

Demokratiaforumi
Vasudhaiva
Kutumbakam

SUMMARY OF A DIALOUGE

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BUILDING CONSTITUTIONS
DEMOCRATICALLY:
PROSPECTS FOR EUROPE AND THE
SOUTH

Thomas Wallgren opened the discussion by pointing out that there is a need to bring Southern voices and perspective, movements perspective to the EU discussion to understand the European Union. It is a problem from the view-point of world's democracy, if the EU tries to adopt the role of the new super-power. The question is, how can you unify EU to play positive role in the international issues, unless it carefully listens the South

It is important to consider the impact of EU Constitution to the South and to the issues of the international agenda and in relation to this, we need to discuss and gather the experiences, initiatives and challenges for democratic constitution building and more democratic Europe.

We can notice that those who wanted to impose the EU constitution in its proposed relatively non-democratic form, were not well-prepared to the current situation and the French and Dutch referendums opened a space, which can be utilised for the democratization of the process.

We should consider, what are the options of the European and Nordic models of constitutional order, which we could offer to the world. What are the best options we have for the future ?

Susan George summarised her critique of the constitutional treaty that was rejected in the French referendum and provided a review of the campaign before the referendum. The post-referendum in France is not a show of great activity or initiative from the winning Non-side. The local groups that were many and active before the referendum now mostly dormant.

Wilhelm Bos from Netherlands briefly addressed the same issues from the perspective of the Dutch No -campaign. He also presented about some post-referendum work bringing people from greens and reds with different views on the referendum together.

Holland was known earlier as very pro-European and co-operating in the EU affairs and it was earlier expected that the referendum will accept the EU constitution. Most of the parties and more than 80% of the parliament were in favour and in addition nearly all the big NGOs and unions. Only the socialist party in parliament and some small extreme right political forces and 2 small christian organisations on the political left opposed and few small NGOs. Gallups used to measure 10 % in favour, 10 % against and 70 % not decided

This was the first referendum in Netherlands. As constitution is expected to serve constitutional rights of the people against the governance; so the referendum appeared as being needed for legitimacy. It should be noted that 62% voted; while only half of this voted in EU parliament elections.

The result was that also 62 % voted against the proposed EU constitution. This was not due to a great very good, well managed NO-campaign but reflected rather the general feelings of the people not only in Netherlands but in Europe more in general.

Earlier Europe has been very positive or progressive sounding idea. Now it is connected with fear because of the neo-liberal politics. Governments use Europe as a strong instrument for the implementation of neo-liberal politics. People has been told it is the Europe, the economy which needs these decisions without people having possibility to even express their will.

People voted thus against this governance power growing out of their hands. If you want to control TNCs you need more comprehensive power. You would need European taxes. People do not like the way how Europe is functioning. Thats why people were against existing structure and functioning which was given the name or shape of constitution. Left wing wanted to make its own No-campaign also because otherwise right wing would have gathered the criticism.

What is the situation now after the referendum? The constitution as such is dead. They now drop the name of constitution and take it as new treaty. They try then to change the name and the constitutional application but to keep the content because every treaty is not requiring referendum and have no need for public consultation with the people. Government wants to accept treaty without people's vote.

But what kind of Europe people need or want? The European power must be under democratic control. EU took lot of power away from parliamentarian level and from parliamentarian control of power and is structured to work for the interest of the industry and governing elite

There is 'Another Europe' discussion considering do we need another kind of constitution etc. In Dutch social forum there was a seminar where No-campaign

people discussed together with the trade union, green party, friends of the Earth, who all campaigned for favor of the constitution. Big majority of their people voted against. We had very interesting discussion in that seminar.

It is important to do this discussion also on the international level. We are learning from each other and from the campaigns in France and Spain

Harsh Mander:

When India created its constitution after the independence, it was progressive in its time.

Supreme Court has said that the two fundamental features of the Indian constitution which can not be amended, are that it is a secular and socialist constitution:

That means that in social life there are equal rights and equal respect for different convictions. The word secular means here in Indian context separation of religion from the state and not from the society. This is not western idea. From the ancient times there has been also an atheist tradition in India. In Rigveda there is the important creation hymn which ends with the thought "may be even god does not know..".

The constitution defends the equal rights by multiculturalism, demanding that prejudice against others should not be legitimised. Similarly EU constitution must look carefully the position of minorities.

In Indian constitution, the State is responsible to ensure and defend the social rights. But even though fundamental and progressive in Indian constitution, social rights are non-judicial. Right to food, education, health care, right to work must be regularised as judicial on the basis of constitution.

