

**Summary based on national presentations**  
(World Conference of Constitutional Justice  
Cape Town, January 24, 2009)

Dear colleagues,

With your permission, I would like to submit to you the conclusions of our discussions in the group of the constitutional courts of countries of young democracy.

Communications by chairpersons of constitutional review bodies of countries of young democracy, as well as by chairpersons of other European constitutional courts, have convincingly demonstrated the following:

1. The rulings of constitutional courts have a significant impact on the society, they define the character and trends of democratic developments in a country, they possess normative power, acquire precedential value and often system-setting significance. They represent an important source of constitutional law, and constitutional courts themselves become a reliable safeguard for irreversibility of establishment of constitutional democracy.
2. These rulings mostly encounter a positive response from politicians, the media, and the public at large. At the same time, the first stage of the establishment of constitutional courts was characterized by the emergence of a certain antagonism between the constitutional court and other institutes of power, since the latter sometimes had problems in coming to terms with the independent functional role of constitutional courts. This often led to a deficit of adequate perception within the society of the legitimacy, the place, and the role of constitutional courts as bodies possessing oversight functions over the constitutionality of operation of all bodies of power, including those endowed with a primary mandate. At the current stage of social transformation, concerns like these are being overcome thanks to the general trends of constitutionalization of society and the enhancement of constitutional culture, processes that constitutional courts contribute to within the best of their capacity.
3. Constitutional courts have become dependable defenders of, alongside human rights, of social and economic rights, which are constitutionally enshrined in all countries of young democracy. The principal goal of constitutional courts in this area is not only to protect the rights of concrete entities, but also to set constitutional bearings for lawmakers with a view of, without encroaching on their competence, to set conditions for consistent development of social and economic legislation towards harmonization of citizens' and public interests, prevention of arbitrary, unjustified withholding of social protection services, at the same time duly considering the economic and financial possibilities of the state.
4. In many countries, the constitution and the law on the constitutional court provide for the duty of the constitutional court to evaluate the possible impact of a ruling under its consideration. In addition, if the constitutional court finds that deeming a contested normative legal act or a provision thereof unconstitutional and quashing it may invariably lead to grave consequences for the society and the state, undermining its legal security, the constitutional

court may recognize the act unconstitutional, at the same time, through its ruling, deferring the loss of legal force thereof.

Constitutional courts pay significant attention to maintaining the principle of self-restriction in constitutional litigation and in designing the language of their legal positions in ensuring the supremacy and self-sufficiency of the Constitution. Another practice is to recognize a legal norm constitutional only within the four corners of the legal position formulated by the Court in its ruling.

5. A comparative analysis of the practice of constitutional justice indicates that the role and the influence of constitutional courts are undoubtedly determined by the general level of democracy within the society in question. Along with that in countries of developing democracy, constitutional courts play an exceptionally important role in affirming the principles of the rule-of-law state. Rulings of principle by constitutional courts predetermine the direction of constitutional-legal developments and the character of formation of the practice of law. Constitutional courts have a significant impact on the development of the legal system of a country, plugging legislative lacunas and overcoming contradictions, eliminating the European deficit in the legal system, forging sustainable national legislation. In applied terms each ruling of a Constitutional Court that recognizes a norm unconstitutional or affords it a constitutional meaning differing from that established through current practice, shall have a certain influence over social relations.
6. In many countries of young democracy, constitutional justice represents an established fact within the social reality. At the same time the process of functional and institutional improvement of the mechanisms of judicial constitutional review is continuing. The equilibrium between the constitutional functions and concrete powers of these courts, between the subjects and the objects of judicial constitutional review is getting stronger. In certain countries, the institute of individual complaint to constitutional courts has not yet been introduced, and the right of each individual to enjoy constitutional justice is not yet fully ensured. However, without this, it would be impossible to ensure the integrity and effectiveness of judicial constitutional review. The systemic nature of constitutional review, the interaction between all constitutional institutes in ensuring the supremacy of the Constitution, as well as in enforcing the rulings of the Constitutional Court, require further strengthening.

There is also a need for significant work towards increasing the legal awareness of the citizenry and reducing the incarnations of legal nihilism within the society.

7. In countries of young democracy constitutional provisions that enshrine concrete human and citizens' rights and freedoms as having direct effect are interpreted by constitutional courts according to universally recognized principles and norms of international law. Constitutional courts become conduits for transposing international principles and norms onto the domestic legal turf.

A certain influence of promoting uniformity in the domestic practice of constitutional courts is exerted by international courts that have jurisdiction with regard to complaints over violations of human rights and fundamental freedoms, in particular by the European Court of Human Rights.

One may acknowledge, to some extent, that there has come into being European regional jurisprudence on human rights and dignity, both from the perspective of law implementation

practice of public authorities of European countries, and the influence exerted by the latter on the development of their respective legislations.

8. In Europe and in the countries of young democracy in particular, an active exchange is taking place of experience in domestic constitutional justice. This includes regular studies, undertaken by many courts, of foreign case law. A sustainable practice has emerged of scrutinizing the legal positions of peer constitutional courts. Along with bilateral and multilateral active contacts between constitutional courts, an important vehicle for exchanging experience is the regular discussions of topical problems of constitutional justice at the congresses of the European Conference of Constitutional Courts and the annual forums of the Conference of Bodies of Constitutional Control of the Countries of Young Democracy.
9. One may assume that, along with the expansion of contacts between regional organizations (groups) of constitutional courts and their mutual enrichment with regional traditions of constitutional litigation there will emerge the necessary preconditions for interregional convergence and, albeit along only several dimensions, also global convergence of judicial practice of constitutional courts. This will objectively contribute to setting forth and discussing the issue of possible future global jurisprudence on human rights.
10. The research of the processes of the constitutional development in the world drives to the conclusion that the humanity is getting closer to the issue of formation of **qualitatively new immune system of the social body**. XX century has convincingly proved that the faith, traditions, moral norms, and the whole system of the social behaviour and other mechanisms of systemic self-defense have insufficiently ensured the balance and stability of the development of the society in the circumstances of the new reality. In the new millennium, the constitutional review becomes one of the sufficient elements of the self-defense of the civil society and the rule of law state.
11. Consistent constitutional development, stable dynamism of this process, the evolutionary nature of overcoming the trends of critical accumulation of negative social energy and, as a result, prevention of transformational social calamities, should become a worthwhile and useful model for the development of constitutionalism in countries of young democracy. Current **“transformational constitutionalism”** is gradually **acquiring a systemic-integral character**, increasingly permeating the legal awareness of the public, the process of lawmaking, legal practice, shaping the lifestyles of millions. The Constitution ceases to be strictly a political declaration; the legal nature of the Fundamental Law of transition countries comes increasingly to the forefront. This attests to the emergence of a new constitutional culture in the society: the constitutional culture of the 21<sup>st</sup> century.
12. In view of the current development trends of constitutional justice, the increasing role of constitutional courts in ensuring the supremacy of the Constitution and of human rights, as well as considering the prominent results and the high level of the First World Conference on Constitutional Justice, the need has matured for institutionally strengthening this forum and holding it on a regular basis. Many issues of its organizational and informational support can be effectively addressed through subsequent active cooperation with the Venice Commission of the Council of Europe.  
On behalf of all speakers at this section, allow us to express our profound gratitude to the Supreme Court of the South African Republic and to the Venice Commission for this initiative and for the organization on such a high level of the First World Conference on Constitutional Justice.

Our section hereby endorses the draft Declaration of the World Conference.

Gagik Harutyunyan

24.01.2009

Cape Town