



Report by rapporteur

5th Congress of the World Conference on Constitutional Justice

Session D

"Fundamental Principles: the Protection of Human Rights, Democracy, and the Rule of Law as a Precondition to Peace"

Fahrad Abdullayev

Chairman

Constitutional Court of Azerbaijan

Dear Mr. Chairman,

Distinguished participants of Congress,

First of all, on behalf of the Constitutional Court of the Republic of Azerbaijan, I am pleased to extend cordial congratulations to Honourable Chief Justice Mr. Anwar Usman, as well as the Judges and Secretariat of the Constitutional Court of the Republic of Indonesia for the excellent organization of the 5th Congress of the World Conference on Constitutional Justice.

I would also like to take this opportunity to express our special thanks to President Emeritus, Special Representative of the Venice Commission Mr. Gianni Buquicchio and Secretary General of the WCCJ Mr. Schnutz Rudolf Dürr, as well as to the Secretariat of the Venice Commission for contributing to the functioning of Conference.

Ladies and gentlemen,

The topic of this session, chaired by President of the Constitutional Court of Dominican Republic Mr. Milton Ray Guevara, consisted of three interrelated aspects contributing to social peace: the protection of human rights, democracy, and the rule of law as a pre-condition to peace. The present report summarizes the session at which the reports were presented by President of the Constitutional Court of the Republic of Korea Mr. Namseok Yoo and President of the Constitutional Council of the Republic of Mozambique Ms. Lucia da Luz Ribeiro, having regard to the prepared national reports and conducted discussions.

The intensity of protection of human rights determines the social climate, the level of stability and security in society.

We can fully agree with the position mentioned in the Keynote speech by President Mr. Namseok Yoo that the constitutional review bodies contribute to social peace by means of direct application of constitutional provisions or constitutional interpretation.

In the Discussant Speech presented by President Ms. Lucia da Luz Ribeiro, the contribution of the Constitutional Council to political and legal life in Mozambique was revealed comprehensively. The role of the Constitutional Jurisdiction Body in ensuring peace is presented evidently when mentioning the Permanent Peace Agreement that involves the Constitutional Jurisdiction Body by political forces and this involvement within the political and constitutional framework contributed to peace.

Peace implies the consent of the parties to continue the legal relations. These legal relations can develop in various fields, for instance in the political arena, which is clearly manifested in the decision of the Constitutional Court of Indonesia regarding the inadmissibility of discrimination against citizens, with regard to the right to stand as a candidate for election to legislative body, or the criminal law, where the Constitutional Court of Georgia, developing the concept of legal certainty, pointed the importance of foreseeability of criminal legislation in order to eradicate the instances of arbitrariness and ensure the peaceful coexistence in society, either when it comes to the importance of protecting

freedom of religion and ensuring tolerant society, enshrined in the practice of the Constitutional Court of Portugal.

Such terms as “harmony” in society, stated by the Constitutional Council of Kazakhstan, as well as “positive peace”, that can only be carried into effect through a “living democracy” as it is indicated in the decision of the Federal Constitutional Court of Germany, gives brightness to the very concept of “social peace”.

President Mr. Namseok Yoo also rightly indicated that by harmonizing diverse values within society the social and legal institutions include the resolution of social conflicts.

As it gets obvious, in maintaining this harmony, the constitutional courts use in a balanced manner the most important instruments, such as the principles of proportionality and the principle of legal certainty. And here I would like to mention the legal position of the Constitutional Court of the Republic of Türkiye, which states that any limitation that prevents the exercise of rights and freedoms in violation of the principle of proportionality, will be in breach of the democratic social order.

By referring to the Report submitted by President Ms. Lucia da Luz Ribeiro, one can conclude that the judiciary possesses not only the constitutional duty but also the ethical commitment to assess the violation of fundamental rights and to correct controversial situations.

During discussions the participants of Congress also noted the importance of protection by constitutional review bodies of social, cultural and economic rights as pre-condition for public peace and mentioned the challenges the constitutional justice institutions faced during COVID-19 pandemic.

Distinguished participants of Congress,

Summarizing the above, I would like to get back to the Keynote speech by President Mr. Namseok Yoo providing that the rulings that aim to realize the rule of law through the application of constitutional provisions or constitutional interpretation finally contribute to achieving social peace. Here I would like

also to mention the position of the Constitutional Court of Austria, which reflects the general mission of the constitutional justice body, which consists of peaceful and consistent clarification of controversial situations. This position is very similar to the approach the Constitutional Court of Azerbaijan uses in its practice. And as it is noted in the speech of President Ms. Lucia da Luz Ribeiro, in order to effectively implement this mission, the body in charge of constitutional jurisdiction must be designed and organized according to the real and specific conditions of each State.

The submitted national reports and the conducted discussions allow to make the conclusion, which is evident for all participants of Congress: the constitutional review body is able to make an effective contribution to social consensus. Obviously, the mission of all constitutional judges is the adoption of decision that is based on constitutional principles and values, which would allow the parties not only to perceive but also to recognize this decision as a tool serving for maintaining of social consensus and peace.

Thank you for your attention.