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WORKSHOP

**ON THE ROLE OF THE CONSTITUTION IN
THE SPANISH TRANSITION
25 YEARS EXPERIENCE
(1978-2003)**

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REPORT ON

**“Anticipatory Constitutionalism – Constitution-making and
Transition in Hungary”**

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1. The somewhat unusual phrase in the title – anticipatory constitutionalism – requires explanation. The three waves of democratic transition in Europe in the second half of the twentieth century were accompanied by new constitutions. The German Grundgesetz has been the representative constitution for the first democratization. The Spanish constitution of 1978 may stand for the second wave of democratic changes. And finally, the third period of democratic transitions, after the collapse of communism, has brought about a vast number of new constitutions. Practically all new democracies have produced their new constitution, sooner or later, but always after the profound political changes. New constitutions were of course necessary for technical reasons, because the democratic system could not be run on the basis of the old, authoritarian, antidemocratic, or one-party-constitutions. In most cases there was also a strong symbolic demand to have a new constitution as a symbol of the independence; first of all is States, which regained independent statehood. (This applies not only to the late Soviet Union, but also to the former Yugoslavia or Czechoslovakia.) But in all cases the constitution was to fix the changes of the political system and to secure the achievements. It had the function of consolidation of the new regime after having closed the revolutionary or transitory period in the strict sense. This is true also for Spain, where – as the literature suggests – the 1987 Constitution represented the consensus of the whole population and all political forces as regards the trend of democratization in line with the changes in the previous years, setting the framework for the further consolidation of Spain within the common European democratic tradition.

1.1. The due time for proclamation of the new constitution may vary. It depends on the historical facts, when the political forces can reach consensus and may gain popular support to this; or when a new political actor – usually representing the changes – is so strong that it can win the overwhelming majority of the people for the new constitution. Many countries could produce a new constitution within a short period of time, from one till three years after the changes. Elsewhere the constitution-making is a two-stage process. It needs time till the (new) political forces fight out a balance of power. Good examples are Poland and Russia, further South Africa. Although Poland was (with Hungary) one of the pioneers of post-communist democratization, it could reach 1992 only the so-called “small constitution” consolidating the new state machinery, and a complete new constitution could be agreed upon as late as 1997 only. In Russia, after profound changes of the constitution accompanying the stages of dissolution of the Soviet Union and forming the Russian Federation the outcome of the struggle between the President and the parliament in favor of the former was consolidated by a new constitution approved by popular referendum in 1993. In another negotiated revolution, in South Africa, the political agreement in 1993 was followed by an “Interim Constitution” (adopted 1994), which regulated the governance of the country while a popular mandated Constitutional Assembly drafted the new constitution. The latter was adopted 1996, but was subject to a “certification” by the Constitutional Court as to its conformity with the “Constitutional Principles” defined in the Interim Constitution¹.

It may occur that the consensus in the principles of the democratic constitution was not firm enough, including the uncertainty of new balance of political actors. Constitutions that have been issued in such situation may be premature. But even in this case is true that the new constitutions are issued after the change of regimes.

¹ The Constitutional Court first refused certification because of small incongruence with the Constitutional Principles, but stated that these presented no significant obstacle and the text could easily be formulated in a way complying fully with the Principles.

1.2. By contrast, in Hungary the constitution-making was not a consolidating act, which closed the first stage of the democratic transition. On the contrary, the new constitution preceded all other changes and served as a basic document for the whole process of transition. It determined the requirements and also the limits of all institutional and political transformation. In this sense the Hungarian change of regimes was really a “constitutional revolution”², each step of which was based on, and directed by a new constitution. Indeed the Hungarian constitution was a *filius ante patrem*. The new Hungarian constitution was promulgated and went into force on October 23, 1989. The free elections followed the new constitution six months later, in April 1990. The new State organization, which was foreseen in the constitution, was set up from this latter date on. In the meantime, the only organ representing the new order was the Constitutional Court, which was elected immediately after the constitution took effect, and commenced working on 1 January 1990.

