



SUNICOP

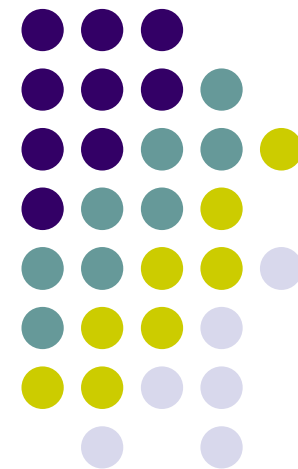
EUROPEAN CONSTITUTIONAL LAW



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European Constitution

Constitutional interpretation - ECJ
Supranational Constitution - Theory
*Draft of the Convention – New Treaty of
Rome? Instead of it: Lisbon Treaty*

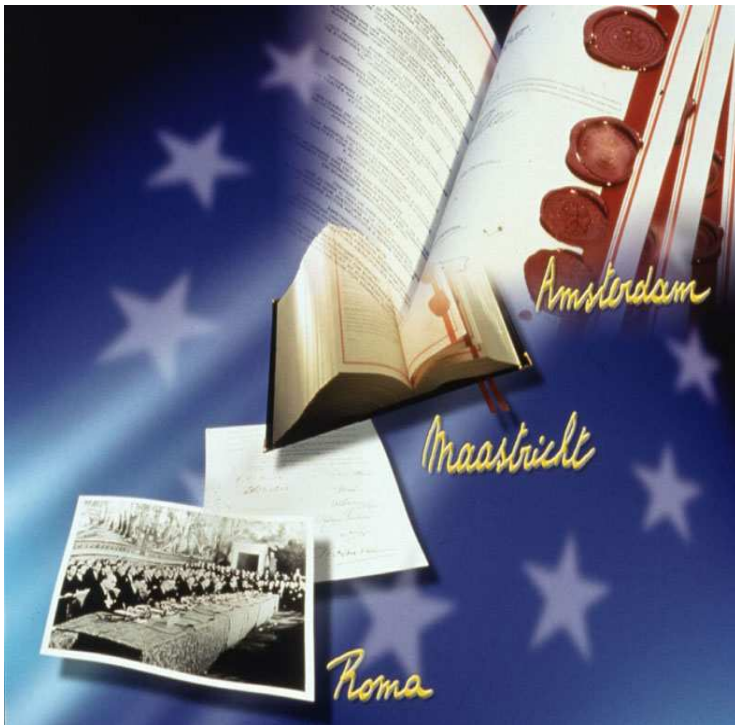
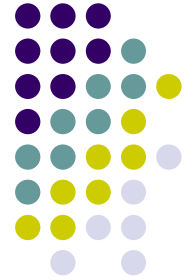




I. The existing treaties and ECJ

- Direct effect, supremacy (Van Gend en Loos 1963, Costa v ENEL 1964)
- Constitutional interpretation (Internationale Handelsgesellschaft 1970)
- Treaties as constitution (Les Verts 1986, EEA opinion 1991)
 - In *Partie Ecologiste 'Les Verts' v. Parliament*, Case 294/83 [1986], the Court affirmed that the European Community is 'a community based on the rule of law' and, in particular, the Treaty had to be recognised as its 'basic constitutional charter' and EP can be brought to court
- Limits of 'constitutionalising' (ECHR opinion 1996)

Constitutional character of the Treaties



- At the top of EC-law hierarchy (Foto Frost 1987)
- Powers of EU (Roquette v Council 1980, Factortame 1990)
- Constitutional rules (TEU Art. 1-2, 6-7...) + CFR
- Material elements

Citizenship of the Union



- Freedom to move
- The right to vote and stand (local + EP level)
- Diplomatic protection
- The right of petition + appeal to Ombudsman



Counter-arguments



- Originally international treaties
- Amendment if all Member States agree (no separate 'constitution making' power)
- Subject: economic integration
- No competence-competence



II. Real constitution for the EU? Functions and characteristics:

- Treaty-like
- Complementary
- Integrative and strategic
- Incorporative
- Federative

Problems:

- European identity
- Sovereignty of Member States

III. Constitution making Preliminaries



- Ceremonial Declaration about the EU 1983
- Spinelli suggestion 1984
- Adonnino report 1985
- EP Declaration on basic rights and freedoms 1989
- Hermann report on Constitution of the EU and the draft Constitution by EP 1994

