CHECK AGAINST DELIVERY

Lecture
Given by the President of the Federal Court of Justice
To the plenum
Of the Supreme Court of Cyprus
In Nicosia

“Challenges for the European Judiciary”

Friday, 25 May 2018

CHECK AGAINST DELIVERY

Dear Mr President Nicolatos,
Dear Judges of the Supreme Court of Cyprus,
Dear Ladies and Gentlemen!

One of the fathers of the European Union, Jean Monnet, once said: “We do not want to form an alliance of states, but an alliance of people.” Although much has been achieved since, the goal of a European Union surely has not been fully achieved yet. However, visits like this – or more generally speaking: cross-border exchange, whether among citizens or economy people or judges of the supreme judicial courts – clearly show: Europe moves up closer, it literally unites people.

In particular, since Europe is a legal community, I would like to thank you very much, Mr President Nicolatos, for this invitation, for this very warm welcome, and for the possibility to exchange our views here. This invitation is a great honour for the Federal Court of Justice. I am convinced that this visit will bear fruit for both sides. Yesterday has already illustrated this impressively. Furthermore, I have been made well aware of the challenges of the unsettled Cyprus issue. I wish the political leaders perseverance so that they may overcome this split, and luck, which is necessary to take advantage of a favourable moment hopefully to come some time or other.

There are also important challenges for the judiciary in Europe. I would like to dedicate my lecture to these challenges, and in particular, to focus on the following two topics:

The tension between European and national legal and judicial systems (I.) as well as the threats to the rule of law in Europe in recent times (II.). Maybe, these topics are connected with each other.

I.

Firstly: As a matter of course there is a conflict between national and European legal system.

To begin with, there is the practical aspect of this conflict. The national legal system usually uses only one language, not 24 official languages, as well as a

uniform technical language, the terms of which often evoke a lot of associations in the background, which even an expert might not be aware of - at least until he or she talks to a foreign colleague. The national legal system has grown systematically, and often it is possible to refer to a more or less established legal practice in order to find solutions in particular cases.

In contrast to that, European law is often new with regard to content, it uses an unfamiliar or - even worse - apparently familiar terminology, its provisions are fragmentary, and thus, it causes multiple frictions, especially at the frontier with national legal systems.

All this makes its application arduous and prone to errors from the point of view of those who are to apply it and who are still very much orientated towards their national laws. Nevertheless, this is not a fundamental problem; it can be solved by providing our national jurists with training and further education in European law. However, seeing the network of provisions of European law getting tighter, appropriate efforts are also indispensable. Therefore, it is our duty to provide further education for all judges within the European Union and to improve the training of our younger colleagues.

Completely different and certainly much more complicated is the emotional tension between European and national law, which forces its way from time to time, even in public.

The national legal system frequently is a palladium for truths which we have grown fond of, but which might be comprehensible only in this tradition, too! When European courts force a break with these traditions, laypersons, some politicians dealing with legal matters, but sometimes even jurists have no sympathy for such decisions. This reveals how much our national lenses affect our perception.

From the German point of view, I would like to give two examples to throw light on the relation both to the European Court of Justice and to the European Court of Human Rights:

My first example deals with the European Court of Justice quashing the German purity law, which was said to be the most ancient German law (!), as far as beer imported to Germany was affected, thus causing a storm of protest.[1]

Decisions with a far more serious background were rulings of the European Court of Human Rights declaring particular national provisions on preventive detention – i.e. provisions ensuring that particular highly criminal offenders could be deprived of liberty due to their dangerousness, even after having served a sentence – violated European law.[2] Consequently, the offenders had to be released. Large parts of the population, but also the responsible supervisory authorities and members of the judiciary hardly had any sympathy for these decisions.

Certainly, each country could give similar examples. I just think of the decision of the ECtHR concerning the United Kingdom and Russia, holding that depriving convicted criminals generally of their right to vote violated the European Convention on Human Rights.