Under such circumstances the constitution was not the consolidation but the starting point of the change of regimes. It anticipated a democratic, parliamentary republic; independent judiciary, a constitutional court, and a long list of fundamental rights³. The system change meant therefore to Hungary the implementation of the constitution; its institutions had to be set up and run, its basic rights had to be enforced⁴. With this the whole process of transformation became a process of constitutionalization. This situation gives reasons for the peculiar role the Constitutional Court played in the transition. (see in the following section)

The Constitution as a starting point and strictly compelling legal framework of the transition is a unique method of the system change. Of course the factual basis for the change of regimes in all negotiated revolutions was the political agreement itself. But without transforming the agreement into a constitution the transformation process has no firm guaranty and remains defenseless against the fight of the political actors, instead of forcing them to keep political struggle within the frames of the constitution. For instance the implementation of the Round Table protocols in Poland suffered in the first years under the reconstructive efforts of the Communist, later, following free elections, under the deep division of the Polish society between believers and non-believers and between promoter individual vs. collective rights⁵. The South African way seems to be similar to Hungary’s anticipated constitution. But the South African Interim Constitution was expressly a transitory document to be replaced by a final one. The Hungarian Constitution agreed upon at the Round Table was a final one⁶.

² The Constitutional Court called the Hungarian transition “revolution under the rule of law” – a phrase that became international known.

³ The chapter of fundamental rights was formed according to international instruments and richly incorporated also social rights.

⁴ As the Constitutional Court formulated it: “For the legal system, the change of regimes means, and the change of the legal system is possible only in that sense, that the whole body of law must be brought into harmony – and new legislation must be kept in harmony – with the new Constitution. Not only must the legal provisions and operation of state organs comply strictly with the Constitution but the Constitution’s values and its conceptual culture must permeate the whole society.” (Decision 11/1992)

⁵ Jacek Kurczewski: Parliament and the Political Class in the Constitutional Reconstruction in Poland. *International Sociology*, Vol. 18. No 165.ff.

⁶ One can state this although the preamble contains the wording that the parliament establishes the text of the Constitution “until the adoption of the new Constitution of our country”. The preamble was originally not foreseen at the Round Table and was inserted into the Constitution by the parliament on the proposal of a MP. However, the Constitution has no single provision which would be “transitory”, it pronounces neither the obligation to make a new constitution nor prescribes any deadline for the effect of the constitution. The preamble may be considered as a description of the historical situation when the constitution was made.

1.3. The peculiar weight of the Constitutional Court in the process of reconstruction of constitutionalism has been rooted in the anticipated constitution. When the new constitution took effect, the “old” parliament was still being in session, but lost, together with the government, which henceforth understood itself as managing government, all sociological legitimacy. The Constitutional Court was the only state organ that possessed full legitimacy. In the time between passing the constitution and the formation of the new, multi-party parliament and the new government the Constitutional Court supervised the “transition” in narrow sense (that is the political process, which cumulated in the free elections). The Court enforced the new constitution also during that period of time; it blocked unconstitutional attempts of organs of the old regime and issued decisions that announced fundamental principles of the interpretation of constitution.⁷ The Constitutional Court maintained its particular position after the free elections and during the time while the first elected judges were in office, that is, till 1989.