European Convention



- December 2001 Laeken Declaration

Mandate:

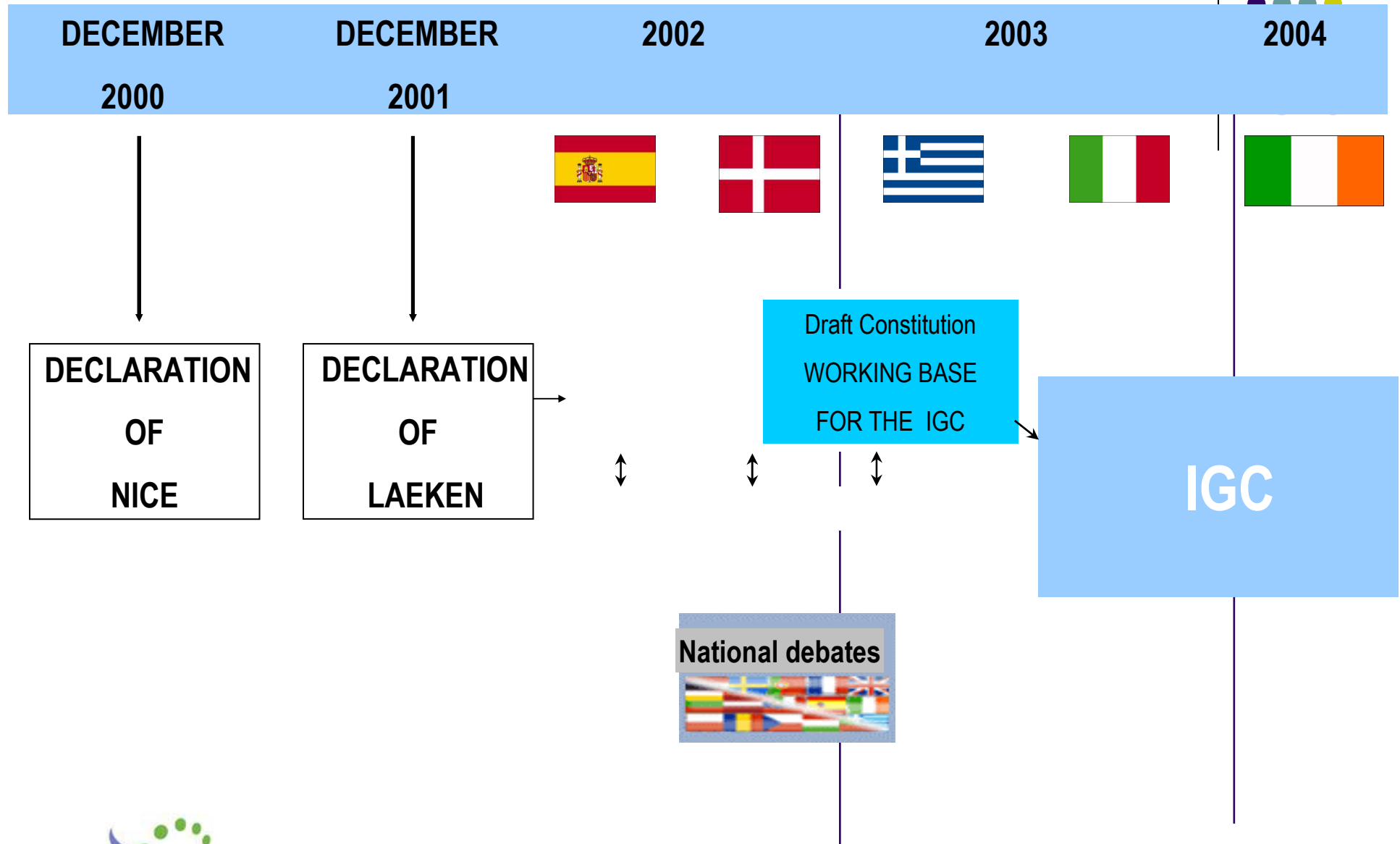
- Revising competencies
- Simplification of legal means
- Democracy, transparency, efficiency
- Constitution of European citizens

