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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with the Constitutional Court of Hungary

INTERNATIONAL CONFERENCE
IN CELEBRATION
OF THE 20TH ANNIVERSARY
OF THE CONSTITUTIONAL COURT
OF HUNGARY

Budapest, Hungary, 23-24 November 2009

SYNOPSIS

The International Conference in celebration of the 20th anniversary of the Constitutional Court of Hungary was organised in co-operation with the Venice Commission and took place in Budapest on 23 and 24 November 2009.

A solemn ceremony commemorating the 20th anniversary of the Constitutional Court took place on 23 November, opened by Mr László Sólyom, President of the Republic of Hungary, bringing together the high dignitaries of Hungary and around 100 presidents and judges from constitutional courts or equivalent bodies from 23 countries. The topics of the conference were the “*Development of constitutional adjudication in Europe*” and “*Politics and law in constitutional justice – from the political questions doctrine to judicial politics*”.

The conference was divided into two sessions, the first dealt with European courts (ECJ, ECtHR) and the second session dealt with the relationship between these courts and national constitutional courts. Participants were told that the Hungarian Constitutional Court joined the now 19 constitutional courts that are operating within the EU area back in 2004, when it became member of the EU and that there is, in general, a genuine co-operation between the ECJ and national constitutional courts. However, although these courts may turn to the ECJ for preliminary rulings with respect to EU legislation, this is rarely done as these courts do not often deal with EU legislation.

Discussions also revolved around the supremacy of EU law in the light of the upcoming entering into force of the Lisbon Treaty on 1 December and the recent judgment of the Czech Republic’s Constitutional Court on this issue (on 3 November). The earlier ruling of the Constitutional Court of Germany concerning the Lisbon Treaty, which had given rise to many discussions, and the role of the ECJ were also broached. The President of the ECJ explained that Article 220 of the Treaty of Nice states that the ECJ and the Court of First Instance ensure that in the interpretation and application of this treaty the law is observed and that, for this reason, constitutional courts, just as any other national courts, should turn to the Court of First Instance and the ECJ for preliminary rulings with respect to the interpretation of EU legislation. As there is no one, unified approach to a problem and much in this context also depends on the understanding of international law – some courts tend to use the integration process, while others tend to have serious reservations regarding the role of the ECJ in the national system. This leads to the consequence that, on the one hand, the European legal order is rich, varied and strong, but on the other hand, it is weak because of its diverging cultures, traditions and languages.

The participants all agreed that their constitutional courts had moved from Kelsen’s narrow definition of this court as a negative legislator towards it having a more active attitude. Most participants agreed that there were no formal exclusions of any “*political questions*” in front of their courts. Some explained that the right of initiative could have a political starting point for the courts, but that in these instances the courts often exercised self-restraint. With respect to the election of judges, all agreed that an entirely satisfactory solution has not yet been found to make these less political.

Participants also spoke about the individual complaints procedure and the recent French constitutional reform (23 July 2008) was also touched upon, especially as the enabling legislation for the new law was being adopted in France while this conference was taking place. With this reform, the French have introduced the procedure for a referral for preliminary ruling in front of the *Conseil Constitutionnel*. Participants acknowledged that with such procedures, it was important to introduce good filters to weed out inadmissible cases as early as possible.

The participants agreed that the subject of politics and law in constitutional justice is always of relevance as politics are always an element in constitutional justice. Although the constitutional court is not a political body, political life will have an indirect impact on constitutional justice. Therefore, one of the main roles of constitutional court judges is to ensure that constitutional law remains within the bounds of the law without allowing it to slip towards politics.

The conference concluded that there should be a continuing dialogue among constitutional courts on this issue.