

EUROPE CONSTITUTION DESIDERATUM FOR THE THIRD MILLENNIUM

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The purpose of the present paper is to make a short analysis regarding the future of the European Constitutional Project from the recent events perspective, by identifying the factors which caused its failure. At the same time, the present paper aims to delimit the elements that the future European Constitution should meet, without exception, in order to provide an actual answer to the Union citizens' issues and challenges.

The European Constitution, an international treaty which has had and still has as purpose the creation of a unique normative act for the European Union represented, in the European leaders' opinion during the passed decade, a primordial objective, which, as a result of a bad coincidence of events turned into a major challenge which can threaten the evolution and even the existence of the European Project, as it was planned in the perspective of the third millennium.

The European Constitution institution treaty had as objective the replacement of all the overlaps existing in the current treaties in force, forming the present "constitution" of the Union, offering a comprehensive formula of the human rights on the UE territory and facilitating the process of taking the decisions within the present organisation, determining a positive evolution of its operation.

The Constitutional Treaty was signed by representatives of the Member States on October 29, 2004 and it was submitted to the ratification process by the Member States until 2005, when the French voters (May 29) and the Dutch voters (June 1) rejected it during the referenda.

The failure to adopt the European Constitution within a democratic assembly, "Convention on the Future of Europe", especially founded in order to elaborate the act which should have given a fresh impulse to the United Europe, especially since the constitutional project seemed well planned, represented a deadlock of the European Project, but also a turn of the expectations at the European leaders' level.

The Constitution Project, an intricate and bulky document was the unsatisfactory result of some harsh negotiations. The final version, the result of tormented compromises, was a compilation of thick, uninspired and contradictory articles, as it did not have a clear and succinct content.

An important part of the constitutional failure is due to the flagrant disconnection between the political leaders' aspirations and the citizens' fears, being preoccupied with the economical and social realities in the respective countries.

Against all recommendations, EU created in Brussels a dense, uncontrollable bureaucratism, detached from the public. In stead of inspiring trust, respect and community pride, the European institutions created themselves a negative image.

Under the community “convergence”, the *Eurocrats* of Brussels tried to join the EU populations by issuing a huge wave of directives, rules and laws. Predictably, a part of the French and Dutch electorate took advantage of the constitutional referendum in order to express its disapproval regarding the “arrogance” shown by the community authorities.

Ignoring the historical experience, the France and Germany governments constrained the economical activity, regulated excessively the work relations and destroyed the necessary dynamism and flexibility in order to maintain the economical progress, in this way feeding the fears of an electorate lacking anyway of the conviction that a constitution in the suggested form is the answer to their problems.

The European citizens’ main fear and dissatisfaction is the EU future, through the vision crisis regarding the European construction. The Union has already 27 states and the politicians do not say exactly how much it will expand. The invitation made to Turkey, the Norway and Switzerland intentions to adhere, the closeness to Ukraine and other eastern countries (Croatia, Bosnia, Serbia, Macedonia, Albania, Moldavia) which sooner or later might want to be integrated in the EU frightens them and brings discontentment among the European citizens. They want to know how far this expansion will go and when it will stop in order to allow the community construction to become strong.

The European Constitution, in the suggested form, militated for an indefinite expansion, which brings to the citizens’ soul the fear that the European social model will be destroyed, the European values will be lost, unemployment, losing jobs. For the prosperous European population, prosperous but with plenty of difficulties, the fear regarding the invasion of the eastern workers, who could occupy their jobs, plays a very important role. In their opinion, the issue of the relation between prosperity and tolerance is back.

In France, the Treaty was rejected due to various reasons. The French Prime Minister’s lack of popularity at that time and his nationalist policy contributed to the result of the referendum. There was an alliance between the French left and extreme-right party for a negative vote against the Constitution, as it was never seen before. Some citizens voted “no” from identity-cultural reasons or differently put, from a vague kind of nationalism, but probably for most of them would be difficult to define themselves as such and they would be very indignant if they were treated as “nationalists”.

