



3rd Congress of the World Conference on Constitutional justice Seoul, Republic of Korea, 28 September – 1 October 2014

Constitutional Justice and Social Integration

Seoul Communiqué (30/09/2014)

From 28 September to 1 October, the World Conference on Constitutional Justice held its 3rd Congress in Seoul, upon the invitation of the Constitutional Court of the Republic of Korea.

The World Conference on Constitutional Justice unites 93 Constitutional Courts and Councils and Supreme Courts as well as Constitutional Chambers (hereinafter all referred to as “Constitutional Courts”) in Africa, the Americas, Asia and Europe. It promotes constitutional justice – understood as constitutional review including human rights case-law – as a key element for democracy, the protection of human rights and the rule of law (Article 1.2 of the Statute of the World Conference).

In addition to delegations from 73 Constitutional Court members, 21 Constitutional Courts eligible for membership as well as 3 international and regional Courts, participated in the 3rd Congress, which had a total of 306 participants.

The topic of the 3rd Congress, proposed by the host Court and approved by the Bureau of the World Conference, was the “Constitutional Justice and Social Integration”. The 3rd Congress dealt with this theme in four sub-topics:

1. Challenges of social integration in a globalised world
2. International standards for social integration
3. Constitutional instruments enhancing/dealing with/for social integration
4. The role of constitutional justice in social integration.

On the basis of the replies to a questionnaire, each sub-topic was introduced by a key-note speaker and then discussed by the participants. At the final concluding session, the key-note presentations and the discussions of each session were summarised by rapporteurs.

There is a wide range of constitutional systems and the implication of the Constitutional Courts depends on the powers they exercise on the basis of their Constitution.

While some courts have a very wide jurisdiction that specifically includes adjudication of social rights, the powers of other courts relate more to civil and political rights, at least as concerns claims by individuals. Some courts have developed a rich case-law on social issues on the basis of the rights to dignity, liberty and equality and in the light of the principle of proportionality. Another group of courts receives appeals only from State bodies rather than from individuals. Finally, some Courts are most active in the control of elections or the constitutional review of organic or institutional laws.

Notwithstanding this diversity of jurisdictions, there was consensus among the participants of the 3rd Congress that their work, whether directly related to social rights, or to civil and political rights or to institutional issues, contributes to social integration.

At some point, all Constitutional Courts have to deal with social issues, be it because they have to solve a legal conflict, which developed between actors in society, be it because they act preventively and have to examine the constitutionality of legislation before it enters into force. In this case, the court pre-emptively possible conflict by abstract control by invalidating unconstitutional legislation, which could give rise to social conflicts, before the legislation enters into force.

The economic crisis, which has gripped many countries, forces Constitutional Courts to take up this challenge even more urgently. Within countries, budgetary cuts result in the reduction of services, which can lead to social problems. Inequalities between countries, but also internal strife, often lead to illegal migration. Within the framework of their competences, it is the task of the Constitutional Courts to ensure that - in such a difficult context - constitutional rights continue to be guaranteed.

Each judgment by a Constitutional Court upholding the Constitution, democracy, the protection of human rights and the rule of law, if properly implemented, contributes to social integration because it settles - with final authority - disputes, which could otherwise result in social conflict. The Constitutional Courts thus have a pacifying role in society, which is essential to the functioning of democratic states that respect the protection of human rights and the rule of law.

On the basis of the debates at the 2nd Congress of the World Conference (Rio de Janeiro, 16-18 January 2011), which had dealt with the independence of Constitutional Courts as the main topic, the Bureau of the World Conference on Constitutional Justice had decided that each Congress should, in addition to the main topic, also include stocktaking on the independence of the Constitutional Courts, members of the World Conference.

The 3rd Congress included such a stocktaking exercise. The replies to the questionnaire on this point and the discussions at the 3rd Congress showed that some courts and some judges have indeed come under serious pressure from the executive and the legislative powers, from vested interests, but also from the media, which sometimes misunderstand judgments or distort the image of courts. This generally occurs when courts render decisions that displease other state powers. Several courts have been subjected to fierce and disrespectful criticism, even seeing their judgments not executed and in some cases, their budgets cut and their powers reduced and some courts had even been dissolved.

The participants call upon the member Courts of the World Conference to resist undue pressure from other State powers and from vested interests and to take their decisions only on the basis of the Constitutions and the principles enshrined in them. The World Conference, through its Bureau, stands ready to offer its good offices to Courts, which come under pressure. While the

World Conference can only provide moral support, solidarity from peer courts, expressed via the World Conference, can be helpful for a Court in order to be able to resist such pressure.

Furthermore, the participants were informed about the initiative of the Constitutional Court of the Republic of Korea to promote discussions on human rights co-operation, including the possibility of establishing an Asian human rights court based on international human rights norms, in order to enhance human rights protection in the region. Recognising the great contribution by existing international human rights Courts in Europe, the Americas and Africa to the protection of human rights in the respective regions through the effective implementation of international human rights norms, the participants encourage participating Asian Courts to promote such discussions.

In addition to the representatives of the 10 regional and linguistic groups represented in the Bureau of the World Conference on Constitutional Justice (Association of Asian Constitutional Courts and Equivalent Institutions, the Association of Constitutional Courts using the French Language, Commonwealth Courts, Conference of Constitutional Control Organs of Countries of New Democracy, Conference of Constitutional Courts of Countries of Portuguese Language, Conference of Constitutional Jurisdictions of Africa, Conference of European Constitutional Courts, Ibero-American Conference on Constitutional Justice, Southern African Chief Justices Forum, Union of Arab Constitutional Courts and Councils), the Bureau is composed of three other members that the first General Assembly of the World Conference elected until the next regular General Assembly which will take place in 2017 - the Constitutional Courts of Austria, Lithuania and Turkey - (Article 4.b.1 of the Statute).

The 8th meeting of the Bureau of the World Conference (Seoul, 28 September 2014) approved the financial report presented by the Venice Commission of the Council of Europe, which acts as the Secretariat of the World Conference and approved guidelines for accepting financial contributions (Article 4.b.7 of the Statute).

The members of the World Conference and all other delegations present express their sincere gratitude to the Constitutional Court of the Republic of Korea for generously hosting the 3rd Congress, which was organised in an outstanding manner, and to the Venice Commission for its excellent secretarial support.