At this point, I do not want to defend or to criticize the judgments mentioned above, although in some cases one might have reached a different decision. I just want to focus on the different level of acceptance in comparison to judgments of national courts.

As far as international courts are concerned, there is a temptation not to leave it at the allegation of an "ordinary" mistake. Often, they are accused of having fundamentally wrong ideas of national legal systems, or of lacking the necessary sensitivity for cultural characteristics. Furthermore, sometimes, their legitimacy is therefore openly questioned. This does also apply to long-time democracies which have difficulties to "bear" being sentenced by the ECtHR, maybe particularly due to their high human rights standards. A good example is the popularity and vehemence of calls in the United Kingdom to get rid of international courts.

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[1] ECJ, Judgment of 12 March 1987, Commission of the European Communities v Federal Republic of Germany, C-178/84.

[2] The ECtHR held that both the retrospective extension of preventive detention to an unlimited period of time and the introduction of retrospective preventive detention violated the European Convention on Human Rights (Judgments of 17 December 2009, M. v Germany, no. 19359/04, and of 13 January 2011, Haidn v Germany, no. 6587/04).

From a German point of view, one can observe: Decisions of national courts may be heavily criticized. However, in the end, the general competence of the third branch of government to judge the actions of the other branches of government by statute and law, and especially to review acts of the legislature pursuant to superior rules of law, is not doubted. Correctly, I should say: this competence of the Federal Constitutional Court is not doubted any more. During the first years of the Federal Republic of Germany, it was not at all considered natural that the Federal Constitutional Court was to control the ordinary courts, thereby applying the still alien and unfamiliar standard of constitutional law.

Ladies and Gentlemen, please allow me to pause for a moment and, according to your wishes, to deal with the function of the Federal Constitutional Court in federal Germany.

As you know, Germany is a federation consisting of 16 “Bundeslaender” (federal states). Furthermore, in contrast to Cyprus, besides the supreme judicial courts – e.g. the Federal Court of Justice, of which I am the president, competent in the areas of civil and criminal law – there is an independent constitutional court: the Federal Constitutional Court. In contrast to the Federal Court of Justice, the Federal Constitutional Court is one of only five constitutional organs. Just like the Federal Court of Justice, it is located in Karlsruhe; from there it controls the observance of the Basic Law, i.e. the German constitution. Since the date of its foundation in 1951, the Federal Constitutional Court has contributed to ensuring respect and giving effect to Germany’s liberal and democratic order. In particular, this applies to the enforcement of fundamental rights.

All public bodies are obliged to comply with the Basic Law. In cases of disputes concerning this obligation, the case can be brought before the Federal Constitutional Court. There is no appeal against its decision. All other state institutions are bound by its rulings. Its work also has a political impact. This becomes apparent particularly if the court declares an Act of Parliament unconstitutional. However, the court itself is no political institution. The only standard it applies is the Basic Law. Questions of political convenience have to be irrelevant for the court. It only defines the constitutional framework within

which politics can be developed. As is well-known, limitation of state power is one of the characteristics of a modern democratic constitutional state.

With a view to federalism in Germany, the Federal Constitutional Court also plays a vital role within the structure of state. The so-called “Disputes Between the Federation and the Laender” give both the federation and in particular the federal states the possibility to defend their competences within the federal structure of state. Many of these disputes concern questions of legislative competences. Alternatively or additionally, the federation and the federal states may file applications for a so-called “Abstract Judicial Review of Statutes” in order to establish not only a transgression of competences by the legislator, but also to verify the validity of a statute. Also in cases of disputes between federal states concerning constitutional issues, special proceedings (called “Zwischenlaenderstreit”) may be initiated in the Federal Constitutional Court.

In the past, for example, the Federal Constitutional Court strengthened the competences of the federal states concerning matters of the European Communities. In a decision from the mid-1990s[3], the court explained that it was for the federation to represent the competences of the Federal Republic of Germany towards the European Union and its organs. However, if a matter which according to the Basic Law lay within the legislative competences of the federal states was concerned, the federation was to represent the constitutional competences of the federal states towards the European Union as an advocate of the federal states. The federation was obliged by the federal principle to take the legal views of the federal states into consideration.