The consolidation of the new democracy that manifested itself elsewhere in a new constitution took place naturally also in Hungary. But the solid and generally accepted state of affairs, which is precondition for the firm and authoritative concept enshrined in the constitution was reached in Hungary not by political compromises within the new political class. The consolidation of the new constitutional order occurred step by step through the decisions of the Constitutional Court. The Constitutional Court was activist to the outmost; it developed an extensive and principled jurisprudence; its interpretations of the constitution were on the borderline between interpretation and writing the constitution. As a response to the praxis of the parliament, which in the first years frequently made small amendments in the constitution according to the political demands of the day, the Constitutional Court declared that it would “continue its effort to explain the theoretical bases of the Constitution and of the rights included in it and to form a coherent system with its decisions, which as an “invisible constitution” provide for a reliable standard of constitutionality beyond the text of the Constitution, which nowadays is often amended out of current political interests.”⁸ Certainly the broad competences of the Constitutional Court, especially the abstract interpretation of the Constitution have been helpful in doing so. The Court was inclined also to formulate positive rules addressed to the legislator and also to the ordinary courts as well.

Compromises and balancing political power happened in Hungary not among the political forces, which usually will then become writer and supporter of a new constitution. The initial constitution has been developed, its gaps filled in, its rules brought to a coherent system in a permanent struggle between the Constitutional Court on the one side and the parliament and government on the other. The practical consolidation came about through a so called “constitutional negotiation” between the Court and the political forces⁹. The Constitutional Court issued strong decisions with high constitutional standards. The parliament complied and rewrote the laws as the Court had required. But the government learned how to reach its goals – mostly the same goals, or similar goals – by a constitutional way. Then the new law was

⁷ The Court decided for instance on the end of office of the acting president of the republic; on the electoral law; on the possibility of amending the constitution; it laid down principles of equal protection and of the subsidiary character of the right to human dignity. See: Introduction to the Decisions of the Constitutional Court of the Republic of Hungary, in: Sólyom/Brunner: Constitutional Judiciary in a New Democracy. The Hungarian Constitutional Court. Ann Arbor, The University of Michigan Press, 2000.

⁸ Decision 23/1990, P. Sólyom concurring.

⁹ This is the point of the analysis by Kim Lane Scheppele: Constitutional Negotiations. Political Contexts of Judicial Activism in Post-Soviet Europe. International Sociology Vol.18 No. 1, 222-227.

reviewed again, and the Court required further changes or found the changes sufficient. Successive legislations and revisions led to a practical compromise, which nevertheless maintained not only the rule of law, but the rule of constitution and pushed state policies as a whole in constitutional directions. Of course there were subjects – first of all in the field of classic political rights – where the Court did not allow any compromise¹⁰.

Also the Constitutional Court followed an ‘anticipatory’ policy during that time. The Court operated as if it had acted in a traditional, long-standing constitutional democracy. As a rule it avoided to take notice of the “transition” or tried to restrict “transitory” themes to leave behind the transitional period as quickly as possible. The Constitutional Court especially did not allow suspending criminal law guaranties with respect to of the extraordinary historical situation of the transition¹¹.

1.4. Hungarian legal literature calls the ‘nineties as “the decade of constitution-making”. This does not mean alone that the Constitutional Court was continuously shaping and developing the new constitution. The political class wanted to get rid of the tutelage of the Constitutional Court. All new governments from 1990 on, including the present one elected in 2002, announced that they would make a new constitution, which summarized and consolidated the constitutional development until the date – and which would make the present activity of the Constitutional Court unnecessary. All plans restricted the competences of the Court. However the time for a new constitution – the “constitutional moment” – has gone. Not only works the present constitution, completed by a considerable body of the case law and principled interpretations of the Constitutional Court, practically well. 1989 as the constitution was made there was a popular support for the system change. This consensus could be transferred to the principles of a constitutional democracy and could be realized in the constitution. Today no new constitutional idea can be showed up that would mobilize the people. The identity of the constitution would not be changed if a new constitution was passed. This means that any change deemed necessary may be realized by amendment; a new constitution is not needed and if issued, it would not be really new.

