



Strasbourg, 9 June 2009

CDL-JU(2009)007*

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT STATUTE
OF THE
WORLD CONFERENCE
ON CONSTITUTIONAL JUSTICE**

16 April 2009

**This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Whereas On 22-24 January 2009, the Constitutional Court of the Republic of South Africa and the Venice Commission of the Council of Europe organised the World Conference on Constitutional Justice;

Whereas the World Conference for the first time brought together 93 Courts and Councils belonging to the following regional or linguistic groups:

- Asian Constitutional Courts
- Association of Constitutional Courts using the French Language (ACCPUF)
- Commonwealth Courts
- Conference of Constitutional Control Organs of Countries of Young Democracy
- Conference of Constitutional Courts using the Portuguese Language
- Conference of European Constitutional Courts
- Ibero-American Conference on Constitutional Justice
- Joint Council of Constitutional Justice (Courts and Councils in member states of the Venice Commission)
- Southern African Chief Justices Forum
- Union of Arab Constitutional Courts and Councils;

Whereas the participants of the World Conference entrusted a Bureau, composed of the Presidents of the regional groups and the three Courts which hosted the preparatory meetings (Vilnius, Seoul, Algiers) with making proposals for the establishment of a World Association open to the Courts belonging to the regional or linguistic groups;

The Bureau established by the World Conference in Cape Town hereby proposes the Statute of a permanent World Conference on Constitutional Justice as set out below:

Article 1. Objectives

The World Conference on Constitutional Justice promotes constitutional justice – understood as constitutional review including human rights case-law¹ – as a key element for democracy, the protection of human rights and the rule of law.

The World Conference promotes the exchange of experiences and case-law within the regional and linguistic groups, between them and with individual members and supports the independence of its members.

The means to achieve these objectives are:

- the organisation of regular Congresses uniting all members on a global scale;
- the participation in regional conferences and seminars;
- the exchange of experience via a website, an on-line forum and a case-law database;
- the offer of good offices to its members upon their request.

Article 2. Membership

Membership in the World Conference is open to :

- a. constitutional courts and equivalent bodies (supreme courts exercising constitutional jurisdiction, constitutional councils etc.), members of the regional or linguistic groups ;
- b. regional or linguistic groups uniting them;
- c. individual courts or equivalent bodies, which are not members of a regional or linguistic group but which support the goals of the World Conference.

¹ This wider scope allows also courts, which cannot formally invalidate legislation to participate in the work of the World Conference.

(a) The General Assembly decides on the admission of regional or linguistic groups other than the founding groups set out in the present Statute.

(b) Individual courts and councils, which are members of the groups are entitled to membership in the World Conference. They join the Conference by giving written notification to the Secretariat.²

(c) Requests for membership for courts and councils not member of a regional or linguistic group shall be addressed to the Secretariat together with a presentation of the activity of the requesting jurisdiction and a letter of motivation. The General Assembly decides on membership. Until the next meeting of the Assembly, the Bureau can invite a candidate member to participate in the activities of the World Conference on a provisional basis.

Only one jurisdiction per country shall be eligible for membership. However, if there is more than one court or council exercising constitutional justice in a given country on the national level those courts or councils shall be eligible for membership.³ Full members of regional groups shall be eligible of membership notwithstanding the above criterion.⁴

Article 3. Congress

The World Conference organises a Congress at least every three years. The Bureau decides on the venue and the topic of the Congress taking into consideration proposals made by the General Assembly.

All group and individual members are invited to the Congress. In agreement with the hosting Court or Council, the Bureau and the Secretariat can invite observers and guests.

Article 4. Organs

a. General Assembly

The individual member courts and councils form the General Assembly of the World Conference, which meets at the occasion of the congresses. The General Assembly is presided by the hosting Court or Council.

The General Assembly is convoked by the Secretariat upon instruction by the Bureau.

The General Assembly, in particular:

- decides on the admission of regional or linguistic groups other than the founding groups set out in the present Statute (Article 2);
- decides on the admission of individual courts or equivalent bodies, which are not members of a regional or linguistic group (Article 2);
- makes proposals to the Bureau on subjects for future Congresses (Article 3);
- sets the level of non-mandatory financial contributions (Article 6);
- examines the financial report submitted by the Secretariat (Article 6);
- amends the present Statute (Article 8).

² This underlines the strong role of the regional and linguistic groups within the World Conference. Membership within a group entitles to membership in the World Conference.

³ E.g. Supreme Court and Supreme Administrative Court in Finland and Sweden, which both exercise constitutional review.

⁴ E.g. in Mozambique, the Constitutional Council is member of ACCPUF, whereas the Supreme Court is member of SAJC.

b. Bureau

The Bureau of the Conference is composed of representatives of the regional and linguistic groups, which are members of the World Conference, and the Courts hosting the next and the previous Congress. The courts having contributed to the organisation of the Cape Town Conference (South African, Lithuanian, Korean Constitutional Courts and Algerian Constitutional Council) participate in the meetings of the Bureau on an honorary basis without the right to vote unless they also represent a group or host the next or previous Congress.

