



3rd Congress of the World Conference on Constitutional Justice

“Constitutional Justice and social integration”

Seoul, Republic of Korea, 28 September – 1 October, 2014

Questionnaire

Reply by the Constitutional Court of Angola

A. Introduction of the Court

Unless the Court¹ you belong has already transmitted a description for the data base CODICES (www.CODICES.coe.int) it's requested to give a brief introduction on your Court. This will allow different Court members know each other better. Please provide a description of the composition and competence of the Court to which you belong, according to the following categories:

Introduction

The Constitutional Court of Angola was established in June 2008, the date of 25 June was set up as day of the Court.

The official and permanent designation is “ Constitutional Court” according to the Constitution of the Republic of Angola – now CRA – (Article 180.), as much as the Law No. 2/08 of 17 June – Organic Law (Law of functioning, competence and powers) of the Constitutional Court.

The Constitutional Court has its headquarters in Luanda, location and contacts described below:

Tribunal Constitucional de Angola
Address: Avenida 1º Congresso
Location: Luanda - Palácio da Justiça- Court House
Telephone: +244 222 33 06 87
Email: geral@tribunalconstitucional.ao
Site: <http://www.tribunalconstitucional.ao>

¹ The expression "Your Court" below, refers to Your jurisdiction, whether it is a Constitutional Court, a Supreme Court, a Constitutional Council or the Constitutional Chamber of the Supreme Court

I. Fundamental Texts

The Constitution of the Republic of Angola, *Cf Annex*, see website: www.tribunalconstitucional.ao; legislation.

Law No 2/07 – Organic Law (Law of functioning, competence and powers) of the Constitutional Court, *Cf Annex*, and see website: www.tribunalconstitucional.ao; legislation.

Law No 3/07 – Law of the Procedure of Constitutional Case, *Cf Annex*, see website: www.tribunalconstitucional.ao; legislation.

II. Composition, procedure and organization

The Constitutional Court is under paragraph No 3 of Article 180 of the CRA composed of eleven (11) judges, appointed for a term of seven years, non-renewable (No 4 of Article 180 of CRA).

Various subparagraphs of paragraph 3 of Article 180 of CRA indicate the mode of appointment of counselor's judges:

- a) Four judges appointed by the President including the President of the Court;
- b) Four judges by the National Assembly by a two-thirds majority of the Members in full exercise including the Vice-President of the Court;
- c) Two judges elected by the Supreme Council of the Judiciary;
- d) A judge selected by public tender curriculum, according to the law.

Counselor's judges of the Constitutional Court shall be appointed from among lawyers and judges (No 3 Article 180 of CRA).

The eligibility requirements set out in the Article 12 of the Law No 2/08 of 17 June still are – the Organic Law (Law of the functioning, competence and powers) of the Constitutional Law namely:

- a) Being Angolan citizen aged not less than 35 years;
- b) Have a degree in Law legally recognized for at least 15 years;
- c) Have a good moral character;
- d) Be in good standing of its civil and political rights;
- e) Not have been convicted of an intentional crime punishable with imprisonment.

III. Competences / Assignments

The mission of the Constitutional Court is to assure the management of justice in matters of legal and constitutional nature, including matters of political parties, electoral and referendum. It has unlimited jurisdiction on legal-constitutional, electoral and political parties matters, as the result of the combination of the Article No 180 of CRA with the Article No 3 of the Law No 3/08 of 17 June – Law of the Constitutional Cases. It is

assigned the primary task of ensuring the supremacy of the CRA, as provided in the Article 226 of CRA.

Whereas the system of oversighting the constitutionality in Angola is mixed (diffuse and concentrated), and independent of the umbrella function of the supremacy of the CRA, one cannot say that the Constitutional Court is exclusive or monopolistic in defending the Constitution and fundamental rights in particular. The organs of constitutional justice in Angola are:

- a) The Constitutional Court (Articles 176 No 1, 180 and 228, ss. of CRA and the Articles 2 and 16 of the Law No 2/08 of 17 June – Organic Law of the Constitutional Court (Law of the functioning, competence and powers)).
- b) All other courts of the judicial hierarchy (Article 177 No and 180, No 2 of CRA and the paragraph d) of the Article No 16 of the Law No 2/08 of 17 June – the Organic Law (Law of functioning, competence and powers) of the Constitutional Law).