The Federal Constitutional Court has long since found its role as guardian of the constitution and enjoys greatest respect and recognition from all sides. However, the judiciary as a whole enjoys a high level of confidence among the general public, too.

There are two roots of this success of the judiciary: the legal authorities have worked hard for an appropriate reputation of their independence, impartiality, and

[3] BVerfG, Judgment of the Second Senate of 22 March 1995 - 2 BvG 1/89 (concerning Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities).

non-party neutrality. Furthermore, the rules of separation of powers, including judicial control over other public authorities, have become more and more established, along with democracy.

In contrast, it seems to be much more difficult to accept the decisions of “foreign” judges in the same way. In this respect, the category national state is still important, for historical reasons maybe especially when countries like those in Eastern Europe have regained free self-determination only about 25 years ago and now get the impression that they are supposed to surrender it again. Additionally, international courts regularly have bigger problems to be heard with factual messages in the choir of still nationally dominated media.

After all, there is one element of truth in these often vague concerns: the democratic legitimacy of international judges is necessarily much more indirect than in the case of national judges. Nevertheless, it is sufficient because it is conveyed by the respective national states, as long as, like in Europe, the selection procedure ensures that each national candidate is adequately qualified.

Thus, taking into account the latest judgment of the ECJ concerning refugee issues, the international courts will have to be given time until they are as well-established as the national courts. However, it is also the national judges who are called to better explain and communicate their decisions to Europe, and conversely, to work for a better understanding of the European judicial system.

For especially in a national context, the contribution of the European judicial system to a uniform standard of law and rule of law is often overlooked. We can see the chances of the European judiciary when we take into account how the advocates of those principles in countries where the rule of law is in danger put their trust in the ECtHR: for Turkey, where the legal authorities seem to have failed to uphold the rule of law, the ECtHR by means of fair trial will become the last bastion against the erosion of the rule of law as well as of fundamental rights. Maybe the Turkish government will ignore these decisions. It will not be able to escape the effect of being in the pillory because of such a sentence, or the results for its relationship with the EU, and the hope of people for legal support and satisfaction cannot be overestimated.

The ECJ also undertakes basic work for Europe. It is the ECJ that helps to enforce free movement of goods and services; it is the ECJ that puts a stop to attempts to limit the free movement of persons from Eastern Europe to Western Europe. This power of the ECJ, often remaining secret, makes a major contribution to real integration within Europe. In particular, the Brexit negotiations show this success. It is not without reason that the EU vehemently tries to defend potentially continuing rights of EU citizens deriving from fundamental freedoms against the United Kingdom.

I have examined the practical and emotional relations between national and European law; but how about the dogmatic relation? This, my dear colleagues, is not easy to describe either.

From a German point of view, it is obvious in the case of the European Convention on Human Rights. Since Germany follows the system of dualism in international law, international treaties have to be implemented into national law first. This also applies to the European Convention on Human Rights which therefore ranks as an ordinary statute, strictly speaking from the point of view of constitutional law. Nevertheless, the Federal Constitutional Court demands an application of federal law in favour of international law; in other words, federal law has to be interpreted in line with the European Convention on Human Rights whenever possible. However, unambiguous divergent federal law would still be applicable. Furthermore, the constitution does not prevent the legislator to freely, intentionally contravene the European Convention on Human Rights. Especially for this reason, it is important to achieve harmonious results.

As a perfect example, this has been “gone through” in the area of national rules for preventive detention mentioned above. The Federal Constitutional Court[4], after having declared the rules for preventive detention constitutional at first, changed its view after the decisions of the ECtHR and, explicitly referring to the rulings of the ECtHR which were to be taken into account as a minimum standard while interpreting German fundamental rights, declared the national statutes unconstitutional and void. The ECtHR would have never had this competence. Nevertheless, the conflict was settled.