¹⁰ There is a difference for instance between social security cases and cases where such rights as free speech or the right to life are at stake. After the Constitutional Court struck down the austerity package of the government, subsequent laws similarly cutting social security benefits might be constitutional if they left time to adjust and guarantee a minimum living standard. In contrast, in freedom of speech cases there is no possibility for compromising. For instance if the State will punish hate speech that does not amount to incitement to hatred, the Court will maintain that only incitement to hatred is punishable under the constitution. In the decision abolishing capital punishment the Court noted that the parliament could not restore death penalty on any grounds or form: death penalty was “unconstitutional by notion”. The Court also repeatedly struck down laws, which tried to reintroduce – in various form – the uniform and generally usable personal identification number, which the Court had declared unconstitutional earlier.

¹¹ Many other constitutional courts held retroactive criminal legislation possible in order to punish politically motivated crimes or “government criminality” under Communism.

2. After so much abstract talk that anticipated the consequences of the historical facts of the constitutional making in Hungary in 1989 I turn finally to the history.

2.1. The Hungarian constitution was written at the Round Table. The National Round Table Talks were proceeding in summer 1989¹² between the then ruling Communist party and the democratic opposition. The negotiations were based on a preliminary agreement, which defined the scope and power of the Round Table. The agenda of the Talks was “defining the principles and rules for realization of the democratic political transition”¹³. The Preliminary Agreement laid down that the goal of the negotiations was to work out political agreements. The necessary draft laws might be attached to the agreements; however, the Round-Table Talks themselves did not exercise public power. Further the Parties agreed that no legislation could precede the political agreement and that each party would implement the political agreements by all political means at his disposal. For practical reasons the latter point meant that the Communist majority in the parliament would pass all the laws drafted at the Round Table.

Although the Hungarian Oppositional did not have such broad popular support as the Solidarnost had when negotiating at the Round-Table in Poland, the Hungarian Agreement went further than the Polish Round Table. In contrast to Poland in Hungary the Communist obtained no guaranties to keep (at least a part of) power. The Hungarian negotiating parties obliged themselves to accept the outcome of the free elections whatever it will be. Secondly, they transformed the political agreements immediately into laws. The draft laws, including the constitution, were sent to the parliament at the end of September 1989 and the laws were passed in October.

2.2. The original goal of the Round Table was restricted to drafting laws, which were necessary to hold free, multi-party elections. These included electoral laws, a law on the political parties, amendments of the criminal code, further the necessary amendments within the constitution. The Communist insisted on putting two new institutions into the constitution: the president of the republic (instead of the soviet-type “supreme council”), and the constitutional court. They hoped that the then popular reform-communist minister, Mr Pozsgay would be elected to president by the people and that they would dominate the Constitutional Court as well. The Communist wanted immediately presidential elections. In that case the transition period would be supervised by the President. Pozsgay made it clear he should like become a kind of Hungarian Juan Carlos. The Communist often referred to the Spanish transition, first of all because her peaceful character and lack of retribution. The Oppositional wanted no violence either. Peaceful transition was a lesson from the revolution of 1956 and its suppression for both sides. But the Opposition referred to the Polish Round Table and wanted first of all free elections. The Oppositional held that such essential institutional changes as the introduction of the Presidency and of constitutional jurisdiction had to be decided upon by the new, legitimate parliament. All in all, when the Round Table started nobody wanted a new constitution. Quite the contrary, the Oppositional aimed at restricting even the scope of the constitutional amendments.

¹² The Round Table started on 13 June and the final agreement was signed on 18 September 1989. Parties to the National Round Table Negotiations were the Hungarian Socialist Workers’ Party, the “Oppositional Round Table”, an umbrella organization of different oppositional groups, and the “Third Party” consisting of satellite organizations of the Communist. The Oppositional did not consider the Third Party as self-standing.

¹³ The other issue, foreseen in the Agreement on the Talks, the “strategy for overcoming the economic and social crisis” was not practically dealt with. The Oppositional could not and did not want to take responsibility for economic issues.