The Constitutional Court is the court with full jurisdiction on electoral matters, for general elections and for local elections as well (lines f), g) and k) of the Article 3. Thereof Articles 54 to 58, 67, 68 of Law No 3/08 of 17 June

– Constitutional Law Procedure, Organic Law of the General Elections Constitutional Court Articles 153 and seq. Law No 36/11 of 21 December).

“The Constitutional Court is the court with full jurisdiction over Electoral Registration and electoral matters (Articles 22 to 26); in the field of Coalitions and Political Parties (Articles 27 to 31) and still in matters of Parliamentary Litigation (Article 32), all in the Organic Law of the Constitutional Court Law No 2/08 of 17 June”.

According to paragraph l) of the Article 3 and the Articles 69 and ss. of Law no. 3/08 of 17 June – on the Constitutional Law Procedure, the Constitutional Court can intervene in issues of consultation on the implementation of the Constitution. It is the only judicial body with such powers and can define the meaning of the constitutional provisions.

The Constitutional Court also has jurisdiction to assess jurisdictions' conflicts in conformity with the terms of the paragraph j) of the Article 16 of the Law nr. 2/08 of 17 June – Organic Law of the Constitutional Court, related to actions contesting elections and decisions of organs of political parties which under the terms of the law, are subject to appeal. Has jurisdiction to issue opinions on legal constitutional matters (advisory jurisdiction) whenever requested to do so by the President of the Republic, National Assembly and the Council of Ministers (Article 16, paragraph n) and Article 20 of Law No 2/08 of 17 June – Organic Law of the Constitutional Court).

IV. Nature and effect of the decisions

Considering the nature of the interventions of the Constitutional Court, its decisions can have general as particular effects, thus having distinct levels concerning its effectiveness.

Under the Article 6 of Law No 2/08 of 17 June – Organic Law of the Constitutional Court), the decisions of the Constitutional Court are compulsory for all public or persons

entities and shall prevail over those of any other courts and over any authorities; including the Supreme Court.

The judgements of declaration of unconstitutionality of norms or certifying situations of unconstitutionality by omission shall be published in the Official Gazette (Article 7 Law No 2/08 of 17 June – Organic Law of the Constitutional Court).

Conclusion

The role played by the Constitutional Court in the protection of certain fundamental rights, such as for example the right to liberty and warranties of criminal proceedings, the right to effective judicial protection has served to strengthen the Rule of the Law, with direct effect of the functioning of the Public Institutions, namely the Courts, the Attorney General's Office and the police criminal investigation's agencies. Many decisions of the Constitutional Court are the result of incidents on appeals processes that object decisions, resulting in a direct effect on the lives and rights of citizens.

Democracy has also been enhanced with its intervention in processes in processes aimed at clarifying the rules of establishment and functioning of State Bodies, as well as in the two electoral elections petitions, which can indicate, in both cases, the effective enforcement of the decisions of the Constitutional Court, either in the functioning of the organs of sovereignty or on the validity of elections of elections of 2008 and 2012.

B. Social Integration

Regarding the sub-themes to be addressed during the 3rd Congress, please respond concisely to the following questions in one of the working Languages of the Conference, adding, if possible a translation in English.

1. CHALLENGES POSED BY SOCIAL INTEGRATION IN A GLOBALIZED WORLD

1.1. Which difficulties have been encountered by your Court in the past, notably in the field right to asylum, tax law or the social Security Law?

The Constitutional Court of the Republic of Angola has a recent history, aware of its institutionalization year (2008). Since its inception, there are hardly any cases in which it intervened with integration issues or resolution of social conflicts. Therefore there is no reported case of dispute in asylum law, tax and social security law, with or without social involvement.

The Constitutional Court has made an effort, through conferences, workshops, training, to disseminate its role and jurisdiction and for social agents to take the situations they deem appropriate to the pronouncement of the Court. This kind of intervention has reach noticeable results at the level of fundamental rights and the criminal warranties, however with no relevant projection in social matters.

During the early years of its institutionalization there was an outbreak of party's conflicts, very motivated by generational and/or ethnic conflicts. In several political

parties, the disputes over leadership were noticeable, with wings raised and conflicts more or less dramatic.

Another case, which was not brought to the Constitutional Court, but had some national prominence, was the conflict between Angola and the Democratic Republic of Congo, with regard to illegal immigration. Angola still deals with the resolution of more and more complex problems of the phenomenon of immigration.