[4] BVerfG, Judgment of the Second Senate of 4 May 2011 - 2 BvR 2333/08.

A similar tension seems to be unthinkable with regard to the relationship between national law and the “real” law of the EU as the latter enjoys priority of application over conflicting national law. But this represents the “European” viewpoint only - the Federal Constitutional Court is decidedly of a different opinion. According to its - also in Germany not uncontested - position, the law of the EU, like any other international treaty law, flows into the German legal order, metaphorically speaking, only over the bridge of the national law that ratifies the EU treaties. To make further use of this metaphor: Imagine, there is a guard house at both ends of the bridge. The first is occupied by the ECJ. Its primary task is to examine whether the EU law is allowed to pass the boarder or whether it is void. However, it is the Federal Constitutional Court that resides in the other guard house. It scrutinizes whether the bridge of the national ratification law is strong enough to bear the flowing into of the EU law. Seen from the perspective of the German constitution, this is plausible. For, the German constitution bestows certain basic legal principles - such as the essential core of the fundamental rights and the derivation of all state power from the people - with a so called eternity guarantee. Not even by an amendment of the constitution itself could these principles be abolished. Consequently, the German legislator does not have the power to open the German legal order for international influences which violate these principles.

Let me illustrate this with an example:
Whereas the ECJ claims to have a monopoly to decide if a legislative act complies with the competences the EU treaties provide for and applies, in principle, a generous standard, the Federal Constitutional Court regards this question to be by no means so clear. While the Federal Constitutional Court accepts that it is primarily the ECJ that interprets the EU treaties, it nonetheless considers itself entitled to exert the abovementioned control - after a preliminary ruling proceeding was conducted and then possibly even against the decision of the ECJ - if, and only if, the violation is sufficiently qualified, it is manifest that the act of the EU bodies has taken place outside the transferred competences and that the impugned act is highly significant in the structure of competences between the Member States and the EU.[5]

[5] BVerfG, Order of the Second Senate of 06 July 2010 - 2 BvR 2661/06 . paras. 61 (and 55).

The basic argument for this position is that the German people, which is the democratic sovereign, did not consent to the conferral of such powers. Hence, the principle of democracy, a fundamental structure of national constitutional law, is violated if the boundaries of the competences are manifestly transgressed.

This setting makes the occurrence of collisions conceivable. The most recent example: the so called OMT ("Outright Monetary Transactions") decision of the ECB, according to which the ECB is entitled to purchase in certain circumstances government bonds of selected Member States to an extent not limited in advance. In its decision to refer the case to the ECJ for a preliminary ruling, the Federal Constitutional Court issued the provisional assessment that the OMT decision constitutes a transgression of the ECB's mandate to pursue only monetary policy and not to finance the budgets of Member States.[6] A "qualified violation" was expressly considered, thereby making the implicit threat that the Federal Constitutional Court might possibly defy the later decision of the ECJ. At the same time, the Federal Constitutional Court discussed the possibility to interpret the OMT decision in such a way that it complied with the EU treaties.

Procedurally, the ECJ was first to move. It confirmed the principal legality of the OMT decision. However, the ECJ expressly reasoned that its legality is due to the fact that the OMT program provides for restrictions that prevent the inadmissible financing of Member States.[7]

The Federal Constitutional Court then built upon this judgment. It did let the OMT decision, though with reservations, pass. However, the Federal Constitutional Court considered the framework conditions which the ECJ defined to be mandatory for the participation of the German Bundesbank, thus making them legally binding.[8]

In this way, moving forward cautiously, both courts have come closer to one another. The Federal Constitutional Court has recently taken another purchase program of the ECB as an opportunity to ask the ECJ for a further preliminary

[6] BVerfG, Order of the Second Senate of 14 January 2014 - 2 BvE et al, paras. 38, 42, 55, 100.
[7] ECJ, Judgement of 16 June 2015, C-62/14.
[8] BVerfG, Judgment of the Second Senate of 21 June 2016 - 2 BvE 13/13 et al, paras. 175 et seqq., 205 et seqq.

