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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**IN CO-OPERATION WITH
THE SUPREME COURT OF BRAZIL**

**“PROTECTING ECONOMIC AND SOCIAL RIGHTS
IN TIMES OF ECONOMIC CRISIS:
WHAT ROLE FOR THE JUDGES?”**

**Ouro Preto,
5 – 6 May 2014**

SYNOPSIS

The Supreme Court of Brazil, together with the Venice Commission, organised a seminar entitled "Protecting economic and social rights in times of economic crisis: what role for the judges?", which was held in Ouro Preto, Brazil, on 5-6 May 2014.

In addition to several members of the Venice Commission and experts from different regions, including Central, Southern and Eastern Europe and Northern Africa, the event brought together experts from the European Court of Human Rights, judges from the Inter-American Court of Human Rights, as well as members of the European Social Charter and the United Nations Committee on Economic, Social and Cultural Rights. The conference participants further included judges from 12 countries in Latin America, including Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Peru, Uruguay and Venezuela.

The decision to hold the seminar was one of the outcomes of the meeting of the Sub-Commission on Latin America, held in Mexico in October 2013. Among the issues addressed during the course of the meeting, the transversal effects of the economic crisis in many different regions emerged as a promising starting point for an analysis of the crisis' impact on fundamental rights and, more precisely, on the protection of economic, social and cultural rights. In this regard, the role played by international stakeholders, such as the European Union and the International Monetary Fund in requiring the respect of strict austerity measures surfaced as another issue warranting further consideration. Drawing on the foregoing considerations, and against the backdrop of an ever-increasing need to share scarce resources, the aim of the seminar was to provide an opportunity for shared reflection on the impact of the economic crisis on fundamental rights and the role of judges as guarantors of such rights.

The presentations and discussion sessions were divided as follows: a) defining economic and social rights in the Constitution, b) international standards in times of economic crisis, c) the constitutional limits of rights and amendments to the Constitution, d) the *justiciability* of economic and social rights, e) social benefits and austerity measures and f) the respect for equality in times of crisis and the impact of the latter on disadvantaged groups (see link to the programme). The panels were preceded by the welcoming remarks of Mr Gianni Buquicchio, President of the Venice Commission, and Mr Barbosa, President of the Supreme Court of Brazil. The Minister of Justice of Brazil delivered the closing remarks.

The first panel addressed the different constitutional models and provisions in terms of their protection of economic and social rights. Given the diversity of such models, States have followed different paths. Some states have chosen to introduce bills of rights incorporating social rights within the constitutional text, while others have excluded them from the Constitution, as they believed their inclusion would imply fixing a certain standard of living and making it impossible to adapt to current social conditions. Experiences in Europe, North of Africa and Latin America were discussed by the participants, and there appeared to be wide agreement that the existence of long or short 'catalogues of social rights' in Constitutions is not always the key to their effective protection..

The second panel was devoted to discussing the responses of the international bodies of protection of human rights to the economic crisis. The case-law of the European Court of Human Rights, as well as the experience of the European Social Committee on fostering protection for social rights - such as education and housing - during times of economic crisis were discussed, as well as the role played by the Protocol of San Salvador in the case-law of the Inter-American system of human rights.

The debates that followed in the third panel centered on the impact of the crisis on the constitutional reform. Some countries, such as Spain and Italy among others, have introduced the so-called “golden rule” in the Constitution, i.e. a measure to control budgetary expenses. This type of reform often does not stem from a ‘legal necessity’, but is, rather, driven by economic and political reasons. However, once introduced, such a rule has an impact on the role of the judges receiving cases concerning austerity measures decided by governments, a key issue discussed through the seminar. Judges must, therefore, strike a new balance between their role as guarantors of rights and the legitimacy of exercising a control of constitutionality and/or on the compatibility of legislative or new constitutional measures with international standards.

Recognising social rights as fundamental rights entails their judicial protection and the accepting their *justiciable* nature. Judicial self-restraint and judicial activism were at the core of the debates and emerged as a common thread in all the panels, in particular when analysing the legal techniques judges can use and their role with regard to principle of the separation of powers. Finally, the impact of the economic crisis on disadvantaged and vulnerable groups, including children, women, indigenous populations, and elderly persons, as well as the resulting increase in inequalities, were also considered.

In the conclusions, two aspects were emphasised: the absence of a single model for the protection of economic and social rights and the complexities affecting the categorisation of rights which remains largely imperfect. However, access to justice for these rights is the key to ensuring their recognition and their adequate protection. Judges, whether ordinary or constitutional judges, are faced with a double challenge: respecting the legislative and constitutional framework, while simultaneously achieving the protection of rights that are effective and enforceable. The international human rights bodies constitute important tools in the hands of the judiciary, as judges may use the compatibility control (also called “control of conventionality”) in order to enhance the protection of economic and social rights internationally recognized in the domestic arena.

As in times of economic crisis rights may be increasingly threatened, judges have a greater responsibility in ensuring that public policies do not erode the protection of fundamental rights. They are the key stakeholders who may contribute to striking the balance between the need to overcome the economic crisis while respecting economic and social rights.

Link to the programme ([CDL\(2014\)002prog](#))

Link to the list of participants ([CDL\(2014\)002list](#))