

WALTER HALLSTEIN-INSTITUT FÜR EUROPÄISCHES VERFASSUNGSRECHT



FORUM CONSTITUTIONIS EUROPÆ

FCE 2/02

***THE DEBATE ON THE EUROPEAN CONSTITUTION -
A SLOVAK VIEW***

MINISTERPRÄSIDENT MIKULÁŠ DZURINDA

Vortrag an der Humboldt-Universität zu Berlin am 19. Februar 2002

Distinguished Ladies and Gentlemen,

Minister of Foreign Affairs of the FRG, Joschka Fischer, had the honour to speak here almost two years ago. On 12 May 2000, a speech that started a process, of which we can today say with certainty that it will change the form of the European Union in the 21st century, was presented here. It is therefore my great pleasure and honour that I can join the discussion on the future of the EU here.

The road to the present form of the European Union was a difficult one. Consolidating the vision of united, peaceful and free continent with the pragmatic needs of countries suffering from the war was its beginning. Political discussion on the need of uniting Europe has been going on in an intensive way more than a century, and its beginnings undoubtedly go even further back in history. But it was the pragmatic, economic co-operation that has gradually built solid bonds bringing the Member States to a transition from the Communities to a Union. The introduction of the common currency, the EURO, the beginning this year has been a certain culmination in this development. EURO is more than a only a new currency. The introduction of the EURO is the materialisation of European unity. Today, it is hard to assess the consequences of its introduction for the further development of European integration. It is, however, clear already now, that EURO will be one of the pillars of European identity. From the Slovak perspective the introduction of EURO contains special symbolism. In the times when the EU was starting its discussion on a common currency the former Czecho-Slovakia was starting a discussion on splitting the common Czecho-Slovak currency. Today, when EURO is a reality the Slovak Republic and also the Czech Republic are standing in front of the gates to the European Union. Today like then, when we split in a peaceful way on the basis of a free decision of our peoples, we are determined to accede to united Europe together on the basis of an equally free decision. This example can also be used to illustrate that the countries of Central and Eastern Europe went through a complex, often controversial process of internal transformation in the recent years. Their fundamental direction is, however, clearly European. In particular, the experience with the demanding transformation process could, undoubtedly, be one of the contributions by those candidate countries that have a realistic chance to conclude membership negotiations by the end of this year.

Paradoxically, the European Union project is often more popular in candidate countries than in the existing Member States today. Almost eighty per cent of the citizens of Slovakia see their prospects in Slovakia's European Union membership. Is it so because we have been denied the dream of Europe for so long? What do we expect from the Union? What is our idea of its functioning? Is this idea not too idealised? Or do we perceive it in a rational way – as a necessity?

Europe, Europeanism mainly means for us a cultural and civilisation model. To be a European means to commit oneself to certain values – liberal democracy, civil society, individual rights. Of course, in the minds of our people the Union is also associated with the idea of a higher standard of living, however, its foundations lay in the respect for and enforcement of the mentioned values. One of the slogans of the Velvet Revolution in Czechoslovakia was "Return to Europe". It was not by coincidence. The European Union represents a practical expression of the unity and solidarity of its Member States, it represents a safe space and it gives the chance of equal participation in the decisions of the whole entity.

I already hear the voices of sceptics saying that equality cannot be always exercised, that the multitude of interests blocks the possibility of a unified procedure, that the Union does not have sufficient capacities to ensure its security available. Yes, also. The Union is really full of many internal contradictions. However, this proves that life is pulsating in it and that it has the potential of rebirth into a new quality. Two years ago Minister Fischer with whom I share the same hobby –

long-distance running – realised that the Union in its current shape has reached its internal limits and he named them. Decision-making mechanisms that functioned half a century ago cannot function with fifteen countries with the same quality. Future enlargement of the Union to, say, 25 members makes this task even more urgent. The events of last September the 11th clearly convey that co-operation in the area of security must go hand in hand with economic integration and building of links. The events of September the 11th are a clear call for creating a single European security area. Europe is standing at the threshold of a new stage in its integration.

The discussion about the future of the European Union has two levels – the national and European one. The Nice Declaration stated the need of tackling problems accumulated in the European Union in a broad and open discussion. At the same time it invited the Member States and the candidate countries to open a nation-wide discussion on this issue. The Slovak Republic has responded to the call of Nice by convening a *National Convention on the European Future of Slovakia*. It is a discussion forum bringing together representatives from various sectors of the society. The National Convention is composed of the representatives of parliamentary political parties, the academic community, churches, NGOs, local governments. Its sessions are public and fully open to media. The creation of the Convention in Laeken has only confirmed the correctness of our choice.

