

OF CONSTITUTIONAL ESSENTIALS, A COMPLEX RELATIONSHIP, AND JUDGES AND JOURNALISTS

Summary of the discussions on the fifth and sixth session

by

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The third day of the conference was a day with another two workshops (Nos. 5 and 6) and with a final round table discussion.

A. *The Fifth Session*

The fifth workshop was dedicated to the issue of the ECJ and „constitutional essentials“. Aspects touched upon were the transfer of jurisdiction from the ECJ to the Court of First Instance, decentralisation and regionalisation of the EU court system, the overall quality of preliminary reference rulings, and the role of national courts in that context.

Advocate General *Miguel Maduro* and *Dieter Grimm*, a former judge at the German Federal Constitutional Court, tried to approach the question of what could be constitutional essentials of European law. Whereas *Maduro* started out from the idea that courts have limited resources, *Grimm* took a different stance in that he raised the question of the limits of constitutional law. The ensuing lively discussion indicated that there is no obvious answer to that question. The call for ‘more European constitutional theory’ was articulated more than once in that debate.

With his suggestion to distinguish between traditional essentials, European integration-related essentials and member-state-specific essentials and the statement that fundamental rights protection could be considered an undisputed constitutional essential, *José Maria Beneyto* (Universidad San Pablo-CEU, Madrid) managed to establish a link to the sixth and final workshop.

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B. The Sixth Session

The sixth workshop had the title ‘The ECJ and the ECHR after accession of the EU to the European Convention on Human Rights’. The conveners of the conference captured the essence of this topic with a short, but dramatic subtitle, asking ‘Coordination? – Cooperation? – Subordination?’

Apart from the technical side of such an accession, it was the analytical nuances related to the specific institutional background of the different contributors which turned out to be highly interesting. ECHR-Judge *Egbert Myjer* made the least conditional and most optimistic assessment, when he described the close relationship between ECJ and ECHR in vivid colors, pointing to the references to the respective other court’s decisions in the ECJ and ECHR rulings, using words such as ‘harmony’ and ‘fantastic atmosphere’. Against this background, the Luxembourg view presented by Advocate General *Jacobs* who spoke of a ‘peaceful co-existence’ appeared to be less euphoric, independently from the double meaning of ‘peaceful co-existence’. A viewpoint from a state that is not a member of the EU, Switzerland, was contributed by the former president of the Federal Court (Bundesgericht) *Heinz Aemisegger*, who spoke of an unproblematic relationship with the ECHR. Finally, a viewpoint from a state where the highest court is part of a three-level-system of fundamental rights protection, was presented by Judge *Brun-Otto Bryde* from the German Federal Constitutional Court in Karlsruhe, who inter alia pleaded for a differentiated reading of the Constitutional Court’s *Görgülü*-decision.

C. The Final Round Table

The conference ended with a public round table discussion between Rainer Müller (Frankfurter Allgemeine Zeitung), the president of the ECJ Vassilios Skouris, the former President of the CCBE Hans-Jürgen Hellwig, Cheryl Saunders (University of Melbourne, IACL) and Advocate General Juliane Kokott on future perspectives for the ECJ. This open topic permitted to get back to numerous contributions and views expressed previously in the workshops. The question of the future of the Constitutional Treaty also came up. Beyond that, this round table also gave some insight into the relationship between the ECJ and the media, apparently a relationship more complex than one may think.