

Welcoming Remarks

for the

16th Meeting of the Joint Council on Constitutional Justice

at the Federal Constitutional Court

“Guarantors of the Constitutional Law and the Rule of Law”

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Dear colleagues,

I am delighted to be able to extend a warm welcome to you at the 16th Meeting of the Joint Council on Constitutional Justice here at the Federal Constitutional Court, and I would like to begin my opening remarks with a quote which could – in my opinion – not be more accurate,

“In constitutional law, exchanges of information and ideas between the long-established and new democracies are extremely important.”¹

This quote can be found on the Joint Council’s website. The Joint Council has the purpose of reinforcing the position of the constitutional courts as guarantors of constitutional law and the rule of law.

Presently, this task is more important than ever. We are currently witnessing veritable constitutional crises in some of our direct and more distant neighbouring states. Constitutional courts are put under pressure with specific measures taken by the current political majorities. Judges and prosecutors are suspended from duty or

¹ http://www.venice.coe.int/WebForms/pages/default.aspx?p=01_Constitutional_Justice&lang=EN

arrested. Judicial reforms put the independence of the judiciary at risk. In that respect, the Venice Commission's statements speak for themselves.

Weakening the effectivity of constitutional courts means threatening democracy, human rights as well as the rule of law. Constitutional democracies are dependent on a functioning and independent constitutional jurisdiction. Yet to some extent, this certainty seems to have gone missing.

Measures taken to deprive constitutional courts of their powers are often justified by pointing out the principle of democracy and by referring to majority situations that exist in the respective parliaments. In doing so, however, two things are overlooked:

For one thing, democracy is not limited to being a majority rule. In fact, democracy means giving the minority the possibility of becoming the majority. For that reason, democracy depends on various preconditions, for example, guaranteeing freedom of expression and freedom of the press or freedom of assembly.

For another thing, constitutional courts do not serve to support the government; their purpose is – as Hans Kelsen in particular has taught us – to protect, most notably, opposition groups and minorities so that democracy can keep breathing.

Ladies and gentlemen,

in recent years we have established an extremely well-functioning multilevel cooperation of European courts in which the two European courts – the European Court of Human Rights, and the Court of Justice of the European Union – as well as the national constitutional courts take part. In this respect, I like to refer to the image of a mobile which is in balance, and which can, if it dangles nicely, unfold in all its glory before the eye of the beholder.² However, this also means that changes at one place always have an impact on the whole mobile.

² Voßkuhle, Pyramid or Mobile? Human Rights Protection by the European Constitutional Courts, Human Rights Law Journal 2014, p. 1.

Hence, guaranteeing the independence and the functioning of constitutional courts is not only a matter left to one single state. It concerns all of us. Therefore, the constitutional courts also have to strengthen each other.

How can we accomplish that?

We have to take an even closer look at what the respective other constitutional courts are doing. By embedding the work of the constitutional courts into an international and European field of reference, a comparative legal analysis has to take on even greater significance.

In addition, mutual support manifests itself in the reciprocal reception of jurisdiction, the translation and dissemination of one's own decisions.

On top of that, another important element is the personal exchange of experiences and thoughts. Indeed, constitutional jurisdiction is particularly bound to national particularities and traditions – and, not least, to different constitutional laws. However, all constitutional courts are facing structurally similar challenges.

Ladies and gentlemen,

here is where my preliminary remarks come to an end. I would like to thank you all very much for coming to Karlsruhe. Solidarity, cooperation and exchange of experiences across national borders strengthen the rule of law and democracy. I wish you a successful meeting.

Thank you very much!

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