In order to implement these rights, state has to collect additional taxes. There is already a law, that any child must be provided a meal in school. And Employment Guarantee Act requires that if 25 people gather in any state, they have right to get some public employment within 15 days.

State should be judicially responsible to defend social rights without discrimination. But this is under threat. State should be accountable for not acting to protect and ensure these rights.

The constitutional process/assembly must be more participatory, with formal process of consulting all groups and categories.

Susan George noted first the French situation's similarities and differences with what Wilhelm Bos told about the Netherlands

The Constitution had a very non-democratic process with 105 persons. Some of them were parliamentarians, but not elected for this job... they could only comment and amend the text given to them.

National parliaments could not initiate texts. It was in practice unamendable triple unanimity to get any change only with all kind of allies.

The 'constitution' did not mention as its basis or beginning the people or popular sovereignty but the kings etc. It was much too complex, can not be amended and long for people to read and get it explicit. People did not want many things which were discovered that were in the text

70 % turn out was 26 % more than who voted in other elections. People were interested in Europe for the first time. There were also some right wing forces voting "No", but not more than 20 % from the no-votes came from the right

Trade-unionists, farmers, etc. gathered at the lowest grass root level and 1000 collectives campaigned. All major parties supported "Yes" for the constitution and in public services media debate 3/4 of the speakers supported yes, greens supported as well and business sector said you will lose your jobs if it is not accepted.

But people voted 55% against this stalinist economic constitution, whose basis is continuing free commercial competition as a war against welfare state and democracy.

The constitution includes fake public consultation where 1 million people could ask realisation of what is in constitution and still the EU commission can decide not to care about it.

Charter of basic rights was regressive if compared to national constitutions; guaranteed not anymore right to work but only a right to look for work.

The constitution process meant that the French finally came interested and as they learned what Europe was already doing, they said "no, we do not want this constitutionalised", when they were for the first time asked about the functioning of the EU. France has tradition for referendums and according to the earlier gallups in the beginning of the campaign only 35 % voted against and 65 % for the constitution.

After the referendum however the spirit has fallen and the collectives has not been very active.

One can acknowledge that we do not need constitution because there is nothing like European people (Finns are not Greeks etc.)

Constitution would require a constitutional assembly elected allover at the same time. National parliaments must be able to initiate texts for the constitution.

Now it should be dead as it is not unanimously approved... but it is not as they try to resurrect it

Commissioner Gunther Verheugen said about Dutch referendum we cannot give in to the blackmail. So popular universal sovereignty is blackmail for a Commissioner, who is not elected. We have to be prepared for the worst

The provisions on budget are ridiculous... no decent solidarity fund for newcomers they are treated as reserves for cheap labor. In the text the Central Bank is without political oversight in composing its inflation control measures. There is no capacity to borrow, no European level taxes and the parliament does not have even mandate to set them by legislation – while wage difference inside Europe is 1-12.

We have no means to do what a state or government should be able to do - not even 0,7 % for development aid, no democratic control over what is done by the Commission or by the trade commissioner, whom people can not elect.

Now if the constitution is not accepted the commission may propose some half-way measure.

We are quite weak. Most countries have not had real public debate or consultation. One of Spanish ministers said you do not have to read the constitution to know it is good.

Jacob Patocka from Czech noted that these peoples' movements can not be replicated in new EU countries as he can not see the potential for such a movement to take place there.

To answer whether EU can play positive role in overcoming the neo-liberal paradigm, Jacob estimated that EU can play positive role. Invited by Thomas 12 years ago to join the Finnish 'no'-campaign on referendum of Finland's EU membership, while Jacob was involved in a movement to join EU, Jacob saw those campaigns opposing the neo-liberal paradigm and campaigning for the quality of democracy. Coming from the same perspective in Czech republic I came from movement of joining the EU. We were coming from the lower level of the democratic quality.

Jacob said that if we are to overcome the structure we need political tools and for this the level of nations would be enough. When the movements for example in Latin America come to power they find themselves too weak to change the global market or governance structures. Therefore we need strong Europe to cooperate to change those global politics.

We need constitution worth of its name. This constitution was not a constitution understandable to the people as the founding of the democratic parliamentary people's power over the governance. We need a profound debate on identity on another basis (than some post imperial superpower identity).

Set of principles understandable to general public in all European countries is needed to change matters internationally.

Was it right to reject the constitution? Yes in Holland and France but I would not be sure in the new entering countries. In the new entering countries the nationalism is a threat to democracy.

