EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

in co-operation with

THE CONSTITUTIONAL TRIBUNAL OF CHILE

CONFERENCE ON

THE CONSTITUTIONAL PROTECTION OF VULNERABLE GROUPS : A JUDICIAL DIALOGUE

Santiago, Chile
4 – 5 December 2015

SYNOPSIS

On 4 and 5 December 2015, the Venice Commission, in co-operation with the Constitutional Court of Chile, organised a Conference on "The constitutional protection of vulnerable groups: a judicial dialogue", which was held in Santiago de Chile.

The event brought together experts from the European Court of Human Rights and judges from the Inter-American Court of Human Rights, as well as several members and experts of the Venice Commission. The conference participants also included judges from 11 countries in Latin America, including Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

The main objective of this Conference was to foster judicial dialogue on the topic of vulnerability, which was one of the issues proposed for the next conference in the meeting held in 2014 in Ouro Preto, Brazil. Indeed, the complexity of the definition of "vulnerability", due to its many angles, and the need of a constructive transversal dialogue were essential to the discussions. The situations in both Europe and in Latin America were a good basis for the comparative approach, as both regions have struggled with the protection of vulnerable groups and with the constitutional and international dimensions of their definition. The aim of the Conference was to provide an opportunity for shared reflection on the limitations on the protection of fundamental rights in a collective perspective and the role of judges as guarantors of such rights.

The presentations and discussion sessions included an introductory session followed by four specific topics chosen for debate. The introductory session tackled the definition of vulnerable groups in constitutions in Europe and in Latin America, as well as in the case-law of the European and the Inter-American Courts on Human Rights. The other four sessions were organised as follows: a) protection of migrants as a vulnerable group, b) minorities and indigenous populations as vulnerable groups, c) persons with disabilities as a vulnerable group and mechanisms for their protection and d) the constitutional protection of vulnerability based on age: the protection of children and elderly people (see link to the programme). The panels were preceded by the welcoming remarks of Mr Gianni Buquicchio, President of the Venice Commission, and Mr Carlos Carmona, President of the Constitutional Court of Chile. Mr Oscar Urviola, President of the Constitutional Court of Peru, delivered the closing remarks.

The first panel addressed the different constitutional models and provisions in terms of the protection of vulnerability. Given the large definition of vulnerability itself, States have followed different paths. Some have recognised different fundamental rights without particularly referring to the idea of vulnerability and without a special definition of groups of people in need of special care. Some constitutions have used the idea of human dignity as a key point, developed by judicial bodies, to protect vulnerable persons and groups. Different experiences in Europe and Latin America showed that every human being could be considered a vulnerable person. The construction of the constitutional and legal protection of the vulnerability has followed, therefore, a case-by-case approach, considering this idea as an open notion.

The choice of four specific topics was the result of several factors. Indeed, the idea of vulnerability could also refer to victims of crimes, detainees which are under the direct responsibility of the State and many other possibilities. However, the conference sought to foster a double judicial dialogue: first, the case-law of the Inter-American Court was presented, and then the comparative approach of the European Court on Human Rights was examined. Speakers chose cases which showed the different solutions given by both courts when dealing with similar legal challenges. At a second stage, three different national examples were introduced for debate. The three different national scenarios stressed the complexities of implementing the international case-law presented or, on the contrary, the way in which implementation had been successful. The debate was then opened for presentations by other constitutional courts presenting transversal problems and different interpretations of the protection of vulnerable persons and groups.

The discussion in the panels pointed to the difficult position of judges when dealing with such cases, since they had to implement techniques of judicial activism or judicial self-restraint depending on the interpretation of the fundamental rights at stake. 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.

The conclusions emphasised several problems: the difficulty in finding a definition of vulnerability and the categorisation of rights, which remains largely imperfect. The international human rights bodies constitute key tools, which have to be implemented through the use of the so-called "control of conventionality" in order to enhance the protection of internationally recognised fundamental rights in the domestic arena. Moreover, the principle of non-discrimination as a key transversal principle could become a powerful mechanism in the hands of constitutional judges when fighting inequalities. Finally, the exchange of experiences, the knowledge of foreign examples and the construction of a judicial dialogue in its widest sense, is essential to build further shared standards in the field of human rights.

Link to the programme
Link to the list of participants