

31 EUIDENTITY – EUROPEAN CONFERENCE ON CONSTITUTIONAL IDENTITY

Report on the ‘Constitutional EUidentity 2019’ Conference Organized by the Constitutional Court of Hungary, 8 March 2019, Budapest

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At the invitation of the President of the Constitutional Court of Hungary, Koen Lenaerts, President of the European Court of Justice and Andreas Voßkuhle, President of the Federal Constitutional Court of Germany both visited Budapest on 8 March 2019 to speak at the conference organized by the Hungarian Constitutional Court. In addition to the attending dignitaries of international law, the constitutional courts of Austria, the Netherlands, the Czech Republic, Latvia, Luxembourg, Italy, Switzerland and Slovenia were also represented at presidential or vice-presidential levels.

The conference ‘Constitutional EUidentity 2019’ was attended, besides foreign guests, by the President of the Republic, the President of the Constitutional Court and the Minister of Justice of Hungary, by Hungarian public law dignitaries, constitutional jurists, public administration professionals, as well as members of academia. This professional event of major significance even at an international level had as its venue the Great Hall of the Hungarian Academy of Science.

As the focus of the conference President of the Constitutional Court Tamás Sulyok chose a topic that created the opportunity for participants, beyond discussing topical issues of the legal profession, to respond to everyday challenges faced by constitutional courts. The optimal way to meet this demand proved to be to examine the problem of European and national identities from several aspects. Already in its title, the conference implied the main points of connection between European and national identities; the way these ‘types of identity’ affected each other; the elements and sets national identities shared when compared to one another and the way national identities affected European identity. The conference provided an exceptional opportunity for participants to strengthen the dialogue between constitutional courts, which is essential for efficient cooperation.

The President of the Republic János Áder welcomed attendees quoting Ferenc Deák (Hungarian Minister of Justice in the 19th century, known as the ‘Wiseman of the Nation’). The President said that the effort to define the constituents of European constitutional

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identity was not made easier by the fact that the concepts of identity, sovereignty and loyalty were often mixed up in various lectures and studies. Quoting Tamás Sulyok, the President of the Republic recalled that under the concept of constitutional identity the Hungarian Constitutional Court understood Hungary's constitutional self-identity. János Áder added that the Federal Constitutional Court of Germany, a frequent point of reference for constitutional courts, pointed out in one of its decisions that the primacy of EU law was fundamentally restricted by the constitutional identity of the *Grundgesetz*.

The President of the Constitutional Court Tamás Sulyok emphasized in his welcome address that globalization and the new challenges Europe faced called for a redefinition of the essence of European identity. The conference aimed to contribute to the clarification of the legal content of the concepts of European and national identity. The common historical past was the strongest link among European nations, the president added. It depends solely on us whether our common European identity will be shaped by conflicts or a constructive dialogue. A bridge would have to be built between our Europeanness and our national identities, in a way that a balance is found between our 'global' and 'local' self-understanding. This was what made an intensive dialogue between judicial forums operating in the European space, based on mutual recognition, especially topical, he said.

The President of the European Court of Justice Koen Lenaerts emphasized that European identity reinforced national identity; moreover, European identity was comprised of the Member States' common values. The EU was based on the equality of the Member States, who retained their rights to shape their respective national identities. In areas not regulated by EU law Member States enjoy a wide margin of discretion to create their own legislation.

Andreas Voßkuhle, President of the Federal Constitutional Court of Germany underlined in his address that the concept of constitutionality could be different from Member State to Member State but there are some common points and values (human dignity, liberty, acquired rights) that formed a strong constitutional basis. In the EU the precise content of European identity has not yet been defined and it is our common responsibility to make up for this, he said. The President of the German Constitutional Court emphasized the importance of dialogue between the Member States and the EU noting that maintaining the balance between national constitutional identity and European values was of key significance.

The Minister of Justice of Hungary László Trócsányi said in the EU, too, there was need for mutual respect and communication as well as for the equal partnership between the parties. All these are indispensable for maintaining and developing integration and for creating an ever-stronger EU in the global area.

The above was followed by contributions from the representatives of national judicial and constitutional forums. Presentations were delivered (in order of speaking) by Peter M. Huber, Justice of the Federal Constitutional Court of Germany, János Martonyi Former Minister of Foreign Affairs, Brigitte Bierlein, President of the Austrian Constitutional

Court, István Stumpf, Justice of the Hungarian Constitutional Court, Maarten Feteris, President of the Supreme Court of the Netherlands, Tamás Sulyok, President of the Hungarian Constitutional Court, Pavel Rychetsky, President of the Constitutional Court of the Czech Republic, András Varga Zs., Justice of the Hungarian Constitutional Court, Marta Cartabia, Vice President of the Italian Constitutional Court, Ineta Ziemele, President of the Latvian Constitutional Court, Rajko Knez, President of the Constitutional Court of Slovenia and Martha Niquille, Vice President of the Federal Supreme Court of Switzerland.

The two panel discussions were chaired by Christoph Grabenwarter, Vice President of the Austrian Constitutional Court and Francis Delaporte, Vice President of the Constitutional Court of Luxembourg.

These outstanding professional contributions can be summarized as follows. The EU's value catalogue's success is primarily owed to democratic constitutionality. These common values are, at the same time, not abstract but actually practical values, of which some outstanding ones comprise the core values binding each Member State. National constitutional courts are the forums that determine the value content of these values. A collision between national and EU values is possible, in which case, however, there are no simple solutions for solving the situation. Therefore, where possible, the emergence of such collisions should be avoided. This is why regular dialogue between constitutional courts is so urgently needed, especially on contentious issues where the future of the EU's value community (fairness, honesty, diversity, subsidiarity) can be ensured. Some questions, too, were formulated with reference to the value community and the cooperation of constitutional courts: there is no agreement between Member States as to where the boundaries of common core values exactly are. The question what institutional preconditions are required from the side of constitutional courts in the Member States to enable the efficient functioning of the Association of European Constitutional Courts is also in need of further elaboration. The systematic, efficient and purposeful sharing of Member State information should not be underestimated. A further question is whether the components of the core of constitutionality can precisely be identified and if so, what these are. What are the components, by contrast, that make up national identity? The question also arises who or what bodies are entitled to identify its constitutive elements. The Member States alone or the Member States' constitutional courts, or would it be useful in this respect, too, to strive for and identify the contents of national identity in the course of a dialogue? It is characteristic of the EU that it is a region regulated by national legal systems, EU law and international treaties, where constitutional courts are in the space between national and EU legislations. It is here that they perform their activities based on their exclusive competence to interpret national legislation. It is in this respect that it emerged as an important argument that the EU was required to consider national characteristics, *i.e.* national identity. It also arose as a possibility that national constitutional courts should try to define a common language to facilitate communication.

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As the summary and conclusion of the conference it was pointed out that dialogue between Member States' constitutional courts – for which this conference was an example – created the opportunity to reduce the number of difficult-to-formulate and express, very delicate and open questions. Meaningful dialogue makes it possible to reach an agreement between Member States on certain issues, while in questions where a uniform stance is not feasible, the common goal may be to try and bring positions closer and find a common denominator as a compromise solution.