There is a strong authoritarian movement in all entering countries.

In Czech I would be a kind of clown to oppose EU constitution because it is seen as control of the freedom of the corporations. No side occupied by the nationalists. Opportunity to find a common language. It is the major task of the civil society to provide a viable political alternative to the current neo-liberal movement

Thomas noted that European model is less than Nordic model.

Ramon Fernandez Duran asked about the EU constitution, when and why it was written and what we should do?

Ramon pointed out that the EU was an economic process and monetarian, but not political. But 1991 with Maastricht there were created EU foreign and defence policy and European internal affairs policy pillars (pushed by Germany and France). Revolution in east Europe, Collapse of Soviet union, Gulf war etc. Had certain impact in the process.

In the Summit of 1993 in Copenhagen the 10 new countries were invited and to solidify the military cohesion. The new countries seemed to go under NATO ruled by the US.

Amsterdam and Nice treaties were both to extend and solidify/integrate. In Nice treaty they decided that by 2004 they should have new treaty to develop. There were 3 on-going projects:
Fisher said we want a strong federal structure. Chirac said we want strong non-federal structure. Blair said we want big market but keep nation states independent in foreign and military policy.

Convention was initiated 2001, 3 months after the September 11, Germany wanted constitution, Chirac and Blair accepted only the constitutional process. The process took place during the war in Iraq. British did not want much power for EU foreign or military policy.

The 3 main aims were:

- a) Neo-liberal Europe to solidify the existing and to proceed. The privatisation of public services
- b) Structure for 25-members decision making and how can the big countries make the decisions
- c) Military and foreign policy

This was the project of the power.

Ramon noted 3 alternatives for this project of power:

1. Some say we are for this European Union project: Left and parliament want reform the project.
2. Some say we should build another Europe project
3. Some say let us deconstruct the project and nation state

The question is, can these 3 alternatives come together?

In Spain, Aznar stopped the constitution for ties to the policies of Bush (new Europe). In those days the constitution was developed but Aznar wanted to bring the interests of the US inside the EU and stopped the EU constitution process till Zapateiro came. The Euro to play a role of global currency needs political and military support. The dollar has that but the euro has not got.

Ville-Veikko made a note on the problematic historical impact of the EU constitution as a model of legal order. The European heritage of constitution as a model of legal order has been inherited all around the world.

The major historical function for which the constitutions were established was to control the whims of rulers, governance and administration. Through the EU and

especially through its new constitution now the authorities and administrative competence have been given again institutionalised power to change and control legislation according to its administrative and commercial vested interests.

How this will impact to the whole idea of legal order in the world? It sets the model of legal order 500 years backwards.

What is the citizens' general understanding, expectation and requirement from the legal order

Wilhelm Bos said that now the process was stopped; there is not going to be European referendum in Denmark or in Great Britain.

The danger is that they keeping away the term of Copnstitution and the latter part of it or to rewrite it, to keep the content and represent it as new treaty to be accepted without referendum in many countries

If you need a constitution, you can not say for political unity you need a constitution. There are important countries, like Great Britain which do not have Constitution. It does not change very much if you write down some principles or not. And the other way round of course the existing Europe has some kind of constitution as there are rules of functioning of the existing EU like the treaty of Nice.

The idea to call it constitution was to say to be able to say to people who oppose it that you are against democratically accepted constitution.

So it is not so important whether the rules are called constitution, but they are functioning as constitutional for the unity. It is important that if there is European process of coming together it should be democratic with several options provided for the people

Sven from Germany said there is not only a constitutional problem but also deep economic problem. Basically there are 3 positions for options in Germany.

1. One put by Angela Merkel : We should add to the current text a declaration on social Europe. But even she may have realised that it could not work to be given as same text to the Dutch and French.

2. Skipping part III of the constitution, changing the title keeping the part I and II and taking necessary things from part III to part I as supported also by stiftung of Bertelsman corporation. But there is also skepticism from administration as all countries which have ratified would have to withdraw and that's what some of the 17 ratified countries may be would not be ready to do.

3. Do we really need this constitution ? EU is not in crisis. Can not we just pick up the bits and pieces out of the whole cake from here and there and try to realise them to function without changing the treaty.

So probably the German presidency will not make very far reaching proposal because it is too early.