2.3. The Round Table sent out a subcommittee to draft the inevitable amendments to the constitution. The Subcommittee went on seeing the necessity of changes article by article, beginning with the preamble. The Hungarian constitution began – as usually the socialist constitutions – with “general principles” defining the socialist character of the State and of the economy. The first chapter declared the socialist State, the leading role of the Marxist-Leninist Party, the collective ownership of means of production and so on. It became clear to the Subcommittee immediately that if the principles embodying the identity of the Constitution had to be changed the changes could not be restricted to the general principles. The consequences of the amendments would lead to changes in the entire body of the constitution. So the Subcommittee declared that it was not bound to the original mandate and would consider the whole text of the constitution. It also stated that the proposed changes would be aimed at a workable constitution for the long run and would not be shaped especially to the transition¹⁴. In the following the questions of short run, concerning the technical management of the free elections to be held in the spring 1990 were separated from the constitutional regulations¹⁵. The Round Table accepted that standpoint and decided on all “political” questions, which could not be agreed upon in the subcommittee, and finally sent a draft of a totally new constitution to the Parliament in order to pass it.

2.4. The Round Table was not able to consider each provision of the constitution with the same depth. Obviously it discussed the general provisions thoroughly and paid much attention to political important or delicate questions even of technical nature. It was decisive for the future of the whole transition whether Hungary would be declared a “socialist state”. (The Communist fought vehemently for such a definition). The provision on political parties, especially the separation of the parties and the State was also essential. Not less important were the rules on the armed forces, and especially the distribution of commanding powers. Another, more symbolic provisions were among the old general principles, as for instance that the society was based on work. Cancellation or maintaining of such principles had however impact on the regulation of social rights. As to the human rights only the general rule on conditions and method of the restriction of constitutional rights was bitterly discussed. The Oppositional wanted to accept only criminal offences as a limit for the free exercise of any fundamental right. The Communist would rather have listed up the values and interests, which allow restrictions on fundamental rights. Finally the Round Table agreed that the “essential content” of fundamental rights should not be limited. Again, this was essential for the future scope and efficiency of human rights. But the list of human and citizens’ rights was not dealt with in details. The Round Table accepted the proposal of the Ministry of Justice, which closely followed the wording of the International Covenant on Civil and Political Rights and also maintained social and economic rights from the former socialist Constitution¹⁶. As to the State machinery, Hungary revived its tradition of the

¹⁴ The transcript of the tape and video records of all sessions within the Round Table has been published in six volumes: A. Bozóki (ed.): A rendszerváltás foratókönyve. Kerekasztal-tárgyalások 1989-ben. (The Screenplay of the Change of Regimes. Round-Table Negotiations in 1989) Budapest, 1999/2000.

¹⁵ For instance financial measures in order to give the new parties real chance to attend the campaign, free access to the public media etc. were regulated separately for the 1990 elections. In contrast, the constitution contained only general rules on the role of parties, and the new Party Act provided for the publicity of party finances and the support of parties from the state budget. These rules applied practically to the time after the first elections.

¹⁶ That time, Hungary has already been member to the ICCPR; moreover – as first among the “socialist” States – she joined the first optional protocol and from December 1988 on the way for individual complaint against the State was open. Consequently, the Covenant was known; its application symbolized the changes. No wonder that a catalogue of basic human rights that claimed to be based on the ICCPR could pass the Round-Table Talks without debate in the merits. This merely formal connection to the origins remained also for the interpretation of basic rights by the Constitutional Court. The Constitutional Court cited rules of the Covenant on occasion in the first years. But from

parliamentary system that went back to 1946 and 1848. As to the crucial political issues of electing the President of the Republic and setting up a Constitutional Court the Oppositional gave their consent in the last minute to the immediate election of Constitutional Court judges but managed – by enforcing a referendum – to postpone the election of the president after the free elections¹⁷. So it came to the situation described above, on the base of which the leading role of the Constitutional Court in the transition developed.

