-German 'Golden Bull' of 1356 as 'constitutional laws'. However, none of these 'constitutional laws' of the early modern period was intended to provide a comprehensive political framework; they were always concerned with pressing individual issues even if their settlement implied broader commitments. It was only the modern concept of a constitution, as for example in the 'constitutions' of the USA (1787) - with its strong influence on Europe - and France (first 1791, in the same year also the Polish one which was frustrated by the second and third partition) made possible the part revolutionary, part reformist transformation of the political systems of Europe around 1800. The beginnings of this modern concept of constitutions reach back to Britain in the early 17th century and took shape during the 18th century in the debates among the enlightened

intellectual elites of the continent, acquiring an increasing normative and political charge: Individual freedom, equality before the law, division of powers, press freedom, political representation. Between the late 18th and the mid-20th centuries, in particular, one can identify broad, Europe-wide connections, certain waves and regions of constitutionalisation which strongly qualify the dominant image of this age as a long epoch of national fragmentation.

The first republican-democratic constitution had come into being as early as the 1750s under the special conditions of the Corsican secession from Genoa; the project finally failed in 1769 with the French annexation of the island. The highly developed plan by Archduke Peter Leopold, the later emperor, for the constitutionalisation of Tuscany in the 1780s, too, did not come to fruition mainly because of the resistance of the conservative clergy. Yet it deserves study as a strong example of enlightened reform absolutism. The examples mentioned here show that the constitutional state was 'in the air' from the final quarter of the 18th century at the latest. They also point to the fact that the long road from the early, usually monarchical, constitutionalism to a fully-fledged democracy was certainly not smooth or without contradictions but rather marked by massive, even violent resistance and reactionary retrogressions, and in the inter-war period even by a complete, albeit temporary, change of direction.

The constitutional state of the 19th century

Important as the role of revolutionary France as part catalyst, part direct promoter - via the Napoleonic hegemonial system - was for the transformation of Europe around 1800, it could only play this role because there had been for some time - more in some places than in others - changes taking place in society and social consciousness which alone made it possible for the revolutionary impulses 'from the outside' to find fertile soil. Beginning with the Spanish war of independence, the idea of the self-determination of 'nations' made a dialectical turn against the Emperor, not least as a result of constitutionalisation. The extent to which there was a common and fundamental political transformation and paradigmatic change all over Europe around 1800 was shown when the so-called restoration after Napoleon's defeat not only left most of the important social and political reformations of the previous period untouched, at least in Western, Northern and Central Europe, but also permitted another wave of constitutionalisation following the Charte Constituionelle of 1814, especially in the South German states. It was the new bourgeois elites, the 'educated' in Germany, the 'notables' in France, and the 'middle classes' in England (of whom only the latter represented anything like a real bourgeoisie) who understood the constitutional state as a means of its own emancipation and also, simultaneously, as a means of integrating the post-revolutionary societies (if necessary, in league with the monarchy). Alongside this moderate liberal constitutionalism, and in part opposed

to it, could be found more radical, more plebeian currents which, usually in connection with social protests, demanded the unrestricted sovereignty of 'the people' as had been done in the French revolution after 1789.

In decades of struggle in parliamentary bodies, in publishing, and not least on the street and often enough in armed struggle, the liberal 'party of movement' achieved the constitutionalisation of all of Europe's states, culminating in the revolutionary events of the early 1830s and late 1840s. The foundation of new nation states in Italy 1859-61 and Germany 1866-71 as a result of, on the one hand, the bourgeois national and constitutional movement and, on the other, the military dominance of the states of Piedmont and Prussia, concluded this process in the main - with the exception of the constitution which, following the revolution of the previous year, was imposed from above in Tsarist Russia as late as 1906 and which, although it left the monarchical executive in a particularly strong position, was none the less more than a mere pretence. The fact that the new nation states in Eastern and South-eastern Europe issuing from the dissolution of the Ottoman empire in the last third of the 19th century, and then at the end of the First World War from the destruction of Austria-Hungary and the eastward shift of Russia were constitutional states - at least on paper - from the start was already considered normal.

