

“Membership in the European Union – Constitutional Challenges for South East Europe Applicant Countries”

SPEECH HELD AT THE OPENING OF THE REGIONAL CONFERENCE ORGANIZED IN PARTNERSHIP WITH ASSOCIATION ZENITH AND THE SWISS AGENCY FOR COOPERATION AND DEVELOPMENT (SKOPJE, 2 DECEMBER 2011)

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. [...]

I would now like to express my profound thanks to the author of comparative study that will be presented today, Professor Jens Woelk. I consider this study a very useful and valuable one because it provides both politicians and legal experts with the information they need to know when assessing what the constitutional challenges are for the countries in South East Europe that apply for EU membership.

Joining the European Union means more than joining an international organization or signing an international convention, thus agreeing to the prevalence of its content over national law. In fact the

European Union is a unique organisation for regional integration with institutions, a council of ministers, a commission, a directly elected parliament and a court, all with extensive rights. Although the attempt to adopt a constitution for the European Union has so far failed, the Treaty of Lisbon rather resembles a constitution than a normal multilateral treaty. Thus joining the European Union means the transfer of sovereign rights and competences, and a loss of national control over these powers. This needs therefore to be authorized by the national constitutions.

The study shows that old and new member states have chosen different ways to amend their constitutions so that they allow a transfer of competences and powers to the European Union as a condition for further European integration.

Konrad-Adenauer-Stiftung e. V.

**RECHTSSTAATSPROGRAMM
SÜDOSTEUROPA**

THORSTEN GEISSLER

December 2011

www.kas.de/rspsoe

www.kas.de

The German Basic Law can serve as an example for a constitution which both allows and limits a transfer of powers and competences to the European Union. Already in the preamble Germany commits itself to promote world peace as an equal partner in a united Europe. Furthermore Article 23 of the Basic Law empowers the Federation to transfer sovereign powers to the European Union. Article 23 also expresses the will of the Federal Republic of Germany to establish a united Europe in which Germany shall participate in the development of a 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 the German Basic Law. This means that the transfer of sovereign powers is only possible if the European Union commits itself to the above-mentioned values and principles. This structural guarantee for fundamental principles of the Basic Law intends to secure that the transfer of powers to the European Union does not lead to a loss of standards that are guaranteed by our national constitution. But this is not the only limit. Article 20 of the Basic Law ("The Federal Republic of Germany is a democratic and social federal state") and article 28 which contains the federal guarantee of Land constitutions set a limit to a transfer of powers. Germany cannot be merged into a fully-fledged European Superstate. In fact the Federal Constitutional Court has indicated that under the current constitutional provisions there is little room for further European integration. "So far but no further" is the message that has been sent out by the court. And this means that we have a problem. Truly the question whether the European Union should be developed to the United States of Europe is a very controversial one in Germany too but

there is a huge majority at least in parliament that the current financial and monetary crisis can only be managed with "more Europe" rather than with "less Europe." So simply change the constitution? That is not that easy in a country in which basic principles of its basic laws are secured by a so-called eternity clause.

I believe that a look at the German Basic Law makes clear that a country that wishes to become a member of the European Union must not only discuss the wording and content of an integration clause in its constitution. What is necessary is a comprehensive approach.

In this context is it indispensable that candidate countries should make up their mind whether they want an absolute or a relative supremacy of EU law if they don't want this question to be answered by their constitutional courts as notably in Germany and Italy.

Let me extend my profound thanks to our partners firstly the Association for Development Initiatives "Zenith" and secondly the Swiss Agency for Development and Cooperation with which we have had an excellent cooperation which we want to become an even closer one in the future.

But let me also use this opportunities to encourage our Macedonian friends not to slow down the pace of further adaptation of EU standards. We study carefully the Progress Reports of the European Commission and we are always more than pleased when the European commission comes to the conclusion that good progress was made in key priorities for reform but we are more than concerned when we read that little or worse no progress has been made in meeting the Copenhagen political criteria. The European

Konrad-Adenauer-Stiftung e. V.

**RECHTSSTAATSPROGRAMM
SÜDOSTEUROPA**

THORSTEN GEISSLER

December 2011

www.kas.de/rspsoe

www.kas.de

Union is based on values such as democracy and the rule of law, human rights and respect for and protection of minorities, guaranteed by stable institutions. It is in the best interest of candidate countries and their peoples that these criteria are met. We as friends and partners can in this regard offer our full support and assistance but we cannot offer concessions.

I do, however, remain optimistic that the forces in this country that wholeheartedly share our values and that stand for true and profound reform will prevail and that this country will make further substantive progress in the near future.

Let me thank you once again for attending this conference today. I look forward to our cooperation in the future.