3. The history of the Hungarian constitution marked the quality of the new text. In 1989 there was still too much uncertainty as to the future political landscape. Nobody could estimate the outcome of the free elections or even the proportions of the support of the various political forces. So both negotiating parties tried to build into the constitution provisions, which were favorable to the future parliamentary opposition. Furthermore they attempted to occupy so called neutral positions that were independent from the parliamentary elections. I mentioned already the debate about the time of election of the President of the republic. Not only the date and the direct or parliamentary election of the President were debated but also his powers. The Communist proposed a powerful president; the Oppositional wanted him to be a rather symbolic figure fitting into the parliamentary system. Nevertheless, out of distrust in the future political situation the Oppositional demanded that the President became the commander in chief of the armed forces. So it remained for the Constitutional Court to interpret the competences of the president and to declare among others that the President had no commanding power. The Constitutional Court itself was also subject to a compromise: before the parliamentary elections only the half of the judges were elected and the seats were equally divided between the candidates of the Opposition and Communist.

The more serious consequence of the uncertain future was that according to the constitution all human rights and all important State institutions should be regulated exclusively by so called “constitutional laws”, that is by laws passed with two thirds of votes of all MPs. This guaranteed the parliamentary opposition veto power practically in all questions. One can well imagine that there is no subject that could not be regarded as a regulation concerning a fundamental right and to which the qualified majority could not be claimed. No wonder that one of the first tasks of the new parliament – in which the former Communist represented only a small minority – was to amend the constitution and to restrict the number of organic laws to some basic institutions, and to selected constitutional rights¹⁸. Despite of these changes and of a further restrictive interpretation by the Constitutional Court the necessity of the qualified majority, that is, the veto power of the (actual) opposition remained a debated issue until now. In the interest of the stability of government the new parliament also introduced the vote of non-confidence.

1993 on, as Hungary joined the European Convention of Human Rights, the reference has clearly been shifted to the ECHR and the Strasbourg jurisdiction.

¹⁷ In fact the story was more complicated. The Communist did not want to sign the final results of the Negotiations – including the draft constitution – if the latter excluded the election of the President before the parliamentary elections. The Opposition became split: only a part of it signed the final agreement in order to save the achievements of the Round Table Talks and to have the Constitution passed. The other part of the Opposition initiated a referendum, which they won.

¹⁸ To have the absolute 2/3 majority for amending the constitution an agreement was necessary between the majority and the biggest party in the opposition, which former also was a member of the Opposition at the Round Table. That party obtained in exchange the post of the President of the Republic.

4.1. The Hungarian way of constitution-making leaves open questions. The most serious of them is the legitimacy. Neither of the negotiating parties at the Round Table had authorization or mandate to write a constitution. The Communist came to power by not free and not democratic elections; the Oppositional were not elected at all. The parliament that passed the new constitution according to the rules of then valid constitution had the power to make or amend the constitution but was surely not elected democratically in 1995. During 1989 the citizens started to make use of the possibility provided for in the socialist constitution and recalled more and more MPs. The parties at the Round Table agreed that the Opposition would stop this campaign and that the formal legitimacy of the parliament should be saved. Without accepting the authority of the parliament the legal management of the peaceful transition would not be namely possible. It is to be noted that also the parliament protested against this way of constitution-making. The Representatives felt humiliating that they played only a formal role and had to implement the agreements of the Round Table.

The draft constitution was a totally new constitution; it changed the identity of the old one. According to a saying of that time only the sentence was overtaken from the socialist constitution that the capital of Hungary was Budapest. On various grounds however, the new, democratic constitution was passed as an amendment of the constitution, so that the official numbering of the new constitution is still Law XX of 1949. One of the reasons for to do so was that the Oppositional opposed that a not democratically elected, "Communist" parliament passed the constitution of the new democratic regime.