ruling. This may be an attempt to bring the ECJ, for its part, to recognize the framework conditions as legally binding and justiciable.[9]

So far, both courts seem to be inclined to structure their relationship cooperatively, to sensitize the other for essential aspects - the respect for fundamental rights and the broad but not unlimited competences of the EU - but also to grant the other the leeway that is necessary. Up to this point, this cooperation has had - at least in my view - a positive effect on the law of the EU. Let us hope that this "mobile" - as the President of the Federal Constitutional Court has denoted the interaction between the courts - remains in balance.

II.

Now, I would like to turn to the second part of my speech, the threat to the rule of law in Europe. At times, we all quarrel - as I have already said - with the challenges that come with the European legal order. However, a critical level is reached when its common basic values are called into question. In Turkey - on paper still a candidate for EU membership -, the rule of law has in fact been abolished; not even the façade of it is been preserved, as mass dismissals from the civil service and mass arrests clearly show. But the current government of Poland, a Member State of the EU, is also attempting to bring the judiciary under its control. Not least as a member of the Network of the Presidents of the Supreme Judicial Courts of the EU, I feel obliged to take a look at the events, albeit, out of necessity, only a very short one:

In the second half of 2015, five judicial posts became vacant at the Constitutional Tribunal of Poland, three before the elections to the parliament, the Sejm, two thereafter. The predecessor government, this is part of the truth, let not only three but all five constitutional judges be elected straightaway. The new government annulled the election and appointed, for its part, five new candidates. Somewhat unsurprisingly, the Constitutional Tribunal found that these decisions were lawful only insofar as the previous parliament had elected three and the new Sejm two judges. The government refused the publication of this decision. It only complied with its obligation under the Polish constitution to publish judgments without delay in the journal of laws after the Warsaw public prosecutor

[9] BVerfG, Order of the Second Senate of 18 July 2017 - 2 BvR 859/15 (decision of the ECJ is pending).

had started to investigate this matter. However, the publication of another judgement of the Constitutional Tribunal is still being refused by the government. In the respective ruling, the court declared the statute of 22 December 2015, which provides for far reaching amendments to the Constitutional Tribunal Act, to be unconstitutional. What is more, the government did not comply with these decisions of the Constitutional Tribunal but instead pushed through the de facto inauguration of “its” five judges. In the meantime, and with the participation of the three judges that were unconstitutionally elected, a new president and a new vice president have been installed. Furthermore, various new regulations have been adopted which concern the procedural law of the Constitutional Tribunal. I will deal with these later.

The system of ordinary courts has come under attack, too. For a non-recurring period of six months, the Minister of Justice now has the power to replace court presidents. At the same time, the age limit has been lowered from 67 to 65 years for male and to 60 years for female judges, which, by the way, is gender discrimination. When the new age limit is reached, the Minister of Justice decides whether the respective judge can hold his office longer, up to the age of 70.

At least for the time being, a statute was stopped which would have dismissed all judges of the Polish Supreme Court with the exception of those that were confirmed by the Minister of Justice. It would have been up to the Minister of Justice, later to the President of the Republic, to decide which of the judges could have stayed (provisionally or definitively) in office.

It was, on the other hand, not possible to stop a statute on the dissolution and redesign of the Judicial Council, a body that makes important decisions regarding the judicial personnel. The Judicial Council was brought under political control. There is not a single well-known Polish judge among the 15 jurists the parliament, upon proposals by the populist PiS and the right-wing Kukiz, has elected to the body. No wonder: renowned jurists boycotted the “election” because of the open contradiction to the Polish constitution and to European legal standards. The Judicial Council, which shall allegedly guarantee the independence of judges and of the administration of justice, now consists of former subordinates of the Minister of Justice, school friends, and wives of judges familiar to him; judges, who came into office by the grace of the minister

and have such questionable legal qualifications that their previous applications for high-ranking judicial posts had repeatedly been unsuccessful.

