

S P E E C H

Konrad-Adenauer-Stiftung e.V.

RULE OF LAW PROGRAM
SOUTH EAST EUROPE
THORSTEN GEISSLER

November 2012

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“Tackling constitutional challenges on the road to the European Union – Perspectives from South-East European accession countries”

SPEECH HELD AT THE OPENING OF THE REGIONAL CONFERENCE “TACKLING CONSTITUTIONAL CHALLENGES ON THE ROAD TO THE EUROPEAN UNION: PERSPECTIVES FROM SOUTH EAST EUROPEAN ACCESSION COUNTRIES” (SKOPJE, 16 NOVEMBER 2012)

It is a great pleasure for me to welcome you to today's conference on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer Foundation.

Together with our Macedonian partner, the Association Zenith, we are co-organizing this event and I would like to take the opportunity to thank our Macedonian friends for our excellent cooperation.

But let me start with providing you with some information on Konrad-Adenauer-Foundation in general and the Rule of Law Program in particular.

Konrad Adenauer Stiftung is a political foundation affiliated to the Christian Democratic Movement. Its precursor, the Society for Christian Democratic Education Work, was founded in 1955. Nine years later the name was changed to its present one. We are proud to bear the name of Konrad Adenauer. The first chancellor of the Federal Republic of Ger-

many's name and principles are our guidelines, duty and obligation. We stand for the Christian Democratic values of freedom, solidarity, and justice.

As a think-tank and consulting agency our soundly researched scientific fundamental concepts and current analyses are meant to offer a basis for possible political action.

Our headquarters are located in Berlin and St. Augustin near the former West German capital of Bonn. Berlin is also the seat of our Academy which is the national forum of dialogue between the spheres of politics, economy, science and society. We do, however, work in more than 120 countries, having almost 80 offices all around the globe, which are in charge of more than 200 projects. We focus on consolidating democracy, on the unification of Europe and the strengthening of transatlantic relations, as well as on development cooperation.

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Our conferences and events attract people "who have a say" – like you. We provide moral and material support to intellectually gifted people young people not only from Germany but also from Central, Eastern, and South Eastern Europe and we stay in close contact with more than 10000 alumni.

The Rule of Law Program exists since 1990. It consists of five regional programs, one for Latin America, based in Mexico City, one for Asia, based in Singapore, one in Sub-Saharan Africa based in Nairobi, one in South East Europe, which was founded in 2005 and is based in Bucharest and one is currently being set up and will be based in Tunis.

The Rule of Law Program South East Europe comprises Romania, Bulgaria, Croatia, Serbia, Albania, Macedonia, Kosovo, Montenegro, Moldova and Bosnia Herzegovina.

We concentrate on the following six subject areas in which there is substantial need for reform and consultation within and among the countries of the region.

- Constitutional Law insofar as to guarantee separation of powers and provide mechanisms to ensure an effective system of checks and balances within the state as well as the independence of the judiciary.

- Protection of Human and Civil Rights by both the Constitution and the ordinary legal acts and strengthening of international human rights protection systems

- Protection of Minority Rights by supporting compliance with the internationally recognized principle of non-discrimination. The Rule of Law program aims to secure full compliance with this principle in relation to any minority group,

i.e. not only ethnic minorities, but also other socially discriminated groups

- Fight against Corruption above all the promotion of a professional and ethical conduct by legal professionals by means of education about and promotion of international and regional codes of conduct and ethics for the judiciary and by supporting further development of laws and measures aiming at the prevention of conflicts of interest, and the promotion of transparency and free access to public information

- Coping with the Past by Legal Means by promoting the exploration of possibilities of the legal mastering of the authoritarian or totalitarian past

- European Legal Order by assisting the countries of the region to develop their legal structures and cultures to match those of the European Union. In this area there are of course significant differences between the two EU member countries Romania and Bulgaria and the other countries of the program region.