Organisation

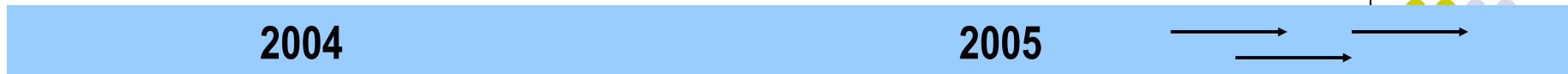
- Plenary session
- Gaps
 - Political
 - National
 - Functional
- Presidium
- Working Groups



FROM THE CONVENTION TO THE CONSTITUTION



FROM THE ADOPTION OF THE CONSTITUTION TO ITS ENTRY INTO FORCE



Elections
PE

BY NATIONAL
PARLIAMENT

IGC

CONSTITUTION

Signature by Head
of States or
governments

Ratifications
by
Member States

Planned COMING
INTO FORCE
- Fallen -

1 MAY
EUR 25

New
Commission
1/11/04

BY REFERENDUM



Hungary-Croatia
IPA Cross-border Co-operation Programme

SUNICOP

European Commission



A Constitution
for Europe



How to assess the results of the Constitution ?

- ***Simplification***
- ***Democracy***
- ***Transparency***
- ***Effectiveness***
- ***Legitimacy***



A Constitution
for Europe



• ONE TREATY

- A LEGAL PERSONALITY FOR THE EUROPEAN UNION**
- GENERALISATION OF THE LEGISLATIVE PROCEDURE**
- A REDUCED NUMBER OF LEGISLATIVE INSTRUMENTS**

• CLARIFICATION OF COMPETENCES



A Constitution
for Europe



- **THE CHARTER OF FUNDAMENTAL RIGHTS**
- **PUBLIC MEETINGS OF THE COUNCIL/LEGISLATOR**
- **ENHANCED ROLE FOR THE NATIONAL PARLIAMENTS**
(Monitoring of the principle of subsidiarity)
- **TAKING ACCOUNT OF CIVIL SOCIETY**

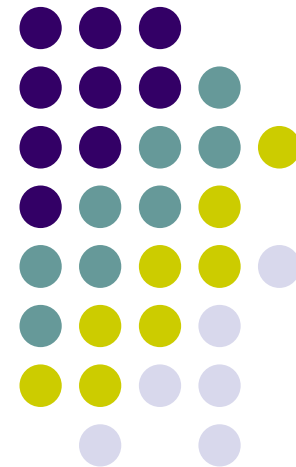


A Constitution
for Europe



- **A BALANCED INSTITUTIONAL SYSTEM**
 - **A LIMIT ON THE RIGHT OF VETO**
- **PROGRESS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE**
 - **A HIGHER PROFILE FOR THE EU**
(One Foreign Affairs Minister)

Lisbon Treaty – new constitutional development for Europe?





Reform Treaty 2007

- The European summit held in Brussels on 21-23 June 2007
- No far-reaching European constitution – a modest Reform Treaty, with a few pragmatic, evolutionary changes instead
- There were negotiations among the national governments of the member states, aiming to conclude by December 2007: Treaty of Lisbon
- Target day of ratifications was: January 2009, BUT it finished: December 2009

Some questions...



- **Why did the European Union need a new treaty?**
- **What was proposed in place of the Constitution?**
- **What happened to the EU Constitution?**
- **What remained from the Constitution?**



Some advantages...

- **A more democratic and transparent Europe**
- **A more efficient Europe**
- **A Europe of rights and values, freedom, solidarity and security**
- **Europe as an actor on the global stage**

A more democratic and transparent Europe



- Three principles of democratic governance
- Greater powers for the European Parliament
- A greater role for national parliaments
- Transparency in the Council of Ministers
- More participatory democracy
- Relations between the EU and its member countries

Efficient and modern institutions



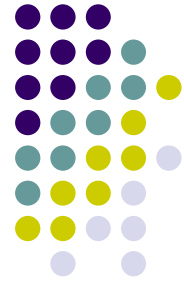
- European Parliament (functions and composition)
- European Council
- The Council of the European Union
- European Commission
- EU high representative for foreign and security policy / Commission vice-president
- National parliaments