Probably that in general, most of those who voted against the Constitution desired to show in a symbolic way that they are not satisfied to be living worse than a few years ago.

In Netherlands, the citizens participated to the suffrage and to the negative vote much more than the French citizens. The majority of the negative votes was realized by an agreement between the confessional, less educated, young people: if the first two have a conservatory reputation, the latter manifests unexpectedly and brings to the surface a new kind of dissatisfaction, that Europe does not give so many chances to the young people as they were expecting or as Europe promised.

The French-Dutch rejection of the European Constitution created a state of confusion, uncertainty and perplexity within the European Union, sending Europe into a period of incertitude and worries without precedent in its history.

The failure of the constitutional project triggered unpleasant situations at European level such as: the degradation of the political process and the reliability of the civic discourse, being adopted a type of unfortunate euro-discourse in a moment when the consolidation of the legitimacy and the transparency was all that was desired; the scepticism regarding the European leaders’ capacity to reach an agreement which could constitute the real answer to the present challenges of the Union;

unimagined compromises from the ambition to make constitutional progresses, such as renouncing to the principle of unanimity in amending the Treaty.

However, contrary to all expectation, this European failure caused another positive aspect, which can constitute an important premise in re-launching this project, represented by forming a space for debates and discussions between Europeans on subjects such as the European identity, where Europe ends, what can be done regarding the social model etc.

The monumental project for building a European Common House is still much too logical, beneficial and wise to be deviated from the selfish reaffirmation of the national interests, the suspicious intentions of uncertain “partners” or the lack of inspiration in conception and promotion.

The necessity of a European Constitution results from the fact that the Union is no longer an economical construction, as there was registered a mutation of the economic Europe into a political Europe. Therefore, the Constitution should be the materialization of a political Europe, meaning a space generating public policies, including concrete strategies in matter of politics and justice, as well as the manifestation of a public power at international level allowing the existence of only one voice. This can be noticed especially in the present globalised and explosive world, when the European Union should assume responsibility in managing the globalization.

The role it must play is the one of an active power opposed to violence, being aware of the injustice appeared in the world. By favouring the international cooperation, the European Union should lead to an evolution of the relations in the world, in this way determining the appearance of positive aspects to everybody benefit. The Union objective to integrate the mondialization according to the ethic principles based on solidarity and lasting development can only be assumed if Europe establishes mechanisms which could allow it to answer unanimously to the multiple challenges of the contemporaneous world.

If the Constitution is adopted, this could clarify the European Union nature, more exactly its affiliation to the confederation or federation category. Being based on an international treaty which can only be revised by the unanimity of the Member States and competencies assigned at community level to the Member States, EU can be considered a confederation. Differently put, a right with directly superior effect to the national one, a Parliament, a Commission endowed with the initiative monopoly, a common Court, vote by qualified majority are a few elements which turn the Union into more than a Confederation, but not enough to be considered a Federation. By adopting a Constitution, this aspect can be clarified and the conceptual debates can be left behind.

The European Union is a community of values, being the product of many great religious and philosophical traditions. As the European Union advanced, enlarging its dimensions and extending its competencies, the enthusiasm regarding the continuation of the European project was lost in the middle of decisional complex procedures, budget calculi and differences in political approach. The more members the Union has, the greater is the risk that these aspects become more pregnant and the citizens cannot distinguish what is common for Europe.

The citizens, although they represent the basic pillar of any community, are far and far away from the decisions at Brussels taken on their behalf and for them, but which they often cannot understand due to the Byzantism of the procedures. A Constitution of Europe would have the role to reduce this perception, to show that the future of the Union is decided transparently and in consultation with the civil society and with the main social actors.

The adoption of a Constitution for the entire Europe would only be the first, but the most important step in order to transpose the principles of unity, solidarity and subsidiarity into diversity. It would allow the exit from the actual ambiguity, it would reduce the juridical abuses at national or local level and it would allow the affirmation of a distinguished political stature for Europe. At the same

time, it would determine the increase of the transparency and of the degree of knowing the fundamental aspects of the community mechanism.