Angola can, in the recent times, stand up the process of legal regulation of churches and sects operating in the country, a matter that has been ongoing administratively, with termination or closure order for organizations that carry out their activities outside the requirements of the Law. This process included indiscriminately all religions, including Islam.

In any of these situations, the Constitutional Court did not see the need for any pronouncement. The church appeals to this Court, integration accusation of discrimination or matters related to social rights were not of concern.

1.2. How issues of social integration or social conflicts became legal matters?

The conflicts between party wings, as stated above created, in some cases, social ethnic and/or generational issues, got a big dimension and demanded legal solution from the moment in which the contestants to the 2008 elections had to assume an exclusive and their identity, if they wanted to compete in the electoral process, in accordance with the requirements set up by the Constitution or with the electoral Law in force, at that time (Article 4 of the Constitutional Law N0 23/92 and the Articles 42 to 47 of the Electoral Law N0 6/05).

Jurisdiction to resolve these conflicts fell to the Constitutional Court (paragraphs *i*) and *j*) of the Article 16 Law No 2/08 of 17 June), which, assumed the observance and the fulfilment of those legal normative provisions, secured a legal solution for such problems, and stanching the phenomenon of party wings. The intervention of the Constitutional Court only verified the legal regularity and did not focus on social, ethnics and/or generational, matters, that were just a reflex of them, although the decisions had an indirect impact on them.

During the 2012 elections, where the same process was repeated, though much smaller, was enhanced the cessation of intra parties conflicts.

1.3. Is there any tendency to the increase of cases involving matters of Law relating to social integration? If so, what were the main issues brought before your Court in the past and which is the situation at present?

There are no disputes in Angola discussed (or brought before) the Constitutional Court related to social integration.

2. INTERNATIONAL NORMS CONCERNING TO SOCIAL INTEGRATION

2.1. Which are the international influences on the Constitution on issues of social integration/social issues?

The Constitution of Angola is fairly recent (2010) and had the opportunity to combine the most current legal perspectives and social concerns, with constitutional dignity.

The first type of influence is determined by the prediction and recognition of the incidence field of the fundamental rights, related or not to social issues (Article 26, N0 1). This is the widest scope possible (*cf.* following response) and virtually recognizes one unity of the Law, in light of monistic conceptions on the relationship between national and international Law (Articles 13, N0 1 and 26, N0 3). The major influences thus result of the Universal Declaration of Human Rights, the African Charter of Human and People's Rights and the International Conventions.

It can be said that the Constitution of Angola enshrines the principles of non restriction of fundamental rights and its better use, to the extent that this extension to the International Law enriches and expands the number and quality of the rights granted to nationals and foreigners.

There are specifically other normative influences, as example:

- a) The equivalence between nationals and foreigners in the area of enjoyment of rights, freedoms and fundamental (N0 1 of the Article 25), it is possible to extend this equivalence to some economic, cultural and social rights.
- b) The recognition of the right to health and health care, as well the right to assistance in childhood, maternity, invalidity, disability, old age and in any situation of incapacity for work (N0 1 of the Article 77).
- c) The special protection for asylum, as well as the established limits of extradition and deportation of the citizens from the national territory (Articles 70 and 71).
- d) The imposition to all citizens the respect the rights, liberties and property of others, the morality, good manners, common good non-discrimination and tolerance.
- e) The protection afforded to children and youth (Articles 80 to 81).
- f) The recognition of freedom of conscience, religious belief and worship (N0 1 of Article 41).

Another way to influence lies in some of the tasks that have been constitutionally conferred to the State, part of which is founded on an African collective consciousness about the aspirations on the continent in relation to social problems and issues for integration of groups. As examples are the duties put on the State (Article 17) to:

- «d) Promote the welfare, social solidarity and raising the quality of life of the Angolan people, particularly the most disadvantaged population groups;
- e) Promote the eradication of poverty;
- f) Promote policies which make universal and free primary health care;
- g) Promote policies that ensure universal access to free compulsory education, as defined by law;
- h) Promote equal rights and opportunities for Angolans regardless of origin, race, political affiliation, sex, colour, age and any other forms of discrimination ».

2.2. Is your Court applying specific provisions concerning social integration with a source or an international context?

The Constitutional Court has the duty to implement the provisions of international sources, be they related to social integration or not.

