



N.B This is an unofficial translation in English of the original speech in Portuguese

Discussant's Speech

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Session C

“Limitations of the Role of Constitutional Courts in Maintaining Peace”

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His Excellency the President Emeritus and Special Representative of the Venice Commission, Chief Justice of the Constitutional Court of Indonesia, Honorable Presidents of the constitutional jurisdictions, Ladies and gentlemen,

Let me begin by expressing our gratitude to the Constitutional Court of Indonesia and the Secretariat of the World Conference on Constitutional Justice, for the warm welcome, and for the excellent reception and working conditions created for this Conference.

On the theme of this Congress, we cannot avoid pointing out that in the case of the Republic of Angola, which comes from a history of post-independence armed conflicts,

peace is mentioned in the very first article of the Constitution as a fundamental objective of the Republic. In this article, and in others mentioned in the reply to the Questionnaire, the word peace does not, in fact, have a sense of absence of war. Once this difficult page of our history has been overcome, the peace that is being pursued at present is social.

The topic that is proposed to us to comment, "Limitation of the role of constitutional courts in the maintenance of peace", effectively brings to the discussion, the limits imposed on the common attributions of most constitutional courts, to be considered as real actors of regulation and stabilization of societies, in order to contribute to the achievement of social peace.

It is common point that most constitutional courts have multiple attributions, and in the case of the Constitutional Court of Angola it includes the review of the constitutionality of the laws and judicial and administrative decisions, as well as the legality of electoral processes.

It is certain that the protection of human rights is a precondition for the resolution of any conflict and for the guarantee of social peace, and that the observation of constitutional principles in the decision-making should, as a rule, contribute to social peace since it promotes trust in the law and in the courts.

I intend to address some of the critical questions so adequately raised by President Emil Oskonbaev, based on the Angolan experience, and some superficial reflection on the responses to the questionnaire.

In his presentation, the key speaker highlighted three key aspects to consider in the topic:

- a) the importance of the procedural impulse of the applicants for the intervention of the courts.
- b) Relations of constitutional courts with other organs of the State;
- c) Positioning of the media before the constitutional courts.

In fact, these elements summed up here have a vital influence on the role of constitutional courts in peacekeeping.

From the Members' replies to the questionnaire, it is clear that, with rare exceptions, the procedural impetus for the intervention of constitutional courts is always of third parties, and only very exceptionally these courts have the legitimacy to intervene in the control of constitutional on their own initiative, as in the case mentioned by the Constitutional Court of Serbia .

Most constitutional courts are therefore limited in their activity and have no initiative of their own. The courts review and decides the questions of unconstitutionality submitted by the entities with legitimacy to initiate constitutional proceedings.

Besides the most common entities, such as the President of the Republic, Attorney General, parliamentarians, in the case of the Republic of Angola, citizens also have the right to appeal judicial and administrative decisions that contradict rights, freedoms and guarantees provided for in the Constitution, but just in the case of the appropriate ordinary appeals have been exhausted, in the common courts and other courts. The exception to the rule comes at a preliminary stage of electoral proceedings, in which any citizen can challenge a candidacy of a Political Party or Coalition of Political Parties, submitted to the Constitutional Court. In any case, the Court has no procedural initiative and must take the applicant's request.

It will therefore be within these limitations that constitutional courts exercise their role as guardians of the constitution, and thus contribute to mitigate the social tensions that would result from the implementation of legal provisions or judicial decisions that contradict fundamental principles and rights enshrined in the constitutions. Although they cannot intervene preventively to avoid conflicts, they do play their pacifying role when the processes are initiated by the competent entities.

The second and third aspects highlighted by the key speaker, which cover the second, third and fourth questions of the topic under consideration, related to non-compliance with the decisions of the constitutional courts, and the challenge of their role by the State powers and the media, bring to the analysis an element that it is essential to maintaining social peace, which is the creation and maintenance of citizens trust in the rule of law and in the States institutions.

The constitutional courts, to fulfill their role, judge the questions of constitutionality as the final instance, so that their decisions are final and mandatory for all public and private entities, prevailing over those of the other courts.

Despite the noted examples where decisions have been enforced with some resistance, most constitutional courts hold that their decisions have been complied with by the parties and other affected entities.

We think that the emphasis placed on other state organs by the key speaker results from the impact of the non-compliance with the decision of a constitutional court, which will be an alarming sign of disrespect for the primacy of the Constitution and the Law, and the ineptitude of the guardian of the constitution to safeguard fundamental rights and freedoms, by controlling the constitutionality of laws and judicial decisions. Faced with such a scenario, the confidence of individuals in the laws and courts disappears, no longer relying on these the peaceful resolution of conflicts.

The majority of constitutional courts have pointed out that their decisions are scrutinised by the media and civil society in general, where criticism is sometimes directed at it.

The very nature of the constitutional process, which presupposes the existence of interested parties, and even parties that contradict each other, implies that the decision of a case may be received with displeasure by one of the parties, who can express publicly this view. This will be particularly highlighted in the cases involving political issues. It is common to make public statements complaining that constitutional courts, with their decisions, acts as the legislative or even executive powers, thus violating the principle of separation of powers.

In any case such manifestations cannot prevent the courts from exercising their powers.

For these reasons, constitutional courts will always be questioned by the media, regardless of the robustness of the rationale and the pedagogical language used in the decisions, should always be considered the need of public clarifications, in order to protect the image and, at the same time, the confidence of citizens in the institutions, thus contributing to the maintenance of peace social.

In conclusion, although most constitutional courts do not have jurisdiction to initiate constitutionality review procedures, they contribute decisively to social peace, through decisions that are given in the specific cases submitted to them, in accordance with the constitutions and applicable laws, always with a view to safeguarding the principles and directions of human rights.

Thank you!