By cooperating with local partners the Rule of Law Program seeks to ensure that it responds to the most urgent needs and developments both in each country, and in the region as a whole.

Macedonia is on its way into the European Union and like any other former or current candidate country it has to implement the *acquis communautaire* and in this context it has to tackle constitutional challenges, something that it also has in common with other potential or future new member countries. Sharing information and experience is always a good idea and so we considered it important to invite experts from Croatia, Albania, Montenegro and Albania and of course from Macedonia to describe the developments

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in this regard in their respective countries.

But as a German I would like to make a few points about the legal way in which Germany transferred national sovereign power to the EU and also about the constitutional issues this complex process involved.

When the European Communities were established in the 1950s, the Member States at the time created a separate self-sufficient body of law which would bind them, all future member states, their citizens and their courts. The Federal Republic of Germany simply applied Article 24 of the Basic Law: "The Federation may, by law, transfer sovereign powers to an international organization". And the European Coal and Steel Community, the European Atomic Energy Community and the European Economic Community were exactly that.

Since then much progress has been achieved on the road to further European integration. A milestone was the Maastricht Treaty which came into force on the 1st of November 1993, through which the European Union was founded comprising the European Economic Community and the inter-governmental policy areas of the Common Foreign and Security Policy, as well as police and judicial cooperation. It also meant setting the stage for the European Economic and Monetary Union with the objective to adopt the Euro as a currency.

Two things were clear in Germany at that time. Firstly, that the EU could hardly be considered just an international organization and thus that Article 24 of the Basic Law was no longer a suitable instrument to transfer power to such an entity and secondly, that the next historic task after German reunification would be the deepening of European integration. Thus, the

dynamics of European integration made changes to the constitution necessary.

Already in 1990 the Preamble of the Basic Law had been changed, it now reads that the German people have adopted the Basic Law "inspired by the determination to promote world peace as an equal partner in a united Europe."

But this was not sufficient. So Article 23 of the German Basic Law - which had formerly opened the door to German unity - was modified and now reads as follows: "With a view of establishing a united Europe the Federal Republic of Germany shall participate in the development of the European Union that is committed to democratic, social and federal principles, to the rule of law, and to the principle of subsidiarity, and that guarantees a level of protection of basic rights essentially comparable to that afforded by this basic law. To this end the Federation may transfer sovereign powers by law (...)"

However, the German Federal Constitutional Court, while underlining the "Europe friendliness" of the Basic Law, has made it clear in several decisions that this Article 23 enables, but also limits the transfer of sovereign power to the European Constitution. I quote from one of the headnotes of the "Lisbon Decision": "Article 23 of the Basic Law grants powers to take part in and develop a European Union designed as an association of sovereign states" and "European unification on the basis of a treaty union of sovereign states may not be achieved in such a way that no sufficient space is left to the member states to the political formation of economic, cultural and living conditions."

This is why now in Germany a discussion has been started whether a new constitution should be drafted and adopted by the

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people in a referendum, a constitution that would allow a truly federal Europe, and of course this is a controversial subject.

So European integration does not only have an impact on the national constitutions of candidate countries, also a country like Germany has and will have to tackle constitutional challenges because the dynamics of European integration have fundamentally changed the nature of the state as a closed entity with clear boundaries.

In fact European integration touches ever more on sensitive aspects of previously exclusive national sovereignty, it affects the national constitutional identity.

National and European constitutional orders form what experts have called a "compound of constitutions" in which both national and European norms complement each other.

The biggest question, however, remains what kind of European Union we want. Shall we go several steps back, as especially one member country proposes and convert the EU into a mere "network rather than a block", shall we be happy with the status quo, or shall we be prepared to transfer further competencies to European institutions? The answer to the question will influence how current and future member states shape their constitutions. It is also a question for Macedonia.

I look forward to listening to the following presentations, I hope that we will have lively and hopefully also controversial debate, I thank each of you for being here today, and I look forward to our cooperation in the future.