In less than two weeks the Convention on the Future of Europe shall meet in Brussels. Thus, the discussion on the future of the EU at the European level will be officially opened. The fact that also Slovakia is going to participate in the work of the Convention is, in particular, important for me as the Prime Minister of the Government of one of the candidate countries. It is the first time in the history of European integration that “decisions about us will be taken with us”. History has not made it possible for us to directly participate in the seeding and gradual shaping of European integration. The more we want to participate in its completion.

The discussion about the future of Europe has been necessitated by the accumulation of fundamental problems the Union must tackle. Their solution is *the question of further existence or non-existence of the EU*. Stagnation of European integration in its current stage of development would equal its collapse.

Despite the reforms of the European decision making process – starting with the Single Act and ending with the Treaty of Nice - *the deficit of democracy* in decision-making mechanisms is still surviving. The Council composed of the representatives of national executives is the standard-maker of the Union. In the best case the European Parliament is only co-deciding. The national parliaments have only indirect control over European standard making.

Despite the distinct benefits integration is bringing to citizens the gap between the citizens and the Union is continuing to deepen. *Bringing the Union closer to the citizens* is one of the greatest challenges the Union is facing. The citizens do not understand the mechanisms of the European Union. They do not know Who is Who in the Union. They are losing overview of who is deciding what and, in particular, who is responsible for what in the cobweb of European and national standards. The improvement of *the transparency* of relationships in the Union is therefore becoming an inevitable prerequisite for the idea of European unification to become attractive for the citizens again.

Making European decision-making more effective. Removing the deficit of democracy. Bringing the Union closer to the citizens. Improving the transparency of relationships in the Union. All these are challenges everyone is aware of. At the same time, they are, however, only general statements the content of which is interpreted by everyone in a different way. The task of the discussion on the future of the EU is to *give these general statements a concrete content*. It is

our common responsibility to translate these general statements into tangible actions. Introducing to European citizens concrete steps, mechanisms and means for ensuring these unquestionable requirements the Union is facing at the threshold of the 21st century **is our duty**.

These calls have necessitated further deepening of European integration. Europe needs a political and legal document regulating basic elements of its functioning. A document that would:

- summarise the results that have been achieved in the integration process so far and would become the cornerstone of its further development;
- make the relationships in the Union clearer;
- “translate” the functioning of the Union into a language understandable to common people.

Is there a better way how to master this task than by adopting a European constitution?

The question of the European Constitution or of the European Constitutional Treaty is closely linked with the issue of simplifying the basic Treaties. Of course, this can also be done without adopting a European Constitution. European integration has been advancing successfully without a constitution for fifty years. However, the question of its desirability and appropriateness remains. The point is that the European Union as such is not really in a need of a Constitution. Its citizens need it. Adopting a European Constitution is not a condition but it can become an expression of European integration transition into a new stage.

Thus, after EURO the Constitution would become yet another confirmation and material expression of European unity. This is an ideal the European integration is striding to. However, the question is when there will be sufficient will to adopt it. The Laeken Declaration mentions long-terms.

I realise the sensitivity of this issue. This sensitivity is not determined by the content of the problem. It emanates from the concept of “Constitution” that is one of the fundamental attributes of a sovereign state. During the discussion in Slovakia the notion of the European Constitutional Treaty has crystallised. In it, the word “*constitutional*” derives from the anticipated content of this document – it should, similarly to the constitutions of national states, stipulate:

- a) fundamental issues of the functioning of its supreme institutions,
- b) the relationship between the Union and the Member States,
- c) and last but not least the relationship between the Union and its citizens.

The word “*treaty*” then expresses the formal aspect of the problem. Already in Nice requirements to simplify Union’s Treaty base have been voiced. The European Constitutional Treaty would, *inter alia*, also serve this purpose. Therefore, from the formal point of view it will be a primary source of law just like the Treaties and in its essence it will be an international treaty concluded by the Member States of the Union.

The concept of a European Constitutional Treaty is one of the proposals. Like everything it has its pros and cons. However, I want to emphasise something else. Let’s not allow the differences in terminology to take us away from the essence of the issue. Let’s not try to put the discussion on the future of Europe into boxes of concepts the current theory of constitutional theory knows. From its very beginning European integration has been a unique project without any parallel in the history. The European Union is a *sui generis* formation. Let’s leave it to the theoreticians and the evolution to find the appropriate concepts for the processes we are witnessing and creating. Let’s work on the essence of the challenges Europe must tackle today.

One of the remaining open questions is what should the Constitution include? In the next part of my presentation I will try to elaborate on some of the issues the European Constitutional Treaty should tackle. It is about current problems that will be tackled in the framework of the Discussion on the Future of the EU. This means they must be resolved regardless of the fact whether it will be possible or not to adopt the constitutional text of the Union during the coming IGC.