It is well known that the constitutionalisation of England preceded that of continental Europe by at least a century. In 1688-89 (the 'Glorious Revolution'), following a decades-long conflict, including a civil war, between the lower house of parliament and the king, a de facto constitutional monarchy emerged, with the financial prerogatives of parliament, as they did elsewhere, becoming the main lever of successive further constitutional change. Although no comprehensive political framework law was ever adopted and no such law exists until the present day, a concept of 'the constitution' emerged which comprised the documents - some going back to the Middle Ages - stating the personal rights of the Englishman or Briton, such as the 1689 Bill of Rights, as well as the Common Law and the unwritten rules of constitutional practice. The result is an evolutionary, customary law based understanding of constitution which has only recently begun to adopt elements of a more normative, systematic, and juridical concepts of the continental European countries (as well as the USA).

Britain's constitutional monarchy with its tendency towards parliamentarianisation was an aristocratic form of rule and remained that to some extent until the House of Lords was effectively stripped of its powers in 1911. However, the English nobility had always been socially open to the commercial bourgeoisie as a result of the strict rules of primogeniture and had established close economic and political ties with it quite early. The political taming of the high nobility by the Crown and the economic de-feudalisation of aristocratic land

ownership in the early modern age provide the most important keys to understanding the pioneering role of England in both the constitutionalisation and the capitalist industrialisation of Europe.

Until the First World War, the pan-European process of constitutionalisation proceeded largely within the limits of a constitutional monarchy in the narrower definition that is a monarchy limited by law but with the executive remaining with the ruler or a government appointed by him. Even in the Prussian-German, as well as the Austrian-Hungarian constitutionalism with its characteristic emphasis on the executive power it is possible to discern in the years around 1900 a creeping constitutional change which strengthened the government against the crown and, at the same time, the position of the national parliaments - elected through a general male franchise since 1867/71 in Germany, 1907 in Austria - against the executive and federal organs of the state. However, the breakthrough to parliamentarianisation had to await defeat in the First World War; it could then no longer prevent the revolutionary democratic rising of the people.

All over 19th century Europe therefore, constitutional monarchies below the level of parliamentarianism still dominated. When in 1906 the traditional autocracy was replaced by a very modest version of constitutional monarchy even in Tsarist Russia, France had already had a parliamentary republic based on a general male franchise for over three decades. In Northern Europe, the introduction of women's right to vote was imminent. However, even France, for all its revolutionary traditions, remained a monarchy between 1804 and 1870, with only a brief interruption. Switzerland, the only constant republican country in Europe, only became a modern federal state in 1847-48 and it was not until 1874 that a combination of parliamentary and referendum democracy established itself. Otherwise it is possible to speak of the adoption of a parliamentary form of government (de facto, not necessarily de jure) at this time only in Italy (1861), the Netherlands (1868), Norway (1884) and Denmark (1905), with some reservations also Greece (1875) and Serbia (1903); only Great Britain and Belgium had done so much earlier in the 1830s and early 1840s if one ignores the special case of a temporary, quasi-parliamentary government by the French ultra-conservatives under the Bourbon monarchy restored in 1814.

The European constitutional state of the 19th century and beyond, of course, organised a capitalist class society founded upon extreme inequality, which in addition was marked by a mixture of many pre-bourgeois and clientilist elements. The representative organs even of already parliamentary states such as Britain were elected on the basis of (initially very) restricted and unequal franchises. In addition, it is important to emphasise the fundamentally manipulative character of European constitutional development. This applies not only to the Southern and South-eastern periphery of the continent but also for the plebiscitary-populist Bonapartism of the two Napoleons, as well as to the specific lobbyism of sectoral interests in Imperial Germany. The Spanish 'Turno pacifico', in which governments were changed by arrangement between the conservatives and liberals and only subsequently legitimised through systematic electoral manipulation and falsification, was matched by the Italian 'Transformismo', a veritable system of oligarchic rule by a liberal government elite in which local clan chiefs and the leaders of provincial administrations took care of the desired results. In Italy as in Spain, where the Constitution of Cadiz (1812) had provided one of the early examples of relatively far-reaching constitutionalism, such practices led to a thorough discreditation of parliamentarianism; much the same can be said for the corruption and clientelism inherent in the constituional practices of the Balkan states.

From the liberal constitutional state to social democracy

The rising democracy movement in many European states around 1900 demanded, alongside the strengthening of parliaments, above all improvements in the franchise. Through a series of its extensions - 1832, 1868, 1884, 1918, 1928 in Britain - the general franchise for men and later also for women was gradually achieved. The demand for a democratic franchise, fought for bitterly including with mass demonstrations and strikes, was a key issue for the young socialist workers movement which considered parliamentary democracy, preferably in the form of a republic, as the most beneficial form of government in a bourgeois-capitalist society, but also at the same time as the form of its abolition. Alongside the labour movement, and sometimes in an alliance with it, were the radical liberal currents of the bourgeoisie and petty bourgeoisie, but sometimes also the peasantry, which contributed to the achievement of democratisation against the traditional ruling elites of the aristocracy and big bourgeoisie.