A Europe of rights and values



- human dignity, freedom, democracy, equality, the rule of law and the respect for human rights – TEU, Art. 2
- social justice and protection
- fight against social exclusion and discrimination
- guarantees the enforcement of the Charter of Fundamental Rights
- a new right: a petition with at least one million signatures

The EU in the world



- two important institutional innovations: the “permanent” President of the European Council and the new High Representative for Foreign Affairs and Security Policy and Vice-President of the Commission
- European External Action Service
- single legal personality for the Union
- specific legal basis for humanitarian aid
- a “solidarity clause”

More Justice, Freedom and Security



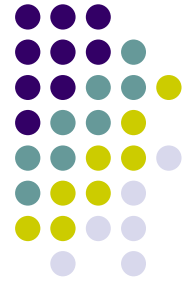
- European Parliament as co-legislator
- abolition of the existing separate policy areas
- known as 'pillars'
- Role of European Commission and European Court of Justice
- operational police cooperation, criminal justice and administrative cooperation

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Policies for a better life

- Climate change and the environment > sustainable development (clear definitions)
- Energy: sustainable and competitive resources (efficiency and saving)
- Civil protection (protection against natural and man made disasters – new legal basis)
- Public health (patient protection, standards of medical products)
- Public services (special protocol)
- Regional policy (principle of territorial cohesion + subsidiarity principle refers to local level as well)
- Research (European research Area)
- Commercial policy and economy



Ratification



- 18/02/2009 - Czech lower house approved the Treaty
- 30/06/2009 - German Court passed judgment on the Treaty
- 25/09/2009 - Final step in Germany's ratification process
- 03/10/2009 - Ireland said "yes"
- 10/10/2009 - Polish president ratified the Treaty
- 13/11/2009 – Czech president signed the treaty
- 01/12/2009 – it came into force



POLAND & Lisbon Treaty – opt out

- The "Charter of Fundamental Rights of the European Union" interpreted by the ECJ is not to apply fully to Poland (and the United Kingdom), although it would still bind the EU institutions and apply to the field of EU law
- Two proposal by an MP and a senator from Law and Justice party to the Constitutional Tribunal

Article 1 and 2 of Protocol nr 7



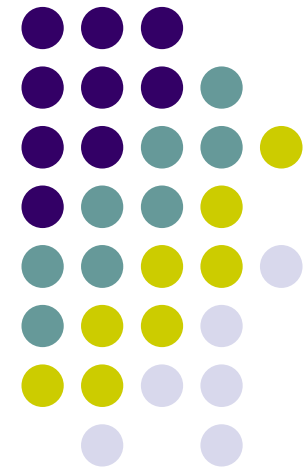
The Charter does not extend the ability of the ECJ, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

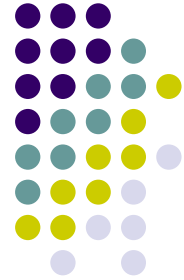
To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

CZECH REPUBLIC

Parliament has ratified, president of the republic (Vaclav Klaus) has not signed



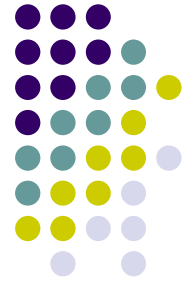
Constitutional Court decisions



- Two constitutional challenges
- November 2008: „The Treaty of Lisbon amending the Treaty on European Union and Treaty on establishing the European Community and Charter of Fundamental Rights of the European Union are not in conflict with the constitutional order. [...] The EU integration process is not taking place in a radical way, which would lead to a "loss" of national sovereignty, but it is an evolutionary process.”
- In September 2009
 - a second constitutional challenge: the Lisbon Treaty is not compatible with the Czech Constitution
 - the constitutional court decided on November 3
 - ruling: no infringements; reference is made to the decision in 2008

GERMANY

Constitutional Court decision



- During the German ratification procedure
- June 2009 (147-page long) opinion regarding the treaty
 - treaty was compatible with Grundgesetz
 - the treaty does not create a European federal state
 - it would invalidate the Grundgesetz
 - require a referendum in Germany
 - the substance of German national sovereignty is protected
 - the judges reserved the right to overrule judgments by the ECJ within Germany, if they should be judged in violation of the Grundgesetz