



**2nd Congress
of the World Conference on Constitutional Justice
Rio de Janeiro, 16-17 January 2011**

**"Separation of Powers
and Independence of Constitutional Courts
and Equivalent Bodies"
organised by
the Federal Supreme Court of Brazil
and
the Venice Commission**

**Opening speech by Mr Gianni Buquicchio
President of the Venice Commission**

Mr Vice-President of Brazil,
Mr President of the Federal Supreme Court of Brazil,
Mr Governor of the Rio de Janeiro Region,
Honourable Presidents and Judges of Constitutional Courts and equivalent bodies,
Ladies and Gentlemen,

I take great pleasure in welcoming you on behalf of the Venice Commission to the 2nd Congress of the World Conference on Constitutional Justice in Rio de Janeiro. I am happy to be in a country and in a region where democracy has taken firm roots.

The recent Latinobarometro poll shows that in Brazil - and in Latin America in general - support for democracy and – most importantly – satisfaction with it is further increasing.

I am grateful to the Federal Supreme Court of Brazil for hosting us today and for the excellent and generous organisation of this event.

Not all of you may be familiar with the work of the other organiser of this Congress, the Venice Commission. The European Commission for Democracy through Law of the Council of Europe, also called the Venice Commission, promotes the values of the Council of Europe: democracy, the protection of human rights and the rule of law.

With its 47 member states, the Council of Europe covers practically all of Europe, from Lisbon to Vladivostok, including important states like Russia and Turkey.

Outside Europe, our continent, the Council of Europe is probably best known for the European Court of Human Rights.

However, the action of the Council of Europe goes way beyond the Strasbourg Court and includes areas such as legal co-operation among its member states, social cohesion and culture. Intercultural dialogue between Europe and its neighbours but also within the member states is a key task of the Council.

Within the Council of Europe, the Venice Commission is an enlarged agreement and our Statute calls us to develop ties with other regions of the world and to share experiences relating to these universal principles with countries and courts in other regions. We are proud to count Brazil and other Latin American countries as our members.

Since the Venice Commission is composed of independent experts in the field of constitutional law – most of them are constitutional judges or professors of constitutional law – the Venice Commission is particularly fit to co-operate with constitutional courts and equivalent bodies such as constitutional councils and supreme courts.

We are very proud of having contributed to the development of constitutional justice and the “cross-fertilisation” between constitutional courts in Europe and abroad.

Mr President,

The topic of our Congress – Separation of Powers and the Independence of Constitutional Courts and Equivalent Bodies – relates to the very essence of constitutional justice.

Without separation of powers your courts will not be able to fulfil their purpose – to guarantee the respect for your Constitution, which enshrines the universal values of democracy.

Only when your courts are independent from the other state powers - the executive and the legislative branches of government – you can effectively control whether these powers respect the Constitution.

The universality of the general principle of judicial independence is prominently reflected in Article 10 of the Universal Declaration of Human Rights. The link to human rights, which was the topic of the first World Conference on Constitutional Justice in Cape Town two years ago, is essential.

Judicial independence is not an end in itself; it derives from the need to guarantee the rights of each individual. Objective aspects of judicial independence, like the system of judicial appointments and guarantees serve the broader idea of fundamental rights protection.

During our Congress we will develop three aspects of this broader topic in more detail in the working groups: the independence of the Court as an institution; the independence of the individual Judge and procedural guarantees for judicial independence.

These three aspects are closely intertwined and only when all three of them are covered, judicial independence will prevail.

Dear Participants,

Politics closely follow the work of constitutional judges. Sometimes politicians have clear expectations on how you should make decisions. However, you are aware that you have to be independent from those who appointed you. This is the famous “duty of ingratitude”.

Even if there is strong pressure from politics and - at times much worse – from the media who tell you how you should decide a case, your conscience will tell you to follow only the guidance of your Constitution.

In Europe, we have seen many outstanding decisions of constitutional courts, which significantly promoted democracy, the protection of human rights and the rule of law.

Many will remember the decision of the Constitutional Court of Hungary abolishing the death penalty, which was followed by the Constitutional Courts of South Africa, Albania, Ukraine and Lithuania.

However, we also have seen a few judgements, which seemed less convincing. Decisions by constitutional courts should be well argued and just.

The guarantees for your independence, which we will discuss during this Congress, will allow you to resist such undue expectations. Your allegiance is to the Constitution alone. Who could resist to political pressure if not you - the noble guardians of the Constitution and its values?

Dear Judges,

Sometimes you may feel the loneliness of the independent judge, restraining yourself from making public statements even when you would like to shout out about flagrant violations of the Constitution.

But you will not do so, because you may soon be asked to decide this very case and you must remain impartial. Judicial restraint is a heavy burden on any judge and, even more so, a burden on the constitutional judge.

However, “no judge is an island”. Your peers and especially those in other countries may already have had similar experiences, may already have found solutions to some of the problems before you or they may simply be able to provide comfort by engaging in a serious discussion.

They may be able to give you the necessary moral support and strength to carry on and to move forward on the path of constitutionalism.

This is why the regional and linguistic groups present here today are so important. They provide the opportunity to usefully exchange information with judges in the same region or with the same linguistic background.

Seminars and conferences organised within these groups allow you to meet the other judges and to discuss your problems from various angles.

The World Conference is to build on the strengths of these regional and linguistic groups; it will not replace the groups, on the contrary, it will support them in their goal to assist their member courts and councils.

The World Conference and today's Congress will allow you to meet judges from various backgrounds from diverse cultures and with different experiences. I am sure that by meeting them, you will enrich your own experience.

The Cape Town World Conference of 2009 established the Bureau, which unites the presidencies of the regional and linguistic groups, and gave it the mandate to work for the establishment of the World Conference as a permanent body.

I believe that they did a great job by drafting, editing and revising the draft Statute, which was discussed within the groups yesterday and which is on our agenda for tomorrow's plenary session.

Based on its Statute, the World Conference should be able to support your courts in safeguarding your Constitution.

An international exchange of information between constitutional courts and equivalent bodies is not about travelling to nice places
– even if we appreciate the magnificent beauty of Rio de Janeiro - it is about strengthening your courts, strengthening your Constitution and thus strengthening democracy and human rights in your country and world-wide.

Presidents, judges,

I wish you all a fruitful Congress - fruitful for you the judges, and fruitful for the people of your countries!

Thank you very much for your attention.