This phase of the democratisation of the franchise and, where it was still unachieved, the parliamentarianisation of government corresponded also with the era in which the legal regulation of social policy became a political issue, and here too with the involvement of bourgeois politicians who recognised the need to secure the working population against existential risks such as accidents, illness, old age, later also unemployment). The pioneering model was the social insurance system introduced in the 1880s for the German Empire by the conservative chancellor Otto von Bismarck. Even though Bismarck's motives were patriarchal and anti-socialist and the material benefits quite modest in the beginning, social security and the improvement of employment law gradually became a constitutive element of the European constituional and democratic model. The difference between their financing through taxes or contributions is, in this context, secondary.

The expansion of the social security systems with regards to their objects, their expenditures, perfor-

mances and the number of those insured to the concept of the 'social state' or 'welfare state' occurred after the Second World War and was made possible by the long phase of reconstruction and prosperity, the East-West conflict and the temporary, and in some countries more long-term, dominance of social democracy and Keynesian economic policies. It would not be much of an oversimplification to say that - Great Britain apart - democracy did not reach the degree of stability required for the process of European unification in Western Europe until the 1950s. The welfare state element in the political order must be considered the most important precondition alongside the defeat of fascism and its collaborators.

After the First World War, during the Weimar Republic, political theorists and constitutional law experts from the ranks of German social democracy, especially Hermann Heller, had argued that the 'material' or 'social' law-based state, as it found expression in the articles of the Weimar constitution concerned with labour and social policy which themselves were a compromise between the republican bourgeoisie and the reformist labour movement, would expand the traditional legal and constitutional state by a qualitatively new dimension. The aim of social democracy and the trade unions was to gradually expand this dimension with their social policies and 'economic democracy' approach. It was thought that, in legal terms, it would even be possible to overcome capitalism and realise socialism without any change in the text of the constitution and without leaving the territory of representative democracy.

The key argument was that without a minimum of 'social homogeneity' - which, under the conditions of market capitalism, included also the ability to achieve compromise between different interests on the basis of consensual notions of justice - the masses could not be enabled to complete the self-determination of the people in actual political practice and therefore could not become an integrated citizenry.

These still very relevant deliberations on constitutional policy were directed not only against the old liberal idea that formal freedom and equality before the law were sufficient. They also entailed a clear demarcation against communist statism with its political dictatorship, abolition of the division of powers and fully nationalised command economy, as it had then taken shape in Russia and would later be exported to many regions of Europe and Asia. The theory and practice of a radical-democratic council system as the political form of socialism, which had emerged in several variants from the revolutionary upheavals of 1917-18, had in Russia been overlaid from the start by the educational dictatorship of the Bolshevik party elite which in turn then itself socially into the marasmus of the nomenklatura. The end of that system in the East European popular revolutions of 1989-91 can therefore also be understood as a constitutional revolution.

The historical background of the European constitution

The afore-described historical procedure, i.e. the route of the constitutionalisation process in Europe, defines and renders the course towards a European Constitution. That is, the historical procedure of a lato sensu European constitutionalisation acquires now a concrete form through the creation of the European Communities in 1952 and reaches its first peak and a temporary 'integration' with the signing of the "Treaty establishing a Constitution for Europe' on October 29th, 2004.

The history of the idea of the European Constitution, which commences with the concept of the Constitution of the nation-state, evolves adapted to the idea of a transnational and, finally, supranational and in the same time multi-national legal order of states, and is the one that led to the first steps of constitutionalisation of the process of European integration. The term 'Constitution' - irrespective of the accuracy of the term for describing the European Constitutional Treaty - refers, even symbolically, to the political will to create a unitary legal order or, in any case, a common legal framework of competencies, to ensure a space of liberty - and finally this might be the problem of constitutionalisation of the integration process - to create for the European Union something like a state quality.

These elements are at the starting point and constitute historical and logical conditions of the unification course from a beginning of international law nature (the point of view of international law) to an institutional condensation and, finally, to an outcome of constitutional law nature. The history of the concept and meaning of constitution in Europe explains finally a constitutional romanticism, which prevailed in the European Union and gave birth to the will and the dynamic of the respective evolutions. The international law nature of the starting point of the Communities rendered them inappropriate for a constitution. The legal-political content of unification though, its ratio, already incorporated all the elements of constitutional necessity.