Taken together, these measures - and I am sure you will agree with me - are clearly an attack on the independence of the judiciary. Frankly, I would not have thought that such an unscrupulous and comprehensive assault on the foundation of the rule of law was possible in the EU. However, even if the objective of these measures is, in the overall view, clear and to be rejected we should nevertheless make the effort to take a step back and to analyze them individually as regards their incompatibility with the rule of law - not least to give ourselves an account of what precisely constitutes the unquestionable common canon of values within the EU. Surprisingly, the assessment of the individual measures is more difficult than initially thought.

With regard to both, the principle of democracy and the principle of the rule of law (Article 6 TEU), the assessment criteria have to be: the separation of powers and the independence of the judiciary.

Separation of powers, in the classical view of Montesquieu, means that the judiciary oversees the application of the law by the executive branch and also the legislative activities of the legislator (to the extent that the compatibility with higher-ranking law is concerned). The natural consequence of this conception is that legally binding decisions of the judiciary are to be respected and complied with. The fact that the Polish government refuses to recognize the binding effect of the Constitutional Tribunal's decisions is, therefore, a crystal clear violation of the principle of the separation of powers and, thus, a violation of the fundamental principles of the European system of values. The Polish government cannot counter this by referring to its democratic legitimation. Democracy, precisely because it only legitimizes temporary rule, does not allow the majority to do whatever it pleases. Instead, the majority, too, is bound by the law and must, therefore, respect the principle of the separation of powers.

The evaluation of procedural rules whose aim is to prevent a court from appropriately fulfilling its tasks is equally clear. A striking example is the considered rule to force the Constitutional Tribunal to process cases in the order of their filing - hindering the court to deal with particularly significant cases first.

An evident violation of the rule of law is also to be seen in the proposed rule that the court is prevented from making a decision if, and only because, a person external to it, the Attorney General, was absent in the hearing.

However, it is much more difficult to evaluate the newly adopted requirement that plenary decisions of the Constitutional Tribunal have to be taken by 11 of the court's 15 judges. This rule, too, is criticized by the EU. One reason for the criticism certainly is that three judges of the court have been appointed unconstitutionally. But the evaluation is not that clear. There are many codes of procedural law that provide for a quorum to ensure the legitimacy of court decision.[10] And it must be guaranteed that a court is actually able to work. But is the quorum of 11 out of 15 as such too high? Would it have to be evaluated differently if it was only applied to exceptionally significant cases?

At this point, a fundamental problem of the "evaluation" of measures taken by a government that calls the independence of the judiciary generally into question becomes apparent. It is not always the single measure itself but often only the sum of the proposed actions - sometimes even only the political background - that leads to the questionability of the respective proposal. For, as we can also see in Europe, it is not problematic per se if a government is, for instance, involved in the appointment of the members of supreme courts - under the condition that it does not pursue improper goals.

Independence of the judiciary also means that the judge, in the decision-making process, is only subject to the law. There must be no exertion of influence by people external to this process. This is not only true with regard to the executive branch but it applies, this is at times forgotten even within the judiciary, to fellow judges, e.g. court presidents, too.

The judge's independence in respect of a concrete decision is safeguarded only if the judge is protected from indirect pressure as well. The harshest "sanction" against a judge is the dismissal. A judge who has to fear a dismissal will become vulnerable in the decision-making process. The same is in principle true for

[10] One criticism that was made in regard to the election of the President of the Constitutional Tribunal was precisely the low attendance rate. However, the low rate was due to the ad hoc nature of the convention.

measures with similar effects, such as the threat of disciplinary proceedings, of not being appointed for lifetime and of a disciplinary “transfer” to a different post.

It is, therefore, evident that the granting of power to a member of the executive branch to decide, at his own discretion, over the continued employment of a judge - after reaching an age limit or following a general dismissal of all supreme court judges - is incompatible with the independence of the judiciary and constitutes a grave transgression.