4.2. Such inborn defects of constitutions are not rare. One may recall for instance the birth of the Grundgesetz. As a counterexample one may refer to the South African constitution making where the freely elected constitutional assembly drafted the new constitution. This replaced the interim constitution that was based alone on the political agreement between the white government and the black majority. In that way not a merely formal but a substantial legitimacy was secured to the new constitution. Nevertheless one may ask from where stems the legitimacy of the "Constitutional Principles" that was the measure for the "certification" of the new constitution by the Constitutional Court.

In Hungary, where the constitutional text agreed upon at the Round Table became the final constitution the query for the legitimacy remains. I can offer a double answer. First the freely and democratically elected parliament in 1990 accepted the new constitution as the basis of the democratic Hungary. The new parliament did not initiate to make a new constitution. Instead, it engaged in further amendments eliminating rules that represented the uncertainty and bad compromises from the time of the Round Table. It completed the new constitution with a chapter on local governments ensuring their autonomy. Secondly, the people also accepted the new constitution. One can support this argument not only by the fact, which is also used regarding the Grundgesetz, namely that the citizens reaffirmed the constitutional order in a chain of subsequent elections. This occurred also in Hungary. One can add that the participation in the elections were high in all occasion¹⁹. But we have other indices for popular acceptance of the constitution. In Hungary everybody is entitled to file an abstract norm control against any law of the parliament or government regulation. The Constitutional Court obtained about 2000 such abstract motions yearly. I see it as an indication that the people considered the new constitutional order as their own, they wanted to enforce it in the Constitutional Court even if their concrete constitutional rights were not actually violated. This huge flow of abstract norm control motions can be regarded as a popular referendum for the new constitution. Today I have no doubt on its legitimacy and such a question is not raised indeed.

¹⁹ Between 65 and 70 % in the first, and 45 und 73 % in the second round.

Was there a consensus behind the constitution in 1989 or 1990? Surely the parties at the Round Table agreed upon the text and the parliament passed it with 333 votes for, and 5 votes against (with 8 abstentions). The real question is, however, whether the new constitution represented values and institutions, which the population basically consented to. Even if the change of regimes occurred in Hungary really peacefully, and with only about two mass demonstrations for the democracy, it cannot be doubted that the vast majority wanted democratic changes including the majority of the members of the then Communist Party. The new constitution corresponded to this demand.

5. To sum up: It is due to random historical events that Hungary's democratic transition started on the grounds a new, democratic constitution, which in fact anticipated a fully developed democratic parliamentary government and guaranteed human rights. This result of the Round Table Negotiations progressed far beyond the original intent of the negotiating political forces. Its effects proved however very positive. The transition was not only peaceful but each political act and event of that revolutionary process remained strictly between constitutional boundaries. The constitutionalization of the system change determined the peculiar role of the Constitutional Court that enforced constitutionality from the first moment of the transition. The Court also anticipated a model of a well functioning, established constitutional democracy and operated as a constitutional court should in a consolidated democratic state. This means not only that the Court introduced the usual, common standards of European democracies but first of all that it did not allow making exceptions from constitutional requirements with regard to specific problems and tasks of transition. The policy of the Court determined the style of the transitory period and pushed Hungary's state policies in constitutional directions. The emphasis on European constitutional culture in the first years developed in Hungary a "transnational constitutionalism", which excluded any nationalist trends.

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The efforts of the Hungarian Constitutional Court were soon noticed and acknowledged by the fellow constitutional courts. Not only was the Hungarian Court invited to the Conference of the European Constitutional Court already in the second year of its working. Hungary showed a special interest for the Spanish transition already to the times of the Round Table and this interest continued also within the Constitutional Court. Contacts came into being on different levels. For instance I sat together with Judge Pedro Cruz Villalón at the Global Constitutionalism Seminar instituted yearly at the Yale Law School. The two Courts also established official contacts and mutual visits. I have the best remembrance of the visit of President Bereijo in Budapest and am grateful also today for the professional talks with the Spanish Judges and the warm welcome we were given in Madrid. Let me express my high respect for the Constitutional Court of Spain and congratulate on its 25th anniversary.