



**4th Congress of the World Conference on Constitutional Justice
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“The Rule of Law and Constitutional Justice in the Modern World”**

Session 1 - “The different concepts of the Rule of law”

Response by

Mr Mourad MEDELICI, President, Constitutional Council, Algeria

Mister Chairman,

Excellences, Ladies and Gentlemen,

The contribution of our countries in the questionnaire responses constitutes an important area for the exchange of information and very useful opportunity to share experiences.

I would like to pay tribute to His Excellency Yi-Su KIM for reconstructing a very good summary which gives him, at the same time, the opportunity to shed light on a highly relevant tracks that will help stimulate our debate today.

Thus, the hard core of the concept of the Rule of law informs us about a powerful common denominator between all our institutions and countries, all of which consider the fundamental principles of the Rule of law laid down in our Constitutions and in constitutional jurisprudence, the density of which is growing steadily.

Indeed, the protection of human rights, equality before the law and the separation of powers are principles shared by all today, as well as the independence of justice.

At the same time, and over the past few years, the sources of law are referring to International Law, which, constitutes at least, according to our countries, one useful indicator and, increasingly, an absolute reference. The debate we are having today will probably remind us of the strengths and weaknesses of this trend that needs consideration, particularly on the renewed content of national sovereignty.

Progress is expected to ensure the best effective operational compromises.

Furthermore, Professor Yi-Su KIM suggested, in his brilliant presentation, a cross analysis of the subject related to the concept of the Rule of law in order to better highlight the substantive concept of the Rule of law, dominant but which relies necessarily on a formalism that reinforces clarity and legal certainty as corollary principles of the Rule of law.

In fact, in order to expose the different concepts of the Rule of law, President KIM has expertly opposed the aspect of formal law to aspect of the substantive law in an evolutionary retrospective. The historical evolution of political regimes based on procedural safeguards and those prefacing to guarantee substantive law has given different conceptions on what is the Rule of law.

The various concepts began to evolve at the end of the Second World War. However, a conceptual approach is now tending towards a globalized normativity of the Rule of law.

Ladies and Gentlemen,

Our Constitutional Courts and Councils attracted special attention as they contribute, through abundant case laws, to shed light on the scope of institutional actors in charge of putting into action the Rule of law.

Much progress has clearly been made in favor of the implication of the citizen in the mission of guaranteeing our Constitutions, through the exception of unconstitutionality.

In this regard, you refer, Mr. Chairman, in the summary of the questionnaire responses, to the relevant question of the law constitutionalization. I fully agree with this idea and particularly its implications for the place occupied by the citizen in our constitutions.

We are witnessing today, under the effect of constitutional justice and more particularly with the extension of the scope of referral of constitutional courts to the litigant, an acceleration of the constitutionalization process in all branches of law, public and private. These latter have as a common matrix the constitution in which all rights find their founding principles and to which any litigant may have recourse to challenge the constitutionality of any legislative provision that might adversely affect him.

By accessing to constitutional justice, the citizen is not merely an actor with a separate constitutional space, and rights recognized by the fundamental law, but becomes an essential actor in the process of constitutional control of laws. The exercise of this new way of law enables the citizen-litigant to participate directly in possible interpretations of the constitution and to recover this latter, which is the expression of his volition, but also to recover the laws that his representatives have elaborated and adopted on his behalf and which he now has the possibility to challenge.

Is that not a significant step in the concept of the Rule of law and the idea of constitutional democracy?

Algeria, like other countries in the sub-region and, more broadly, a large number of African countries, has established a mechanism that has already given us the opportunity to benefit from the experience of those who preceded us in this area.

Our debates today will allow us to come back to this new and powerful segment of constitutional justice, which has substantially transformed our action programs and consolidated our monitoring missions relating to the respect of our Constitutions.

Here is an area where the Rule of law works on subjects close to citizens' concerns and which leads to enrich considerably the case law.

Finally, I would like to suggest that the debate should be engaged on the importance of the judge who is also a principal actor and merits full consideration to improve his capacities and strengthen his independence.

Over all these questions, I would be remiss if I did not single out the role and the effectiveness of the Venice Commission and its President, who has contributed in a very important way to shed light on the field of constitutional justice.

The best tribute we can pay to this institution, which brings together all continents, is to contribute to the debate, which was excellently led by our eminent speaker and President of the South Korean Court that successfully hosted the 3rd Congress in Seoul.