Also critical, in today’s heated climate, is the - not yet mentioned - “open threat” of the Polish legislator to initiate disciplinary proceedings, which the Minister of Justice shall conduct, against judges of the Constitutional Tribunal. This is delicate when all aspects are seen together. For, e.g., the German Ministry of Justice may also run disciplinary proceedings and decide whether a disciplinary action is taken. However, it is an independent court that scrutinizes, with binding effect for the executive branch, the legality of such act.

The new rule on the age limit is subject to the same verdict because - this is easy to read - it is combined with “extension options” for the Minister of Justice. A lowering of the age limit is, however, generally not unproblematic, as the example of other countries, such as Hungary, has shown in the past. Its delicateness can be seen when taking into account that the average age at supreme courts is traditionally high. Here, a lowering of the age limit can open the space for many new appointments, forcing a political reorientation of the court. The evaluation must, therefore, consider what the scope of the measure is, namely: Does it affect only individual courts? Does is affect all courts but not other parts of the civil service? Is it even just a temporary measure? These would be indicators of a misuse.

The dismissal of court presidents, on the other hand, always constitutes an unacceptable violation of the independence of the judiciary, irrespective of whether the president fulfills only administrative or also judicial tasks. For, even the solely administrative president is an indispensable component of an independent judiciary. His powers to evaluate the performance of the court’s judges, to allocate the workplaces and to organize the court’s staff, to name some examples, directly affect the judicial realm. The administrative president

guarantees the proper working of the court and ensures that the conditions for a functioning judiciary are met. His powers are part of the institutionalized independence of the judiciary.

In sum, the following is to be said: Some of the decisions taken in Poland threaten the rule of law already by themselves. Other measures could be the subject of a discussion if their intention was not so mistaken. There is no doubt that a “cleansing” of the judiciary is planned in Poland and that the rule of law is in danger. We must not be indifferent towards this development, in the interest of our neighboring country but also because it endangers European cooperation. The EU, as a legal community, is based on the mutual trust that all states guarantee a minimum standard of the rule of law. We are all called upon to resolutely and objectively demand what Europe stands for and what it makes strong.

Against this background, due to the massive attack on its independence, the judiciaries of the other Member States are, in my view, obliged to solidarize with the threatened judiciary in Poland.

The Network of the Presidents of the Supreme Judicial Courts of the EU, to which President Nicolatos and I are members, has issued an unequivocal statement. The three recommendations which the European Commission has already adopted are equally clear. The Commission rightly emphasizes that the rule of law is a core value and an essential cornerstone of the EU. If the EU is a community of central common values - and only as such does the EU have a future - it must resolutely defend the rule of law.

But, the struggle for the rule of law can only succeed if the citizens, too, realize the need to stand up for the independence of the judiciary, rule of law’s central pillar in Europe. For this to happen, the judiciary must prove worthy of the citizens’ trust. This requires professional expertise but also efficiency - specifically a reasonable duration of proceedings -, impartiality and the absence of corruption. It is here where each and every one of us can make a valuable contribution!

So far, Europe has successfully mastered all crises. One may well think of the EU and its politics skeptically, one may regard a number of the decisions it had made as mistaken, but its overall record after 60 years - the establishment of a common European area of peace and freedom with a charter of fundamental rights, fundamental freedoms and a single market - is impressive and certainly unique in the European history. After the foundation has been achieved, it is now up to our and the next generation to interweave the original radicality of the European idea with the national claims of the Member States. In this respect, it is necessary to point out again and again the core of this idea - that we can overcome the challenges only together and as a part of the world community. National identity, also in the field of law, and European core values can and must be thought of together and realized simultaneously. A great European[11] once said: “The greatest danger to Europe is Europe itself.”

Let us confront this danger bravely. A strong and united Europe, the Europe of the law and the people, has never been as important as in this time of manifold radical changes!

Thank you very much!

[11] Václav Havel