The division of competences and the principle of subsidiarity – the key issue for the further development of integration

The division of competences, making it more transparent and accurate shall be the key issue in the context of the future reform of the Union. Unanimous decision-making that prevailed in the beginnings of European integration meant the right of veto for every Member State. Maintaining enlarged Union's functionality does not allow insisting on the inter-governmental approach.

Maintaining flexibility, efficiency and effectiveness of its decision-making will need further strengthening of the Community approach. In this context it is mainly the division of competences that is becoming the main tool for the protection of Member States' national identity. The Union and/or the Member States must clearly define what, in their view, must stay national decision-making to avoid excessive interference by the Union in the sphere of national interests.

We have welcomed the Laeken Declaration, which envisages a re-assessment of competences in addition to bringing more transparency into their division. The Declaration clearly speaks about the need to *clarify, simplify and adjust* the division of competences between the Union and the Member States in order to cope with the challenges the Union is facing. In doing so it assumes not only transfers of other competences to the Union but also renewal of Member States' sovereignty in certain areas.

Well-balanced respect for national interests while pursuing common European interests should become the criterion applied in the assessment of areas that should stay or be returned to the national and/or regional level and those that should be transferred to the Union. *The principle of subsidiarity* should guide us in cutting this Gordian knot of interests.

What does the application of *subsidiarity* mean? Decision-making should be brought close to the citizens in maximum possible way. Matters that can be resolved at a lower level should be tackled there. Matters that exceed the capacities of Member States and/or regions and matters that under uniform regulation bring higher efficiency and, thus, also benefit to the citizens should only be transferred to higher decision-making levels. The principle of subsidiarity does not mean that everything we are able to agree on must be handled at the European level. Only those matters where it is appropriate and meaningful should be tackled at the European level. The form should not prevail over the content.

Where is the room for European decision-making? **Let me give you some examples.** In trans-boundary issues – organised crime, the environment. In matters where co-ordination is better than individual approach – food safety, consumer protection. In areas where removing mutual barriers is of general benefit - economy. In affairs where two are stronger than one – common defence, foreign policy, protection of Union's external border.

In the context of recent developments in the world it is necessary to openly re-evaluate European foreign and security policy. Today, the real enemy does not have his armed forces lined at our borders but he may be hiding in the neighbouring flat and read a pilot's manual. The events in the US have *de facto* erased the borders between external and internal security. A close co-ordination

of these two aspects of national security will be needed in order to be able to face security challenges of the 21st century.

Now, if I may, I would like to come back to the thought of bringing the Union closer to the citizens. The individual is the basis of each society and the protection of his/her rights and freedoms ranks first in the European system of values. The protection of the individual against the "omnipotent" state power is the greatest gain of the European, or if you want, Western civilisation. Placing the interests of the individual and his/her protection to the highest position in the system of values makes the difference between European civilisation and other civilisations. This is what Europe can offer the world. This is where Europe must set the example.

Currently, there are two levels of the protection of fundamental rights and freedoms in Europe. The national one, which is guaranteed by the Constitutions of individual states. And the second one, which is the European protection guaranteed by the European Convention for the Protection of Human Rights. The adoption of the EU Charter of Fundamental Rights in Nice has laid the foundations of the third level in the protection of fundamental rights and freedoms. Is this level of protection at all necessary? Is it not in excess? Does it not result in duplicity? Why does the European Union need another separate regime for the protection individual's rights and freedoms?

The consequence of growing EU powers has been a European legal regulation that has an increasingly higher impact on citizens' individual rights. The supra-national nature of the EU allows the European institutions and bodies to directly decide on these rights. The EU law stipulates in details the rights of European institutions and also of its citizens. But what to do when they are violated? When then should the protection in the meaning of the Charter be applied? The Charter itself gives the answer:

- a) when the rights of the citizen are violated by the institutions or the bodies of the Union
- b) when the rights of the citizen are violated by the bodies of member States applying the EU law.

In all other cases national legal protection guaranteed by the Constitutions of the Member States and/or the protection in the framework of the Council of Europe guaranteed by the European Convention for Human Rights shall continue to be applied.

The list of fundamental rights and freedoms of individuals is only one side of the coin. The real guarantee for the protection of the rights needs their enforceability by courts. This is possible only in the case when the catalogue listing fundamental rights and freedoms of citizens is legally binding. Europe's loyalty and commitment to the values of fundamental rights and freedoms will therefore require giving the EU Charter of Fundamental Rights and Freedoms legally binding nature. The current circumstances remind of a situation where we, as if, give the citizen a book but forbid him to read it.

The question of who shall be the procedural guarantor of these rights arises in this context. The most logical and most natural solution seems to be enlarging the jurisdiction of the European Court of Justice to include also this area.

If we achieve it then we would give substance to what I understand under the concept of *Europe of Citizens*.

