



**3rd Congress of the
World Conference on Constitutional Justice**

International Standards for Social Integration

Session II Keynote Speech

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It is my great pleasure to deliver this keynote address at the second session of the 3rd Congress in Seoul.

In the first session, we addressed the sub-topic of "Challenges of social integration in a globalised world" and looked into the specific cases of each country.

Globalization brings more openness, diversity and wealth to the world, thus promoting human rights. However, free flow of people, products, information triggered by globalization also generates new social conflicts; it may also bring about

a fragmented society by aggravating already existing conflicts, such as the gap between the rich and the poor. We have learned in the earlier session that diverse social conflicts present us with equally diverse tasks in our efforts to overcome such conflicts and achieve integration.

Building on our discussion from the first session, we will now delve into the second sub-topic of "International standards for social integration." We will explore the possibilities of implementing common international standards aimed at achieving social integration. We previously collected information about the current practice of individual countries, based on the 55 countries' responses to our questionnaires. The questions were about i) international influences on the Constitution regarding social integration issues, ii) specific provisions with an international source on social integration, iii) direct application of international instruments in social integration issues, iv) implicit or express reference to international instruments, and v) conflict between national and international standards

1. The need for international standards for social integration and our current status

We need some sort of international standard to resolve social conflicts in areas that influence international relations, including foreigners' human rights issues, social treatment of political and economic refugees, and acts of environmental destruction.

International standard can also be important in common issues faced by the whole world, such as economic polarization, as it can serve as a major reference, regardless of binding force, in comparative studies that incorporate political, economic circumstances of each country and function as the backbone of minimum protection of human rights.

Social conflicts in an individual country arise, in many cases, from discriminatory elements among members of society regarding race, religion, region, and social and

economic status. We have seen extreme outbursts when such conflicts are politically abused. Human rights issue in an individual country is not just a domestic problem but can be a huge threat to peace in the region.

In order to solve these social conflicts and to achieve social integration, it is vital that every member of society is not left isolated but respected as an equally valuable human being. This in essence is the protection of human rights. It is the important role all of you here carry on your shoulders.

There are many international standards regarding human rights protection for social integration.

What is important is the relationship between many international standards and domestic law. I will go over the specific cases of the countries based on written answers.

2. Incorporation of international standards into domestic law

The constitutions of modern countries provide how international law should be dealt with, and many countries are joining conventions or agreements known as international human rights law. However, the standards of such international human rights law hold different status under different constitutions, and the possibility of the standards being cited in domestic judicial norms differ from one country to another. Therefore, it is important to see which international human rights norms are adopted by national constitutional courts.

In most countries, constitutional courts refer to international standards on protecting human rights in reviewing whether their domestic laws conform to the Constitution. Many countries, such as the Constitutional Court of Uzbekistan, the Constitutional Council of Burkina Faso, and the Constitutional Council of Algeria, implicitly take account of or expressly refer to international standards in their constitutional

adjudication. The Constitutional Court of Belarus takes into account universally recognized principles and rules of international law and ratified international treaties.

More specifically, the courts of the Netherlands do not have the jurisdiction to review the constitutionality of laws, but they do have the authority to review whether provisions of domestic law violate the self-executing clauses of international treaties (including EU laws) that act as a de facto constitution. This can be seen as a system that reviews whether provisions of domestic law are consistent with international law. The Constitutional Court of Italy call the European Convention on Human Rights and the case laws of the European Court of Human Rights as *norme interposte* (intermediate law), and apply them in constitutional cases.

Meanwhile, there are also countries like Armenia where they implement constitutional control prior to the ratification of international treaties or agreements. This is to ensure that the duties under international agreements are consistent with the Constitution.

In Finland, when interpretation of its constitution is clear enough, it is not necessary to seek international standards for support. But when it is not the case, international standards such as the practices of the European Court of Human Rights serve as an important factor in the interpretation. According to the Constitutional Court of Portugal, international standards can contribute to expanding the scope of the rights enshrined in the Constitution, and the Universal Declaration of Human Rights can be applied to interpret the constitutional concepts. The Constitutional Council of Cote d'Ivoire is obliged to apply the ratified international standards related to social integration at the national level.

The Korean Constitutional Court often explicitly mentions international law in a decision where a complainant makes an argument based upon it. In the case of the Ministry of Labor's established rule limiting labor rights of foreign workers, the Court

referred to Article 5 of the Labor Standards Act and Article 4 of the UN ICESCR (International Covenant on Economic, Social and Cultural Rights). However, international law is not the only determining factor in constitutional review; rather, it is referred to as a norm to be respected in the course of judgment.

3. Conflicts between the national constitutional law and international standards

We have seen that most countries, by employing both their unique standards and rational interpretations, have embraced international standards in accordance with domestic circumstances. In some instances international standards have constitutional effects or are directly applied as a criterion; in others they are employed to confirm and construe the substance of a national constitution or basic right. International standards have influence in the review of constitutional cases in various ways.

Individual courts, naturally, may encounter conflicts between the standards applicable on the national and on the international level, as seen below.

In Armenia, the national law on social security cards was declared not in conformity with the UN Convention on the Rights of the Child. In Estonia, in case of conflict between legislation and international treaties, the domestic law was not applied.

In Germany, cases involving freedom of speech, a right to private life, and incarceration policies have dealt with the standards of the European Convention on Human Rights. The Constitutional Court of Portugal decided on the constitutional conformity of international standards regarding same-sex civil marriage. The Russian Constitutional Court referred to the ILO Convention when ruling on the right to nursing leave for female military servicemen.