The development of the European integration into a political process

The contemporary history of European integration has as a symbolic starting point: May 9th 1950, which is nowadays celebrated as 'Day of Europe'. At that time, the French Minister of Foreign Affairs Robert Schuman proposed the establishment of a supranational organisation for the common administration of two principle sectors of economic policy, coal and steel. His final objective was to ensure peace and prosperity in post-war Europe through solid cooperation links between the European states, especially between Germany and France. In 1952, the European Coal and Steel Community was established (ECSC) with the participation of 6 European states: France, Germany, Italy, The

Netherlands, Belgium and Luxemburg.

The undertaking of ECSC proved to be so successful that some years later the six states decided to extend their cooperation to even more sectors. In 1958, two additional communities were established through the Conventions of Rome, which were signed in 1957: the European Economic Community (EEC) and the European Atomic Energy Community.

The European Communities have been based since the beginning on a novel principle of transnational coope-ration, which went beyond the concept of a traditional international organisation. The core of the unifying task was lying in the so called, 'community method' of cooperation which was based on the transfer of sover-eign rights from the member states to the Communities, as well as on their joint administration at European level. Schematically: the Council, where representatives of member states participate, decides, the Commission proposes to the Council and imple-ments its decisions, while the Assembly, which was composed at that time by representatives of the natio-nal parliaments, had an advisory role.

The European Communities evolved soon into a pole of attraction for the remainder of the states of Western Europe: in 1972 Great Britain, Denmark and Ireland joined, in 1981 Greece and in 1986 Spain and Portugal. The last enlargement was accompanied by the first revi-sion of the founding treaties, under the Single European Act in 1986. This historical moment marks the evident commencement of politicisation of the phenomenon of the Union. On the basis of the Single European Act, a decision to create a unified internal market was made and the first step was taken towards the political - apart from economic - unification of Europe, through the establishment of a mechanism of loose coordination of the external policy of member states, the European political cooperation.

The European unification process undergoes a first institutional deepening

At the end of the 1980s, while the existing socialist regimes were collapsing and the re-unification of Germany was becoming a reality, everybody realised the need for deepening not only the economic unifica-tion in view of the aim of its political unification of Europe. Moreover, the unified internal market in 1992 created the conditions - and according to many the need- for a single currency. In 1991, the Maastricht Treaty was signed, according to which the European Union was established as it principally operates to date. The European Union is based on three pillars. The first pillar refers to the European Communities, where the community method is implemented. An underlying evolution was the creation of the Economic and Monetary Union (EMU), which was completed on 1st January 2002 with the circulation of Euro. The second pillar refers to Common Foreign and Security Policy (CFSP), where cooperation in the field of external poli-cy is implemented at intergovernmental level.

The third pillar, finally, refers to cooperation on issues of justice and home affairs (e.g. asylum and migration policy), where the member states cooperate also at intergovernmental level i.e. without the community method being implemented.

Amsterdam

Following the next enlargement of the European Union in 1995 (Sweden, Finland and Austria) a third revision of the treaties took place under the Amsterdam Treaty in 1997. This treaty extended the implementation of the Community method of coope-ration and enriched the institutional framework of CFSP; however the problem of preparing the Union - and especially its institutions - for an already visible enlargement of the European Union towards Eastern Europe was not dealt with. This task was undertaken by the next intergovernmental conference for the revision of the treaties, which lead to the Treaty of Nice.

Nice

By means of the Treaty of Nice (2000) the Union attempted to solve the leftovers of the Amsterdam Treaty and to render the Union capable to receive the twelve member states, which were in the course of accession negotiations. Among the achievements of the Treaty of Nice were the promotion of the commu-nity method in new policy sectors, the reinforcement of the European Parliament, as well as the facilitation of enhanced forms of cooperation should be acknowled-ged. It remains to be proved though, since these forms of cooperation have not been used so far, whether they will serve the need for flexibility or whether they will endanger the unity of the European Union in the futu-re. In parallel, a compromise in the institutional archi-tecture of the enlarged Union has been achieved: the composition of the Commission and of the Parliament in a Union of 27 was regulated and the votes for deci-sion making in the Council were allocated. On the con-trary, the Charter of Fundamental Rights that was ela-borated by a Convention established for this purpose, was not incorporated in the Treaty, despite the related endeavours of the European Parliament, but was only adopted as a political declaration. The Nice Treaty has been enforced on February 1st, 2003 paving the way for the enlargement of the EU. As of May 1st 2004 Estonia, Cyprus, Malta, Latvia, Lithuania, Hungary, Poland, Slovakia, Slovenia and the Czech Republic became members of the Union. The Nice Treaty con-stituted a difficult compromise, which was not convin-cing as a basis for the future of the enlarged Union. In particular the solution of weighted votes has since the beginning been considered extremely complex, partly unfair, and convoluted for the citizens. The allocation of competencies between the member states and the Union, the role of national parliaments, the incorpora-tion of the Charter in the treaty, as well as the overall rationalisation and simplification of the treaties could not be encountered in Nice.

