



**4th Congress of the World Conference on Constitutional Justice
Vilnius, Republic of Lithuania, 11-14 September 2017
“The Rule of Law and Constitutional Justice in the Modern World”**

**Opening statement
by
Mr Linos-Alexandre SICILIANOS, Vice-President, European Court of Human Rights**

Mr President of the Constitutional Court,
Madam President,
Ladies and Gentlemen,

It is an honour for me to participate in the Fourth Congress of the World Conference on Constitutional Justice, representing the European Court of Human Rights and its President, Mr. Guido Raimondi. Our President was unable to travel these days due to an unfortunate event, but asked me to convey to you the importance he attaches to this Congress.

My taking the floor this morning, before an audience of such distinction and such diversity, is a sign of special consideration for the European Court.

For this honour, I am deeply grateful.

The Strasbourg Court is here today as a guest, of course, and not as a member of the Conference, since it is not a constitutional court.

Its judges are not vested with constitutional functions.

Rather, the European Court is a regional, international court exercising a treaty-based jurisdiction in respect of 47 European States, nearly all of which are represented here today.

Notwithstanding these institutional differences, there is a strong and obvious affinity between the European Court and the member courts of the World Conference on Constitutional Justice.

Above all, our court shares with you the mandate to protect fundamental human rights.

In the broad domain of international law, the protection of human rights lies closest to the domain of national constitutional law.

The European Court has, time and again, underlined the special character of the European Convention on Human Rights as a “*human rights treaty protecting individuals on an objective basis*”¹.

Since the earliest days of the Convention, it has been reiterated at Strasbourg that the purpose of the Convention goes beyond the usual treaty function of setting out reciprocal rights and obligations of States. The Convention was drafted “*to realise the aims and ideals of the Council of Europe ... and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law*”².

These aims, ideals and values are a faithful reflection of those embodied in constitutions, charters and bills of rights throughout the world. In some of its most significant cases, the European Court has invoked the underlying values of the Convention, in much the same way as constitutional jurisprudence draws upon the foundational values of the respective political community.

This essential commonality between constitutionalism and international human rights law is reflected in a well-known formulation that was first used by the European Court in 1995, when it described the Convention as a “constitutional instrument of European public order”. It is an audacious statement, affirming that Europe (in its widest sense) has a public order, and that it finds expression in the Convention.

Going further into the concept of European public order, and relevant to the theme of this fourth congress, our Court has affirmed that one of the core components is the principle of the rule of law. From this it follows that an arbitrary interference with individual rights – and this applies to all of the Convention rights – cannot be tolerated, because arbitrariness is the very negation of the rule of law.

The case I am referring to is *Al-Dulimi v. Switzerland*. It stands as a landmark ruling from Strasbourg on the question of safeguarding human rights in the context of applying economic sanctions decided by the Security Council of the United Nations.

¹ *Nada v. Switzerland* [GC], no. 10593/08, § 182, ECHR 2012

² *Austria v. Italy*, no. 788/60, Commission decision of 11 January 1961, Yearbook 6, p. 116.

The issue appeared to be one about the conflict of norms and the hierarchy of norms in the international legal order. However, approaching the question from the standpoint of the rule of law, and the imperative of guarding against arbitrariness, provided the key to striking a fair balance between two objectives of the highest importance: on the hand, ensuring respect for human rights; on the other, the protection of international peace and security.

Similar issues have come before the courts of a number of countries, in Europe and beyond, and their rulings were very instructive. The European Court often uses a comparative methodology in its legal reasoning, drawing on the wisdom of constitutional courts and supreme courts. I know that in many of your courts that courtesy is reciprocated, and that you are attentive to the jurisprudence of Strasbourg.

This is vital as far as the European States are concerned, as it is the essential meaning of subsidiarity in the Convention system. It is also the means by which judicial dialogue is conducted among national and international judges in Europe, which serves to deepen and strengthen the protection of human rights and respect for the rule of law.

This great gathering in Vilnius will facilitate judicial dialogue on a global scale, among the judges who bear the responsibility to uphold and to further the rule of law, a principle of fundamental, universal and enduring importance.

I am delighted to have had this opportunity to contribute to your proceedings, and I conclude here by thanking you for your attention.
