

2nd Congress  
of the World Conference on Constitutional Justice  
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**“Separation of Powers  
and Independence of Constitutional Courts and Equivalent Bodies”**

***Konrad Adenauer Foundation’s Rule of Law Programme –  
Promoting judicial independence in the world***

Since the beginning of its international work on Rule of Law, Konrad Adenauer Foundation advocates the separation of powers, exercised by institutions based on the central elements of rule of law, in particular a strong and independent judiciary. An effective constitutional justice is a traditional focal point of the Foundation’s work and was one of the purposes why the Rule of Law Programme was created at the beginning of the 1990s in Latin America. The experience in Latin America served as an example, and in 2006, regional offices of the Rule of Law Programme for Sub-Saharan Africa, South-East Asia and South-East Europe opened in Nairobi, Singapore and Bucharest.

Even though constitutional jurisprudence in many cases has political implications, a clear division of Constitutional Courts<sup>1</sup> from the political powers (legislative and especially executive power) is vital in a democratic state, as the Courts’ function is to safeguard the constitution and to control the acting of the other powers. This institutional independence has to be provided legally, but even given the respective regulation, judicial independence is not necessarily guaranteed if the awareness to make these rules effective is lacking amongst political decision-makers, civil society and especially within the judges themselves.

Therefore, one of the most important missions of the Rule of Law Programme is raising consciousness in the target groups mentioned, particularly in those who exercise constitutional jurisprudence, about their role in a democratic system, putting emphasis on the ethical standards for their acting. Notably in Latin America, where the Rule of Law Programme started about 20 years ago, the Foundation could establish over the years a trustful value-based dialogue with constitutional judges themselves.

The instruments the Rule of Law Programme uses in this respect are publications and dialogue programmes like expert conferences, seminars and workshops for legal professionals, generally on a regional level.

The most important example is the anual Latin American Meeting of Constitutional Judges, organised since 1993 by Konrad Adenauer Foundation and the

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<sup>1</sup> Hereinafter, the expression “Constitutional Court” applies to specialised Constitutional Courts as well as Supreme Courts or other bodies exercising constitutional jurisprudence, according to the judicial system a state opted for.

Constitutional Court of the respective hosting country. During these meetings, that take place in a confidential atmosphere and to which media do not accede, the judges, together with international experts on constitutional law, discuss challenges to the constitutional jurisprudence in their respective countries and give advice to each other how to face these challenges. It has become a tradition to invite a judge from the German Constitutional Court and a German expert on constitutional law to these events. The exchange of knowledge and experience is supposed to encourage personal independence in the participating judges and, consequently, strengthen also institutional independence of the Courts. In addition, this exchange allowed creating regional networks between the judges, who stay in contact also independently of the forum provided by the Foundation.

Similar initiatives have been established in Asia, Africa and Europe. Moreover, in Asia the "Association of Asian Constitutional Courts and Equivalent Institutions" was founded recently after years of preparation, supported by Konrad Adenauer Foundation's Rule of Law Programme South-East Asia. The purpose of the association is to offer a forum for exchange and consultation to the judges in the region, thus contributing to the stabilisation of Constitutional Courts.

Within the Latin American section of the Rule of Law Programme, a study group on Constitutional Justice and fundamental rights has been founded in 2009, gathering experts from 11 countries, including constitutional judges. The study group's aim is to constantly monitor the development of constitutional justice and the protection of fundamental rights on the continent and report on it in an annual meeting as well as by editing a publication a year.

Konrad Adenauer Foundation's experience in its Rule of Law work all over the world shows that the patterns of direct or indirect obstacles by political pressure and/or lack of acceptance which Constitutional Courts often have to face are very similar on the different continents.

Examples of lacking acceptance can be that decisions or the mere existence of the Courts are ignored, but also, in a more subtle way, denying the necessary financial means for its work, either generally speaking or selectively, in moments the Court is working on a case with impacts for those who hold the political power.

Political pressure is exercised when judges are recruited exclusively or by majority from the political party governing, leading to a control over the decisions of the Court. The reason for this may be, especially in presidentialist systems where parliaments are often weak, that Constitutional Courts assume the vacuum as the only control organ to government's acting, particularly when it comes to guaranteeing the citizens' fundamental rights. In some countries Constitutional Courts have therefore gained reputation in the societies, but at the same time their jurisdiction has evoked the discredit of the powerful, whose only chance to control these Courts is undermining them by installing judges who unconditionally share their political projects. Both kinds of obstacles can turn Constitutional Courts into "empty institutions" that can no longer exercise their legitimate role in a democratic scheme of powers but only serve for staging or legitimating politics and thus become irrelevant.

The impediments Constitutional Courts meet can be associated with the degree of political and juridical development of a community, that means with their constitutional culture, understood as the sum of attitudes, ideas, subjective experiences, values and expectations, and of the correspondent objective actions on a personal level of the citizen as well as on the level of his associations, like state organs and any others related to the Constitution.

Konrad Adenauer Foundation's Rule of Law Programme tries to contribute to the development of such democratic constitutional culture, based on the principles of Rule of Law. Given the difficult situation of Constitutional Courts in many parts of the world, the Foundation will continue supporting their independence, offering expertise from Germany and experience of more than 20 years of international juridical work.

#### **Relevant websites of Konrad Adenauer Foundation's Rule of Law work:**

- **Coordinator** of the Rule of Law Programme, **main office Berlin**: <http://www.kas.de/wf/en/71.7346/>
- Rule of Law Programme **South-East Asia**: <http://www.kas.de/rspa/en/>
- Rule of Law Programme **Latin America/regional office Mexico**: <http://www.kas.de/rspla-mex/es/>
- Rule of Law Programme **Latin America/regional office Montevideo**: <http://www.kas.de/rspla-uru/es/>
- Rule of Law Programme **Sub-Saharan Africa**: <http://www.kas.de/rspssa/en/>
- Rule of Law Programme **South-East Europe**: <http://www.kas.de/rspsoe/en/>

Moreover, detailed information about the worldwide Rule of Law Programme can be found in the **brochure "Supporting the Rule of Law Worldwide"**, presenting the global activities concerning the rule of law undertaken by Konrad Adenauer Foundation. The brochure is available in English, French, German and Spanish (please consult <http://www.kas.de/wf/en/33.14435/> for the English version and <http://www.kas.de/rspla-uru/es/publications/17970/> for the Spanish version)