



3rd Congress of the World Conference on Constitutional Justice 'Constitutional Justice and Social Integration' Seoul, Republic of Korea, 28 September – 1 October 2014

Concept

Constitutional Justice¹ has become an essential part of many democracies, whether they have specialised Constitutional Courts or Councils or whether the ordinary judiciary - the Supreme Court(s) - exercise this function. All these courts are referred to as 'constitutional courts' below.

The main task of constitutional courts is to uphold the supremacy of the Constitution. In order to make a Constitution a living instrument that shapes the life of society rather than an abstract text that is far from reality, the fundamental principles set out in the Constitution - democracy, the separation of powers, the protection of human rights, the rule of law – must all be implemented in practice and it is the constitutional courts' task to ensure this implementation. These tasks are carried out by each court in the framework of its competences, conferred to it by the Constitution and the legislation governing its work.

At some point, all constitutional courts have to deal with social issues, be it because they have to solve a legal dispute, which developed between actors in a society, or because they act preventively and have to examine the constitutionality of legislation before it enters into force. In this case, the court pre-empts possible conflict in an abstract manner by invalidating unconstitutional legislation, which could give rise to social conflicts, before the legislation enters into force.

Social disputes can have many sources. They can be linked to a widening income gap between various strata of society, which can become a legal issue in cases relating to taxation or they can be linked to the demographic structure of a country, for example conflicts between younger vs. older parts of the population in litigation on social security legislation. The issue of equality between men and women is often linked with social issues. Social problems can be linked to questions of distribution of resources of the state between state activities such as health and education. Even what may at first appear to be an isolated case before a court can be the precursor of a much wider issue in society.

¹ The World Conference on Constitutional Justice has adopted a wide definition of constitutional justice, which includes human rights jurisdiction. Constitutional Courts often also settle electoral disputes, decide on conflicts of competences or act as a final instance of appeal in human rights cases.

When social conflicts remain unresolved, social peace is endangered and - especially in countries with an autocratic style of government - they can sometimes lead to violent uprisings, as has been witnessed in a number of countries. Also, movements below the level of an uprising, such as the *indignados* or the “Occupy Wall Street Movement” are factors, which in one way or another can find expression in legal issues, which may have to be resolved by the constitutional courts.

Globalisation further intensifies such disputes. Vast amounts of funds can flow from one country to another within seconds and can destabilise currencies and entire economies. Limitations of such flows can result in legal conflicts on the right to property and it is the task of the constitutional courts to establish the limitations of this right under the Constitution.

It is not only capital that flows from one country to the next, but people also move from one country to another to, for instance, leave poorer parts of the world and try to build better lives in richer countries. These countries often try to stem these migratory flows by various means. The treatment of these migrants is a frequent issue of constitutional law and many cases related to asylum law find their way to the constitutional courts.

The purpose of the discussions at the 3rd Congress of the World Conference on Constitutional Justice is to discuss these issues and to provide insight on how constitutional courts have dealt with social integration and – in its absence – with social conflict. The participating judges will be able to draw inspiration from the experience of their peers, whether from positive examples or from cases where the courts were unable to solve these issues resulting from the nature of the cases or because their own competences were too limited.

This synopsis deals with the general topic of “Constitutional Justice and Social Integration” in four sub-topics:

1. Challenges of social integration in a globalised world
2. International standards for social integration
3. Constitutional instruments enhancing/dealing with/for social integration
4. The role of constitutional justice in social integration.