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**Session IV: The Role of Constitutional Justice in Social Integration
Report by
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In session 4, the honorable President of the Federal Supreme Court of Brazil, Mr. Ricardo Lewandowski made a keynote speech on the role of constitutional justice in social integration under the presidency of Deputy Secretary General Ms. Alkhalifa of Bahrain Constitutional Court. President Lewandowski emphasized that the important role of constitutional justice in social integration involves applying the generally recognized principle of equality before the law with due consideration. Also, he stressed that a sense of cohesion, harmony and equilibrium in interpersonal relationships are needed to overcome the differences intrinsic to human beings.

Every country has different type of courts which are in charge of constitutional justice. Many Courts answered to the questionnaire that their constitutions do not directly enable the Court to resolve social conflicts and they do not act as social mediator. However all constitutional courts and equivalent institutions play a key role in protecting human rights and enhancing rule of law. Through this function, Courts are at least indirectly acting in settling or avoiding social conflicts and contributing to social integration.

The Federal Supreme Court of Brazil is very active in fulfilling the constitutional role of the promotion of social integration. President Lewandowski introduced a body of case law. He showed us that the enhancement of Brazil's democracy and social integration was possible through the Brazilian court's effort to consolidate social rights, to protect minorities and vulnerable groups, and to promote society's participation as a whole in interpreting constitution.

Through its decisions, the Court recognized enforceability of social rights to guarantee the minimum level of social protection so that citizens can demand the realization of social rights via legal means. The Court also ruled a number of important decisions upholding legitimacy of affirmative action for ethical/racial minorities, the right of same-sex couples to form a union, the duty of the State to protect women against domestic violence, as well as the right of indigenous

people to land. In addition, the *amicus curiae* and public hearings are important mechanisms that promote the society's meaningful participation and respect for diversity in trials.

According to the replies to the questionnaires, the active role of some constitutional courts is remarkable. The Constitutional Court of **Armenia** has acted as a social mediator in many cases. In Austria, until the early 1980s, the Constitutional Court has exercised judicial self-restraint. However, since then, the Court has gradually loosened this self-restraint under the influence of the case law of the European Court of Human Rights. Now the lawmaker's discretionary scope of policy making is significantly narrowed.

The **Croatian** Constitutional Court makes clear distinction between the politics and the constitutional law. In doing so, it balances between activism and judicial self-restraint. In **Czech Republic**, it is not unusual that a minorities resort to the Constitutional Court after it has been outvoted in the Parliament on a specific issue. This practice makes the Court de facto the third Chamber of Parliament.

In **Germany**, it is also a regular occurrence that the minority or opposition group challenges the decision of the political majority in court. Decisions of the Constitutional Court are usually understood as very forceful interventions into political and legal debates, and mostly enjoy full respect. The Court is seen hybrid institution between the courts and political organs.

The **Italian** Constitutional Court is in the position of supplementing the operation of the political organs. The Court sometimes expresses warnings and hopes so as to orient the Parliament's action in a constitutionally compatible direction. Due to the Court's special position, these expressions are particularly authoritative and contribute to guide not only institutions, but also society in general.

The **Latvian** Constitutional Court plays an important role in defining the content of the social rights. The judicial power is committed to assess whether the legislator has observed the limits of its margin of appreciation. The Lithuanian Constitutional Court solves the disagreement that occurs amongst political parties, public figures and other actors in the social space. The Constitutional Court of Moldova has solved many cases of unconstitutionality on violation of the right of property, the principle of equality, and the right of social assistance and protection.

The Constitutional Court of **Russian Federation** plays the role of social mediator by establishing balance between public and private interests in its decision. When considering cases connected with protection of social rights, the Russian Constitutional Court finds balance of competing social values having obvious political significance and thereby fixes the boundaries of admissible increase of the burden of social transformation.

The Constitutional Court of **Korea**, the host court, has made its best efforts to

duly perform the duty of social integration. In 2013, the Court received about 1,500 cases, and more than 95% of cases were constitutional complaints. Anyone whose basic right has been infringed by governmental power can file a constitutional complaint. We have taken pride in faithfully implementing the duty of social integration since the Court was established in 1988. As a result, the Court has been voted as the most trusted and influential government agency since 2005 in the public opinion.

In floor discussion, **France** emphasized the importance of the court's role in protecting equality. France mentioned about its two recent cases on same-sex marriage and full headscarf, how it interpreted the issues within the framework of matrimonial and gender equality.

Romania emphasized the role of the constitutional court in striking balance between the means provided by the state and the needs of the vulnerable people. Particularly, the Court upheld a law imposing a duty on the employer to hire people with disabilities at a certain rate.

Peru raised several points to consider in exercising constitutional judges' authorities to promote social integration, especially the issue of limitation and independence of the judges.

Dominican Republic, although it has only two years of history, shared its experience in protecting the rights of disadvantaged people, promoting participatory democracy and realizing a social state with the rule of law.

Germany pointed out that the role of the constitutional court is to provide normative interpretation based on the applicable sources of law.

Bolivia emphasized the importance of international instruments in providing common ground to respect and protect ethnic diversity.

Albania focused on the function of the constitutional court to implement the constitution in a way to find a balance between positive and negative sides of democracy.

There were additional comments by **Andorra** and the **Netherlands** on the French headscarf case. Finally, **Algeria** made a comment about the rights of children of same-sex couples.

To sum up, all participants agreed on the basic idea that constitutional justice should play a more active role to promote social integration by guaranteeing fundamental rights of socially and economically vulnerable and disadvantaged minorities. At the same time, we also acknowledged that there could be some variations in implementing and realizing the idea among the States.