This comes from the fact that, besides the structural principles of the Republic of Angola (which require the State – and the Courts to enforce – the observance of international conventions, the principles of the Charter of the United Nations and the African Union Charter, and all other norms and standards of humanitarian law – Article 11, NO 1 and Article 12, NO 1), the general or customary international Law, regularly received and approved, is an integral part of the Angolan legal system (Article 13, NO 1).

This idea is further reinforced by the obligation of prior scrutiny of international Law because in deciding disputes by the Angolan Courts on matters relating to the fundamental rights apply international legal instruments, even if not raised by the parties (Article 26, NO 3).

In this condition, the Court must enforce the Law and other regulatory provisions in force (Article 177, NO 1 and Article 179, NO 1), which incorporates the Law of international origin. Some examples of such instruments can be mentioned:

- a) African Charter of Human and People's Rights, approved by Resolution of the People's Assembly NO 1/91 on 19 January.
- b) SADC Protocol on Extradition, approved by Resolution of the National Assembly NO 2/06 on 20 February.
- c) Convention of the Elimination of All Forms of Discrimination against Women, adopted by a Resolution of the People's Assembly NO 15/84 on 19 September.
- d) African Convention on the Rights and Welfare of the Child, adopted by the Resolution of People's Assembly NO 1-B/92 on 15 May.
- Convention on the Rights of the Child;
- e) Convention on the Establishment of the African Rehabilitation Institute, approved by Resolution of the National Assembly NO 47/05 on 03 October.
- f) SADC Protocol on Gender and Development, approved by Resolution of the National Assembly NO 30/10 on 06 September.
- g) Law NO 8/90 on 26 May – On the Status of Refugees

2.3. Does your Court apply international instruments relating to social integration directly?

According to the previous answer, the Constitutional Court applies the International Law and has the duty to ascertain its compliance, in the same way it does in relation to the Law legislated nationally (Article 13, NO 1 and 2).

The scope of fundamental rights recognized by Angola is not unique to the constitutional text. They are also considered applicable in Angola to any other rights constant in the Laws and Rules applicable on the International Law (Article 26, NO 1). There is even a superiority of these provisions in relation to customary Law, it must be interpreted and integrated in conformity with the International Instruments to which Angola is a part (namely the Declaration of Human Rights and the African Charter of Human and People's Rights and International Treaties on the matter, ratified by the Republic of Angola – Article 26, NO 2).

Any constitutional provisions of social nature, integration or related, provided they enter in the field of fundamental rights, whatever its nature or generation, will be of

immediate direct application, although the international source. This scheme is enshrined in Article 28 and 27, which provide for the principle of equalization the economical, social and cultural rights, as well as the recognized by international convention in relation to the system of the rights and freedoms and fundamentals guarantees (*cf.* also Articles 26, 13 and 25, N0 1).

2.4. Does your Court implicitly takes into account international instruments or refers to them explicitly by applying the constitutional right?

The situation in which the Court was confronted with rules of international origin was scarce, with only registration of the reference of the International Pact on Civil and Political Rights, to which Angola is part in the Decision N0 115/2010. However, did not involve a question of social integration or related. One of the parties to the dispute referred to the norm in order to get new chance to appeal.

2.5. Does your Court have been faced with a conflict between the applicable norms at national level and the ones applicable to international level? If so, how these conflicts were resolved?

There was no direct conflict between these two types of norms.

3. CONSTITUTIONAL INSTRUMENTS OF DEALING, OR REINFORCING, SOCIAL INTEGRATION

3.1. What kind of constitutional rule that your Court applies in cases relating to social integration– for example, fundamental rights, constitutional principles (Social State), “objective Law”, Staatszielbestimmungen...?

Repeated and similar to questions 2.1, 2.2 and 2.3 issue, reference may be made to their answers.

3.2. In cases where individuals have direct access to the Constitutional Court, to what extent can different types of constitutional provisions to be relied upon by individuals?

The citizens can individually and in themselves provide actions for consideration by the Constitutional Court and with them aim to obtain a declaration of unconstitutionality.

The most frequent mode of individual intervention before the Constitutional Court for the protection of subjective constitutionality of law is the extraordinary appeal, whereby it is allowed a complain to the Constitutional Court of administrative and social actions violating the fundamental principles and rights enshrined in the CRA.