The necessity of a Constitution becomes directly visible

An extremely crucial point of the institutional evolution of the European Union comes on: Nice designated expressis verbis, in a declaration annexed to the treaty, the limits of the intergovernmental conference as a method for the revision of treaties: lack of transparency and publicity created intense alienation of the European citizens from the procedure of European integration. Thus, during the Nice Summit on December 2000 the member states decided to embark on a new attempt for global dialogue on the future of Europe. A year later, during the Laeken Summit (December 2001) the European Council decided to convene a new unofficial organ, the European Convention for the Future of Europe, following the successful example of the convention that elaborated the Charter of Fundamental Rights; the objective of the convention was to prepare the subsequent intergovernmental conference.

The Convention

The mandate of the European Council to the convention was to elaborate proposals in three directions, namely how to bring citizens closer to the endeavour of European unification and to European institutions, how to organise politically the enlarged European Union in order to operate efficiently, and how to ensure a reinforced role of the Union in the world. At the same time, the convention had to examine whether the need to simplify the treaties could be served by the adoption of a constitutional text.

The convention was composed of 16 representatives of the European Parliament, a representative of the government of each member state and two representatives of each national parliament. The representatives of the ten accession member states had equal status, while the candidate countries (Romania, Bulgaria and Turkey) were given observer status. Two members of the Commission and - under status of observer - representatives of the Economic and Social Committee, of the Committee of the Regions, of the European Ombudsman and the Court of Justice of the European Communities participated.

The works of the convention were initiated under the presidency of Valery Giscard d' Estaing on February 2002 and were completed on June 2003. It operated under conditions of unprecedented publicity and transparency for European standards. Within the limits of the possible, the convention set the conditions for expression and participation of civil society and elaborated ideas for almost the total of the provisions of the European treaties. During its operation, the convention acquired a reinforced political dynamic, which led the governments of many member states to have representation at the level of ministers of foreign affairs. Under the guidance of the presidium, the convention finally managed to surpass the initial mandate of the European Council; instead of being restricted to the submission of different alternative proposals, it drafted

a global, to a large extent novel, comprehensive 'Draft Treaty Establishing a Constitution for Europe' which was adopted on June 13th, 2003 with consensus. The draft treaty was submitted to the Thessaloniki Summit on June 20th, which adopted it, despite the objections of several member states, as a solid basis for the works of the intergovernmental conference.

The European Constitution ante portas

The Intergovernmental conference was initiated on October 2003 in Rome under the coordination of the Italian presidency. The objective of the presidency, supported mainly by Germany and France, was to decrease the spectrum of issues to be discussed anew. In that way, two tendencies were formed: the first was the position of the countries which supported the draft of the convention or pursued limited improvements and amendments; among them was also Greece. The second tendency was expressed by countries which adopted a critical stance towards the draft of the convention and maintained that it had proceeded extremely with the unification endeavour (especially Great Britain) or that it was impairing their interests (especially Spain and Poland). The effort to conclude the Conference in December 2003 failed, since it proved impossible to achieve unanimity among the 25. It should be highlighted that the consensus of the ten new member states was deemed necessary, although they were not yet formally members of the European Union. A key issue of disagreement was the refusal of Spain and Poland to accept the convention's proposal regarding decision making at the Council and their persistence for the maintenance of the Nice system, which almost equated them with the four bigger member states.

The endeavour was further taken up by the Irish presidency, which valorised the new political conditions created by the fall of the governments of Aznar and Miller in Spain and Poland respectively, and convened anew the intergovernmental conference on April 2004. The Irish presidency was based on the acquis of the first phase of the intergovernmental conference and attempted to reduce the issues under negotiation, despite the effort of some member states (especially Great Britain's) to 're-open' several topics. Following a complex compromise on the critical issues, the 'Treaty establishing a Constitution for Europe' was finally approved by the Intergovernmental conference, namely, by all the member states, that convened in the framework of the European Council, held in Brussels on June 17th and 18th, 2004. The 'Treaty establishing a Constitution for Europe' was signed by the governments of the member states on October 29th 2004 in Rome, following the necessary technical elaboration of the final text and its translation into all the official languages of the Union.