The issues that the Union confronts with are the rigidity and the lack of communication and information of the European citizens, which can have repercussions upon the posterior operation and evolution of the European Union. That is why there should be a fundamental normative act that should sanction and accomplish the citizen's closeness to the community institutions and the increase of the citizen's implication degree in the decisional process.

Under the perspective of all these aspects and in order to accomplish this desideratum, it is necessary to adopt a "true" Constitution that should meet further on, the following extremely important criteria.

The first one refers to the amendment procedure stipulated by the constitutional document and to the extent in which it insists upon the unanimity of the Member States or in which it allows amendments by unanimity of States privileged or not. The unanimity, reflecting the principle of agreement and sovereign equality, is a feature characteristic to the internationalism and not to the constitutionalism. The amendments, made by the majority of votes, are not just a political matter. They have a profound constitutional and social significance. The desire to submit the collective ego to the discipline of a decision adopted by majority, even at very high constitutional level, is characteristic to a political system, to the intention to associate to the others differently than by armed force. It is an invitation to associate to the others by loyalty and commitment connections, which impose the submission to a newly shaped collective and to its will. The material obligation regarding the conventions in a treaty or in a Constitution can be identical. The basis of the acceptance and the relation are different – representing a movement towards a political system.

The second criterion refers to the method and the intensity in involving the population in the adoption process. If at least there was organised a plebiscite at the European Union level appealing to the (unique) people of the Union, in order to approve the Constitution, it would have a major juridical and political importance. It is a different expression of the social measure unit defined by the submission to the amendments of the majority. On the other hand, the approval by the European Union nations, in their capacity of national communities, would confirm the constitutional status-quo and it would give a special meaning to the entire European construction.

This tendency towards a classical political system seems very interesting, historical and very pragmatic. There cannot be expected that the loyalty connections, the constitutional *demos*, the political system should be created as a precondition to a constitutional agreement. The constitutional agreement is a voluntary, conscious and autonomous invitation to create in time another political system, another *demos* and another type of loyalty.

The European Union can have a Constitution, such as the Great Britain. However, in the relation between the Union and the Member States, the former formulates difficult, equal constitutional requests, in some cases surpassing the requests of a federal State. There is still a big difference – the constitutional principles of the European Union, although similar from material point of view, are integrated in a different background, in its whole. Within the Federations, whether the American, or the German one, the institutions of the Federal State are placed on a constitutional background involving the existence of a constitutional *demos*, of a unique constituting power, formed of the citizens of the Federation, with a sovereignty, in their capacity of constituent power, and with a supreme authority, which is the basis of the respective constitutional background. Thus, even though the Federal Constitution aims to guaranty the rights of the States, although the constitutional doctrine, as well as the historical reality teaches us that the federation can be a creation of the constituent units and of their people, the sovereignty and the formal authority of the people, in its unit, as constituent power, are

superior to any sovereignty expression within the political organisation form, hence resulting the supreme authority of the Constitution – including its federal principles.

One of the most important errors in the construction of a Federation, as well as in the construction of a nation, is mistaking the constitutional *demos* juridical supposition with the social and political reality. In many cases, the constitutional supposition involves the existence of what it creates: the *demos*, appealed to in order to approve the Constitution, is represented from juridical point of view by the respective Constitution itself and most of the times, the acceptance act is one of the first steps towards the more complex political and social notion of constitutional *demos*. Thus, the legitimacy of the Constitution can remain behind its formal authority, being necessary generations over generations to be completely assimilated. Similarly, the juridical supposition regarding the existence of unique *demos* can be contradicted by the permanent social reality of groups which do not share or do not get to share the feeling of mutual affiliation which overcomes different political opinions, constituting an essential political community for a constitutional agreement according to the classical template.