The extraordinary appeal is provided for in Article 49 of the Law N0 3/08 of 17 June – Law of Constitutional Process – which allows that «the challenge of judgements of other courts contain legal arguments and decisions contrary to the fundamental principles, rights, freedoms and guarantees «and» final and enforceable administrative actions contrary to contrary to the fundamental principles, rights, freedoms and guarantees enshrined in the Constitution ».

Notwithstanding, it is given to citizens the hypothesis of strict supervision of the constitutionality of the Law and to challenge the laws that violate the Constitution applied in legal proceedings (ordinary appeals). Any legal provision that contravenes a constitutional rule may be questioned by the individual who is harmed by his prediction.

Not forgetting the hypothesis of that partisan political conflicts can be brought for consideration to the Constitutional Court by individual citizens with legitimacy for the effect (*cf.* Articles 3 paragraph *j*) and 63, both of Law N0 3/08 on 17 June – Law of Constitutional Process and Article 12, 18, 34 and 35, all in the Law N0 22/10 on 3 de December – Law of Political Parties).

3.3. Does your Court competent to deal directly with social groups in conflict (possibly through plaintiffs/ applicants)?

Repeated question and Answer equated to those given in questions 4.1 and 4.2.

3.4. How the Court resolves social conflicts when deciding such cases (for example, revoke or disapply rules contrary to the principles of equality and non-discrimination)?

3.5. Can your Court act in a preventive way to avoid social conflict, for example, by fixing an interpretation that all public bodies have to respect?

Answer equated to those given in questions 4.1 and 4.2.

The Constitutional Court is passive, has no procedural initiative and depends on the activation of its powers, through appeals or actions that are foreseen in the Article 3 of the Law N0 3/08 of 17 June.

3.6. Does your Court encounter difficulties in applying these instruments?

3.7. Are there limitations to access your Court (for example, will only public bodies competent to bring cases?), Preventing it to solve social conflicts?

Issue similar to 3.2., reference may be made to it.

Should accrue that the Organic Law of the Constitutional Court provides, in Article 8, the existence of the Public Prosecutor at the Court, which on defence of legality, has several procedural skills able to enable him to bring the necessary actions to restore the constitutional legality, which indirectly, may have an effect on social conflicts.

There are also the prerogatives of collective legal protection of fundamental rights, through collective actions, namely the right of people's action (Article 74), whereby «any citizen individually or through associations with specific interests, has the

right to legal proceedings according to the terms established by Law, which aims to annul injurious acts to the public health, ... quality of life, ... the legality of administrative actions and other collective interests » and the right of petition, denunciate and complaint (Article 73), whereby « every citizen shall have the right to submit, individually or collectively, to the organs of sovereignty or any authority, petitions, complaints, or complaints to the defence of their rights, the Constitution, the law or general interest ...».

4. ROLE OF THE CONSTITUTIONAL COURT CONCERNING SOCIAL INTEGRATION

4.1. Does your Constitution allow your Court to act effectively to resolve or prevent social conflicts?

The prevention or resolution of social conflicts is made exclusively in the exercise of judicial functions, ie solving the disputes that are placed at the consideration of the Constitutional Court and always making the implementation and enforce the Constitution and the Law. The Court never plays the role of a social worker, taking the initiative in solving social and integration issues.

Neither the Constitutional Court nor the Judges who compose it can in that capacity provide actions in the Constitutional Court. Any action directed to the Constitutional Court by a Judge Counsellor is done in his capacity as ordinary citizen, having an obligation to declare his prevention to the assessment of the case (Article 37 of the Law N0 2/08 of 17 June – Organic Law of the Constitutional Court).

As stated before, the Organic Law of the Constitutional Court provides, however, in the Article 8, the existence of the Public Prosecutor at the Court, the body that, in defence of legality, has several procedural skills able to enable it to bring the necessary for the restoration of constitutional legality actions, influencing, indirectly, the solutions of social conflicts.

4.2. Does your Court in fact acts as a social mediator? Did you receive such mission?

The functions of the Constitutional Court are exclusively judicial. Here serves as it is said in the previous answer.

4.3. There have been cases in which social actors or political parties failed to reach an agreement would have “passed” the matter to the Court with the request to it to find a “legal” solution that should normally have been found in the political sphere?

If in social relief, ethic and generational in the disputes between party wings, in which the Court was asked to intervene we can say yes. However it should be emphasized that the request made and the solution by the Constitutional Court were strictly legal, as referred in the answers N0 1.1 and 1.2.