The Presidency of the Bureau rotates annually between the regional and linguistic groups in their alphabetical order in the English language (as listed in the Preamble of the present Statute for the founding members).⁵ The Presidency of the Bureau represents the World Conference in external contacts together with the Secretariat.

The Bureau is convoked by its Presidency or the Secretariat.

The Bureau meets before the General Assembly at the occasion of a Congress. Other meetings of the Bureau shall be organised annually - to the extent possible - together with the assemblies / conferences held by one of the participating regional or linguistic groups.

In urgent matters, the Bureau can decide in written form.⁶

The Bureau, in particular:⁷

- decides on the topic and venue of the next Congress (Article 3);
- adopts resolutions in accordance with the objectives of the World Conference (Article 1);
- examines the financial report by the Secretariat (Article 6);
- amends the present Statute (Article 8);
- offers its good offices to the members of the Conference upon their request (Article 1).

c. Secretariat

The Venice Commission of the Council of Europe⁸ is to provide the Secretariat of the Conference.

The Secretariat:

- keeps up to date the list of the members of the World Conference;
- organises the Congresses in co-operation with the hosting Court or Council;
- assists the Presidency of the Bureau in the representation of the World Conference;
- keeps the finances of the World Conference and reports on their use;
- maintains the website⁹, on-line exchange forum¹⁰ and case-law database¹¹ of the World Conference.

⁵ This rotation underlines the strong role of the groups within the World Conference and ensures equality between them.

⁶ i.e. by e-mail.

⁷ The powers of the Bureau are deliberately wider than that of the General Assembly in order to safeguard the key role of the regional and linguistic groups.

⁸ Presentation of constitutional justice activity of the Venice Commission http://www.venice.coe.int/site/main/Constitutional_Justice_E.asp

⁹ Currently www.venice.coe.int/WCCJ.

¹⁰ The Venice Forum – currently: <http://www.extraweb.coe.int/team10/veniceforum/Lists/NewsGroup/AllItems.aspx>

¹¹ The CODICES database www.CODICES.coe.int.

Article 5. Voting

Decisions in the General Assembly and the Bureau are taken by two thirds majority of the members present.¹²

Article 6. Finances

Members endeavour without obligation¹³ to make a financial contribution for the organisation of the activities of the World Conference, the level of which is proposed by the General Assembly. The General Assembly determines these levels according to the financial capacity of the members.

Members, which cannot make a long term financial commitment are free to make *ad hoc* contributions only.¹⁴

With the approval of the Bureau, the World Conference can accept financial contributions from public bodies, governments and intergovernmental organisations. Such contributions shall be in conformity with the objectives of the World Conference and must not endanger its independence.

The Secretariat holds the finances of the World Conference in a special account set up for the Conference in application of the financial rules of the Council of Europe.¹⁵ The Secretariat presents a financial report to the Bureau annually and to the General Assembly at the occasion of its meetings.

No financial commitment shall be made without existing financial provision.

Article 7. Languages

The Congresses and meetings of the General Assembly shall be interpreted in the following languages: Arabic, English, French, Portuguese, Russian and Spanish.

The Secretariat corresponds with the Bureau and the members of the World Conference in English and French.

The meetings of the Bureau are held in English and French.

Article 8. Amendments of the Statute

The present Statute can be amended by the General Assembly or the Bureau. [In case of conflicting amendments those by the General Assembly prevail.]

Article 9. Termination of membership

Each group or individual member can terminate its membership by written notification to the Secretariat. The membership shall terminate by the end of the current year.

¹² These organs should however seek to decide by consensus whenever possible.

¹³ There should not be an obligation to financial contributions, which would be difficult to enforce anyway.

¹⁴ It seems that a number of courts and councils would have to seek approval from governmental agencies before making any long term financial commitment and such a request would not be seen as appropriate from the viewpoint of the independence of the Court / Council. This problem should not exclude membership. Such members would make financial contributions as they see fit.

¹⁵ This is necessary because the World Conference has no legal personality and cannot hold an account. The Venice Commission benefits from the legal personality of the Council of Europe. All Council of Europe auditing rules fully apply.

Article 10. Entry into force

The present statute enters into force upon the signature or written acceptance of the present Statute of at least three regional or linguistic groups or 30 eligible individual members¹⁶. Such written acceptance shall be communicated to the Secretariat of the Venice Commission, which shall notify the members of the Bureau. The Statute enters into force only for those groups and individual members having accepted it.

Article 11. Dissolution

The World Conference can be dissolved by a decision of the General Assembly or by the Bureau if the General Assembly did not meet for more than five years. The remaining finances shall be distributed proportionally between the contributors.

Done in on in the Arabic, English, French, Portuguese, Russian and Spanish languages.

¹⁶ i.e. members of a regional or linguistic group, category b.