Tajikistan encountered contradictions, which has been resolved in favor of international standards recognized by the Republic of Tajikistan. The Uganda Constitutional Court made explicit reference to international human rights law in upholding the death penalty. In Ukraine, trade union law was declared unconstitutional as the requirements of UN ICESCR (International Covenant on Economic, Social and Cultural Rights) and ILO were not given proper reflection in its provisions.

The Council of State of the Netherlands tries to avoid conflicts between international standards and national law by interpreting national law in the light of international law. In Poland, the Constitutional Tribunal analyzed several EU laws in the case on men and women's pensionable age.

As constitutions and laws are based on the history, culture, and time period of one country, it follows that each country has its unique systems and standards. But it is not to say that drawing out a constitutional value and principle that may become a universal standard is entirely impossible. The duty of the constitutional courts and equivalent institutions, when universal constitutional values conflict with specific construction of the constitution of one country, is to harmoniously render it into a decision.

4. International standards for social integration and the role of regional human rights protection organizations

In order to deduct a harmonious solution, we need a forum of discussion. This is where close international cooperation among constitutional courts comes into play. International cooperation among constitutional courts and equivalent institutions provide a precious opportunity to share each country's experiences and wisdoms on social integration and the protection of human rights. It also reduces the risk of losing universality and objectivity, being buried in one country's circumstance and culture.

Already there are nine such associations for cooperation among constitutional courts, including the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, and the Union of Arab Constitutional Courts and Councils. In Asia, the Association of Asian Constitutional Courts and Equivalent Institutions was established in 2010.

Such cooperation among regional groups that share the same cultural background or linguistic groups that speak the same language, seek to share essential information for the development of democracy and the rule of law as well as the protection of fundamental rights. It also establishes minimal international standards or practices that can be commonly applied despite political and cultural differences.

Aside from regional cooperation among constitutional courts, a system of regional human rights protection based on regional Convention on Human Rights can also play an important role in identifying international standards for human rights protection and harmonizing it with domestic law. International cooperation among constitutional courts explained above is limited by not having any legal force by itself. As such cooperation is not based on international multilateral Convention on Human Rights, the effect of international cooperation, which is intended for universal protection of human rights, must have its limits.

In contrast, a system of regional human rights protection based on multilateral Convention on Human Rights makes a concrete agreement among countries within the region on the contents of human rights protection. Thus it has the merit of operating the process of investigation, decision and execution on human rights violations, according to binding international agreements. Moreover, as implementation of the decisions of regional human rights protection mechanism is secured through mutual observation and peer pressure of the regional countries, social integration and human rights protection may be more effective.

Typical regional system of human rights are the European Court of Human Rights based on the European Convention on human Rights, the Inter-American Court of Human Rights based on the American Convention on Human Rights, and the African Court on Human and People's Rights based on the African Charter for Human and People's rights.

Among African nations, Niger takes account of or expressly refers to the international standards included in "bloc de constitutionnalité," and, in Benin, the African Charter on Human and People's Rights, which is a part of its Constitution, often influences decisions of the Constitutional Court.

In Europe, the European Convention on Human Rights as well as the European Social Charter and the case-law of the European Court of Human Rights are directly applied and referred to in the constitutional courts of European countries. We can say that, generally speaking, the role of the constitutional courts in Europe today is not limited to an isolated interpretation of national constitutional law.

5. Proposing an Asian Court of Human Rights

To date, constitutional courts in Asia have been sharing their experience and wisdom, exchanging information on constitutional law and constitutional justice within the framework of the Association of Asian Constitutional Courts and Equivalent Institutions, established in July 2010. Now, it is time that we build on our exchange and further the advancement towards a way to establish a regional human rights protection mechanism, such as an Asian Court of Human Rights.

There already exists a universal consensus among Asian countries that people's inviolable rights should be protected. Most of all, establishment of an Asian Court of Human Rights will be a turning point. We Asians have experienced the brutality of war and egregious wartime human rights violations of women, which still remain

unresolved. We have also witnessed ruthless ethnic annihilation and human rights violations arising from racial conflict. The activities of an Asian Court of Human Rights, founded upon a consensus on respect for human rights, will function as a lever to prevent such tragedy and ensure peace in the Asian region.

Meanwhile, economic interdependence within the region is growing. Social, cultural exchanges between countries in the region are dramatically increasing both in size and quality. Domestically, conflicts of interest between social echelons in various socio-economic areas, such as employment instability, wealth distribution problems, disadvantage in educational opportunity, racial or cultural conflicts, and environment destruction, are constantly on the rise. Furthermore, as population composition becomes diverse due to an increase in immigrants and refugees, respecting diversity while maintaining social integration and public order is becoming a heavy task.

In order to actively handle these problems, we need to examine, through a system of regional human rights protection such as an Asian Court of Human Rights, the ever increasing tasks of social integration in the Asian countries together with our neighbors. We share similar social backgrounds and legal cultures. This will enable us to substantially realize the international standards of social integration in concrete, real-life situations, and strengthen continuous cooperation and partnership for effective protection of liberties and human rights.

We can first look into what areas each Asian country can agree on in terms of human rights protection, and then gradually broaden our discussion on the scope of human rights as well as on many different systems designed to protect human rights. In this way, we may come up with a way to provide human rights protection consistent with universal values. We may achieve social integration without having to sacrifice the Asian values of harmony between individuals and society.

By founding an institution for international cooperation to ensure respect for life and guarantee of human rights, by making sure that violations against humanity are restrained and victims are given access to legal remedies at the regional level, we may bring about the enhancement of human rights in Asia as well as a groundbreaking progress of peace in the region.

Thank you for your attention.

President of the Constitutional Court of Korea

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