Removal of democratic deficit - the main task of the institutional reform

If the division of competences is to be of key importance for the protection of national state identity then institutional reform is decisive in tackling deficit in democracy.

I have outlined the essence of this problem already. One of the basic principles of democracy – that the citizens decide in the state either directly or through their elected representatives – has been substantially distorted due to European integration. In the European Union the main standard-maker is the Council composed of the representatives of the executive. Increasingly more areas have been taken out from the decision-making of the legislative power and handed over to the executive power as a consequence of the increase of “European” powers. The parliaments have maintained only an indirect control over European standard making. This deficit has not been removed by a gradual strengthening of the power of the European Parliament, either.

In this context the Nice Declaration has incorporated the issue of the future status of national parliaments in the future European architecture, into the agenda of the discussion on the future of the EU. However, it is not possible to tackle the issue of strengthening parliamentarism at the European level only by strengthening the role of national parliaments. It will require a balanced strengthening of both components of European parliamentarism - the European Parliament and national parliaments. The Laeken Declaration, which already elaborates on the status of the European Parliament, has confirmed it.

It is just the same as with scales - when you add a weight on one side it must be manifested also on the other side – strengthening of parliamentary elements will require adjusting the status of other European institutions. Finding the balance and mutual control will be equally important mainly in the triangle Council – Commission – European Parliament. It is necessary to further strengthen the authority and thus also the independence of the Commission. Improvement of effectiveness and efficiency in Common Security, Defence and Foreign Policy will require improving co-ordination among its individual elements. In a European Union of thirty Member States one Member State will have the Presidency in the Union once in 15 years. The re-assessment of the principles, which are the basis for the six-month rotating Presidency, is, thus, another issue for discussion on the future of Europe. The procedural dimension of the institutional reform, i.e. the improvement of the decision-making process should not be forgotten either.

Nice has created necessary conditions for Union’s viability also after its enlargement. The Nice compromise was the minimum on which the European Council could agree in December 2000. The post-Nice process, however, requires a maximum approach. Maximum political will in looking for consensus. Maximum openness in thinking and overcoming prejudice. Maximum courage in tackling the most sensitive issues concerning the sovereignty of Members States directly.

The creation of a common democratic space of freedom, security and prosperity has been the objective of European unification. All proposed necessary internal reforms of the Union head to the achievement of this goal.

I am a Slovak and I am an European. There has never been a contradiction between these two statements. On the contrary. Being a Slovak I feel the need to make the best conditions for the development of my nation and the preservation of its identity. The co-operation of the peoples of Europe conducted under a framework of clear democratic partnership rules is its best guarantee for it. Being an European I feel that only when continuing together we will be able to withstand the pressures of globalisation and, what is even more important, to co-determine its direction and pace. Jointly we will be capable of preserving the characteristic cultural diversity of the continent, which is the source of its strength and progress.

United Europe has good prerequisites to be a strong global actor and to fully undertake its share of co-responsibility for the development in the world. We must be capable of generating sufficient capacities for European security and defence. However, the future of European security will

continue to be based on trans-Atlantic co-operation. The calls in this area are addressed to all of us. The events of September 11th hitting New York and Washington, D.C. could have also hit Berlin, London, Paris or any other place in Europe. Terrorist attacks on America have been attacks against all of us. The North Atlantic Alliance has been and continues to be the fundamental pillar of the protection of our shared values.

There are moments, which require clear and consistent positions. The moments of truth. During my term of government I have experienced two of them. The Kosovo crisis and the situation after September 11th. I appreciate the political courage and consistency of Chancellor Schröder who combined the voting on sending German troops to Afghanistan with the vote of confidence for his government in the Bundestag. We also had to face grudge and temporary loss of support during the Kosovo crisis. It is understandable. There is a numerous and vital Slovak minority living in Vojvodina. However, the development has once again confirmed that even in hard times it is necessary to stay faithful to the principles and not to yield to populist moods.

The European Union is not a result of a technological process. It is above all the result of human spirit and political will. And it must stay like this if it is to endure and play the role it deserves. We must not get scared of making courageous steps forward. Stepping on one place could destroy the results achieved so far.

Ladies and Gentlemen,

One of the greatest figures in German and European history, Chancellor Konrad Adenauer said: "The unity of Europe was the dream of few, it has become the hope for many and today it is the necessity for all". Maybe never before this prophetic sentence was uttered with a bigger urgency. The unity of Europe was a forbidden dream for us who lived on the wrong side of the Iron Curtain thirteen years ago. The communist were forbidding free association of individuals, so how could then free association of nations be possible? The Curtain so strongly symbolised by the Wall dividing this city fell. Its fall brought hope to many. And today we are standing at the threshold of necessity for all – to continue Europe's unification, to ensure its effective functioning and to maintain its competitiveness in the globalising world in the broad meaning of the word.