And in a German context we see a very strong economic crisis in the euro system

there is huge economic imbalance building up. Germany has the lowest inflation rate and its doing politics with the Dutch model of lowering wages and wage-related taxes and getting thus competitive building up huge trade surplus inside European Union. Netherlands could do that as it is smaller country but for Germany alone France has lost 100 000 jobs to Germany. We are having now trade surpluses with most eastern countries.. they are outside the euro, but nevertheless... and also building imbalances towards Italy and Spain. And these countries due to institutional reasons have difficulties to keep inflation down. Germany can continue with this neo-mercantilism... even if the sacrifices are high. The unions are so weak now. So the question is without economic governance on the Euro level, how do they control this different inflation rates which lean in with the fixed exchange rate - and nothing else is a common currency - how do they get of rid of these imbalances. There are no signs that the France, Italy and Spain are able to keep the inflation below the German level. And next year again they will cut down a part of the labour cost. How long will the people will accept this ? One can point out the big problems in Europe if there would be stronger debate and pressure in countries which suffer from the German neo-mercantilist policy. The surplus money is used to significant part to buy up Eastern Europe.

Sven said he is in favour of a just constitutional process but behind the non-ability to agree there are real problems and there is no chance in public consciousness for such reform and reconstruction of Europe which we would accept. Such constitution which would be along our lines, all nation states certainly could not accept it. Social reality of Europeanisation excludes it.

Meanwhile the economic structure will still force the welfare state and the tax-level to go down.

Jacub noted the position new countries seem to have now is that they are seen as cheap labor or a burden which progressive people want to throw away.

The mentality of these countries can be of great benefit for European wide civil society because in late 80s when these countries were gaining freedom; Estonia, Poland, Czech if you read through what people's movement leaders from 70s wrote they did not want free market, globalisation, they were saying liberty, free election, democracy. But they were only cheated to believe that the reality they will live in would be what they were demonstrating for.

For me this is also oppression of liberty, democracy, censorship by political power and economic forces.

The history and the mentality of the new states is so different

With the idea of the Scandinavian sovinites, who want to keep the highest standard, we need to assist new states to reach the basic rights and safety to oppose the forces of market globalisation

Thomas said there are interesting differences but we need unifying normative fundamentals and to sort out the differences.

Jouko Hämäläinen commented by saying that he is a human being, secondly he is a Finn as he can not be a human being without his language and thirdly he is a world citizen.

Constitution means establishment of the governance body, which in democracy is legislatively controlled by the parliament

This EU Constitution is agreement whose first paragraph starts without any feature of democracy.

And for democracy also the nature must be the absolute highest.

Linus Atarah from Ghana said that European project has gone far to a level of searching a constitution.

But for Linus Europe was to be an efficient counter power against USA. He is disappointed that Europeans have come more american than the Americans themselves. The European project has failed to counter the american hegemony. He wished that the social movement could push Europe to give a serious alternative model to the USA.

Susan George noted that the social movement has deep responsibility

Pakistanian friend noted that we should consider also the foreign policy; before Finland joined EU there was a debate how we a small country can influence, we would need EU through which we can influence. But is EU strengthening this option. Earlier countries like Sweden could raise critical voice but now in the political sphere the result from EU is bad from the point of view of developing world. Earlier some European countries Greece, Sweden, Finland could oppose tyrannical governance oppressing people in the South, but now this ability is dead.

Ramon continued that in the constitution it is said that the constitution will be accepted when 4/5 of the present members have approved. Then the Council will take a decision how to proceed.

The European policy has one year of reflection as decided in Vienna. In summit that closes the German presidency Germany may present proposal on some fundamental treaty taking in some parts of the draft while some parts are left out. Permanent presidency for 5-6 years, how to send troops to Libanon, etc. French presidency will present the final proposal.

France, Great Britain, Germany, with the help of Italy or Spain can make all decisions.

The proposal will allow France, Netherlands not to go to referendum but to decide in the parliament in accordance to their national constitutions

And there are countries, which have promised to have a referendum such as Portugal, Ireland, Denmark, Great Britain. And Poland still has not yet got a clear position. Sweden has decided to make parliamentary position.

Denmark is constitutionally bound to have referendum. Portugal and Ireland will decide not to have referendum. Finland will approve by parliamentarian decision

Denmark and Sweden they are small enough and they are not needed to the 4/5.

What will happen is that the Constitution will be agreed in other countries and then

voted in Denmark and Sweden.

The European Union can go on without Great Britain

From now to 2009 there can be very strong economic, political etc. crisis in world and Europe will need to operate to deal with the crisis, to be reconstructed in a totalitarian way.

This will need only 4/5.