In contradiction to the previously expressed facts, the constitutional architecture of the European union was never validated by means of a viable adoption process by a European constitutional *demos* and therefore, from the political, as well as from the social perspective, the constitutional discipline does not benefit of the same type of authority which can be found in the Federal States, which have a federalism integrated in a classical constitutional order.

The Constitution of Europe did not fulfil a few of the classical conditions of constitutionalism. The norms hierarchy is not implanted in a normative authority hierarchy or in a real power hierarchy. The European federalism is built downwards on a hierarchy of norms and authority.

This particularity of the present European constitutional construction is in contradiction with the usual premises of the constitutionalism. Normally, a democracy requires a democratic discipline, meaning the minority should accept the authority of the majority; however this is characteristic and applicable to the political organizations which are constituted of only one people. Within the European Community, although it is a political system constituted of distinct peoples, it is attempted the application of the same constitutional discipline, which in this case is not correlated with its integration in a State type Constitution.

The importance of various constitutional options does not only consist in the structure and the government process it generates. The Constitution means identity and moral commitment at the same time, incorporating fundamental values of the political organisation, reflecting the collective identity as people, nation, State, community or Union. Europe is based on the social solidarity principle, a principle which has found its juridical and political expression in the post-war social State, which all the states embraced as an ideal. The Constitution of Europe, under this ideal and as commitment to the social welfare model, an element characteristic to the European Union, should comprise the expression of the mentioned principle.

At the same time, the Constitution of Europe, reported to all the similar normative acts and to the fact that the present treaties do not mention this, should expressly and not by a legal artifice comprise a Declaration of the Rights. It is necessary that this Declaration should not be adopted pure and simple, but adopted at constitutional level. The reason why such an express insertion of the Declaration should be made, is to make it visible and known not only by the jurists, but also to turn it into a symbol, contributing to the identity of the European Union, as well as to the identification with it.

Another element making the object of the debates at European level is represented by the competencies of the European institutions from the perspective of the European constitutional project. Looking at this issue from historical point of view, there appears a question regarding the relation between the legislative and the central executive power and the constitutive units. There has been

noticed that the inscription of a positive or negative list in a federal Constitution, of the central power competencies can determine an institutional disequilibrium, in this way the powers of the central authorities are not limited. The effect is opposite, to such an extent that there is given constitutional value to the interpretations allowing the central government to take illegitimate decisions. The challenge does not consist in listing the competencies, but in restoring the authority which observes, interprets the functions and the competencies of the European Community.

An efficient solution could be the introduction of an institution with regulations established within the Constitution and having the features of an authority with jurisdiction only over the competences related matters and over the cases presented for judgement and having as object normative acts adopted, but not yet in force. The community institution could be informed by any Member State through the National Parliament or by the European Parliament and could be made of constitutional courts or their equivalents members in office. The role of such institution would be to watch over the observance of the jurisdictional limits established by Constitution.

An extremely important matter which needs to be clarified at the European Union level, is the form that the European project will have to take in order to prevent creating the already experienced situation, that by presenting a Reform Treaty in a totally uninspired way having as purpose adapting the Union to the expansion process, as a Constitution with all the juridical, social and economical implications resulting from such a normative act. We can say that from this point of view, the Constitution of Europe, as it was suggested to the citizens of the Union, was seriously vitiated, being one of the reasons for the rejection expressed by referendum in the two states.

The Constitution, a document which by its nature generates debates and expectations, should define a series of standards, such as the identity of the respective community, its ideals, the type of society and the political system. The European citizens' answer took into consideration all these elements, which were completely absent and to the mere necessity of the European Union to be reformed in order to face the new challenges.

Therefore, in order to determine the formation of a current of opinion favourable to the European Constitution, it is necessary, besides all the basic elements that such a document should meet, to be given the adequate form, so that the European citizens should have the chance to debate a real document from all the points of view.

Regarding the path that the constitutional document should take, following the registered failure, there were made several suggestions at European level in order to determine a new repositioning.