Should one fact be designated as the main starting point of the last phase of constitutionalisation of the Union, this is beyond any doubt the enlargement, which cannot be compared to the previous ones neit-

her quantitatively nor qualitatively. The leap of the Union from the 15 of the European West (and South) to the 27 of the reunified continent, was the catalyst, which accelerated evolutions and bended the existing objections.

With respect to the method, the procedure of the Intergovernmental conference served the 6 founding members and reached its limits with 15 members. However, it was made clear, that it would not possibly continue to endure - as an exclusive procedure - with 27 members.

With respect to the content, the form, structure and decision making procedures foreseen by the treaties were planned for the 6 member-states and operated in a relatively satisfactory way, with minor amendments for 15 members as well. However, it was certain that a Union with 27 member states would be condemned to paralysis. Schematically speaking: historical 1989 politically imposed the enlargement. The enlargement politically imposed the constitution.

The next steps

The next step until the enforcement of the European Constitution is the ratification by each member state. Once the Constitution is signed, the ratification procedure by each member state commences separately, according to domestic constitutional procedures. In that case, two options exist: ratification through the member state's parliament or through a referendum. Many member states have already announced referenda for the European Constitution. The procedure of approval of the European Constitution by the 25 member states will certainly be time-consuming. It might also prove to be extremely problematic according to historical experience. Denmark, in 1992 and Ireland in 2001 were obliged to hold second referendums following the first negative outcome regarding the Maastricht Treaty and the Nice Treaty, respectively. These facts of course delayed the enactment of the two treaties, the delay in the case of the Nice Treaty reached almost 2.5 years!

In order to avoid extreme delays in enforcing the European Constitution, the Intergovernmental conference adopted a declaration, according to which, if during the two years following its signature by the governments of the member states, at least 4/5 of the member states have ratified the European Constitution and one or more have not done so, the issue will be referred to the European Council. Certainly, this provision is of mere political nature, since the obligation of ratification still remains for all member states. It is worth mentioning, that during both the convention and the intergovernmental conference it was maintained that the enforcement of the Constitution had to be facilitated. According to this viewpoint, even if one or more member states do not ratify the Constitution, the remaining states should have the possibility to proceed with its implementation. That is, the Union should not become a hostage of one member state. Finally, it has not been possible to conclude to overcome the binding

legal nature of the treaties in force, along the lines of which proceeds the enactment of the Constitution. Several procedural proposals have been presented for encountering the problem, such as the simultaneous (at the same day) approval of the Constitution in all member states either through referenda or by the parliaments, aiming at creating a dynamic which will facilitate both citizen's awareness and the approval of the Constitution.Commencement of implementation should the ratification procedures be promptly finalised, the European Constitution is expected to come into force on November 1st 2006. Should delay occur - and should any other procedure be not decided - the Constitution will be put into effect following its ratification by the last member state.

Constitution or Constitutional Treaty?

The term 'constitution' has a specific history in continental Europe and therefore a specific content. Firstly, the constitution emanates from procedures based on increased legitimisation. Secondly, the constitution has acquired, through the evolution of European institutional culture, a specific content and includes regulations of specific nature. The first prerequisite - the constitution-making procedure - is not met, since the origin of its legitimisation is the international treaty concluded by the member states of the European Union. The fact that the convention was set up brings about a certain constitutionalisation of the procedure, which is however not sufficient. The content of the European 'Constitution' undoubtedly has elements of constitutional quality. For the afore-mentioned reasons the term 'European Constitutional Treaty' is more precise.

Final remark

The refusal of the constitutional treaty by a significant part of the European left is justified in terms of opposition to neo-liberal ideology and capitalist globalisation. What must be criticised here is not this basic political stance but the conclusion derived from it - that is, to consider the failure of the constitutional treaty and therefore the maintenance of the status quo as the lesser evil. The constitutional treaty is a step which can now be taken in order to progressively expand the ability of the European Union to act and therefore also to provide the institutional framework for a defence of the welfare state model and the re-regulation of the capitalist economy. Whether or not that can be achieved will be decided by political conflict.

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