



Discussant's Speech

5th Congress of the World Conference on Constitutional Justice

Session B

“Application”

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Honourable President of the Constitutional Court of Indonesia,
Mr Chairman,
Distinguished colleagues,

I am truly honoured to address the participants of the 5th Congress of the World Conference on Constitutional Justice. It is my conviction that the World Conference on Constitutional Justice is a strategically important forum to promote and facilitate judicial dialogue on a global scale among constitutional judges who truly serve to protect democracy, rule of law and human rights.

Thank you, Mr President of the Constitutional Court of the Republic of Türkiye, for your analysis of the role of Constitutional Courts in maintaining social peace! In my intervention of the discussant, keeping in mind that our session's focus is on “Application”, I would like to share some ideas that are related to the main conclusions of your speech.

First of all, the Honourable Keynote Speaker emphasize that pluralism and diversity are needed and essential for a democratic society. Speaking about this aspect, I believe that starting point must be the concept that each person is unique and society which is based on the idea of freedom is the most appropriate environment to realise ourselves. If we can realize our personalities in many different ways we can contribute to the development of our countries.

However, I can share the concerns of the keynote speaker that social diversity can affect social peace. Dealing with cases where some social conflicts are at stake Constitutional Courts, in my opinion, have to bear in mind, that on the one hand freedom of individuals must be respected, but on the other hand, national constitutional identity draws an ultimate line for proper balance. That means a person can exercise freedoms only within so called the unchangeable core of the Constitution, and democracy should not function only in a way that this person or some group of society accepts democracy when its preferred opinion prevails. Individual freedoms mentioned before could be protected and balanced by the Constitutional Courts dealing with the applications submitted by any individual person. Since an individual type of application – constitutional complaint – is an effective instrument to protect human rights, Constitutional Courts actually have become the key players in ensuring “unity in diversity” for the whole society. So, the question arises, what could be the reasons why many legal systems across the world still do not embrace the idea to introduce individual complaints? Why so many countries do not use in their jurisdiction so effective instrument through which Constitutional Court can play significant role maintaining peace and social justice?

The second aspect I would like to touch upon is a legal basis for the Constitutional Courts to ensure social peace. In essence, the members of the Conference were asked, whether the existence of a precise regulatory framework for “peace and reconciliation”, is the precondition for the courts to ensure it. In my opinion, the question of a precise regulatory framework does not play any significant role. It’s because the necessity to ensure social peace derives from the values that are enshrined in our Constitutions. In spite of the fact that regulation about social peace does not exist *expressis verbis*, such values as democracy, sustainability, human dignity and protection of fundamental rights are those fundamental

pillars that should guarantee peace and reconciliation in every situation. By interpreting the catalogue of fundamental rights in conjunction, a fair balance between competing interests could be reached.

At this point, I would like to highlight, in particular, the conclusion made by the Keynote Speaker. Even if the majority of Constitutional Courts have not referred to the terms – social peace and reconciliation – they have facilitated peaceful societal co-existence, by ensuring and promoting such constitutional principles as separation of powers, rule of law, democracy, and human rights.

At the same time, the Constitutional Courts should bear in mind that values enshrined in the constitution as a legal basis are rather broad and should be applied in a manner that ensures social peace, not dividing society. In order to promote discussion, I would like to ask my esteemed colleague, the keynote speaker to debate on such a question: for instance, we can imagine circumstances where politicians, due to a lack of consensus, choose not to address a socially and ethically ambiguous issue, for instance, questions related to euthanasia. Should the courts rule on the issues which are debated in parliament? If yes, how courts could avoid polarisation and conflicts in society as well as constitutional crises related to disputes over the limits of judicial competence?

Now I would like to turn to my final point. Please take a look at the symbol of the Conference. It's a dove of peace and a map of our beloved world. Right at the heart of our symbol is Ukraine where a brutal war is taking place right now. Torture and murder of Ukrainian civilians are Russia's routine in this war. Since I have to talk about the application to the Constitutional Court, I would like to ask this prominent audience – what kind of application the Constitutional Court of Russia is dealing with? The answer was given by the court itself. Just three days ago this court violating international law endorsed the annexation of part of Ukraine's territory. In doing that – this court has turned into “a political institution for legitimising” the ambitions of an autocratic regime and it does not care about the social peace neither in Ukraine nor in its own country. Such a court is no longer a court in a sense of Article 1 of the Statute of the World Conference on Constitutional Justice. The aim of this article is to unite all world's Constitutional Courts which are truly committed to such common values

as rule of law, democracy, human rights and human dignity. If my dear colleagues from other continents truly believe that the Russian Constitutional Court still complies with Article 1 of the Statute then I would like to pose a question – what else should happen in the world that could serve as a real ground for excluding an aggressor state’s Constitutional Court from the world’s Constitutional Courts’ family?

Thank you!