A first suggestion came from Germany, meaning "the repacking" and it referred to a solution consisting in adding new declarations to the existing text, so that the susceptibilities should be spared or the punctual objections formulated in some Member States should be solved.

The second suggestion was the one of the "renaming" and it was a theoretical option reducing to the modification of the title, by eliminating the full of symbolism name of the "Constitution".

The other two suggestions were the "reorganization", consisting in sacrificing parts of the content at the same time with operating modifications of form, this solution being facilitated by the fact that an important part of the technical provisions already existed in treaties and the "renegotiation".

In an uninspired moment the solution that the European leaders chose was the renaming and the recosmetization, by removing the "Constitution" word and introducing the expression Reform Treaty. Thus, we are in the paradox situation to have a Reform Treaty, which in its essence, is the same rejected Constitution and which intends to avoid the only impediment, in the European leaders' opinion, the people's will.

The lack of inspiration or courage results from the choice made despite the solution imposed by such a situation: identifying a normative act that should meet all the elements of a Constitution, which could answer to the citizens' problems and challenges by using simple terms, having a meaning that everybody could understand, in this way the citizens being able to express their consent by vote. The present constitutional project, despite the fact that it is imperiously necessary, continues not to give answers to queries, which, by avoiding their settlement, represent an obstacle to its progress. The most necessary answers are the ones related to queries regarding the final form of the European project: if it will be a partially federal union with significant competencies, but maintaining the sovereignty of the Member States or a Federal State with all the attributes or to the geographical borders of the project comprising the Balkan countries or not, Turkey or Ukraine, or related to the Union competences limits, by specifying if they will include subjects such as education, culture, health.

Similarly, a series of clarifications expected by the European citizens, should be made regarding subjects such as "Lisbon Strategy" or the "coordination open method", in order to know who is responsible and why. At the end of this reflection process, the European Union citizens should be aware that at national level, as well as in the European elections they are the true "masters of the games".

In order to obtain this result, which can guarantee in a great extent the success of the constitutional project, it is necessary that the European Union to develop a pro-active communication strategy with long term objectives.

In the context in which the European Union is one of the most important international regional organizations, with a very important role in the world architecture, having a construction history of over 50 years, the elaboration and the adoption of a Constitution, taking into consideration all the mentioned aspects, is imposed by the coherence and clarity need.

In such a moment filled with historical significance, it is necessary that the present European leaders, similarly to the ones that 50 years ago proved to possess true vision capacities by creating the European Project, should show political ability and recapture within the discourse and action at the continent level, the roots and the traditions constituting the backbone of the European common identity, which is imposed as unique, but not standardized. The simplest way to reach that point is by returning to the citizens' needs, expectations and will. This is only possible if there is political will and implication in this respect.

Maybe the only positive aspect of not completing the historical objective of European constitutional unity is that it is given the necessary time to clarify certain issues and to improve the project, which sooner or later will be achieved, because this is most of the European citizens' will, because it benefits of political will and because it represents the best opportunity for progress, development, prosperity.

On this background of incertitude and constitutional nebula, the only certain facts are that the European constitutional project is far from being "abolished" and Europe is not even remotely in a crisis situation without solution. The European Union should evaluate its possibilities by means of a careful and lucid process and consequently to re-launch the constitutional project, which, this time on a solid basis and by considering the national interests, should offer viable solutions to the present and future challenges of this organization.

The Constitutional Treaty does not mark a final point, but it opens a gate towards a United Europe that our authors did not even have the courage to dream about.

BIBLIOGRAPHY:

- DUCULESCU, Victor, “The Reflection Pause” – The European Constitution under question mark, Commercial Law Magazine No. 7-8/2005;
- WEILER J.H.H, Europe Constitution, Polirom, Bucharest, 2009;
- JINGA Ion, the European Union searching for future. European Studies, C.H. Beck Publishing House, Bucharest, 2008;
- POPESCU Sorin, TANDAREANU Victoria, The European Constitution from desideratum to adopting the treaty project, Commercial Law Magazine No. 2/2005;