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4th Congress of the World Conference on Constitutional Justice

THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD

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CONCEPT

The rule of law is a prominent multifaceted and uniquely structured constitutional principle, which has its origins in ancient civilizations, and is also characteristic of modern legal systems. In its continuous development over the centuries, the principle of the rule of law is now composed of a multitude of elements and every legal system has a different constituent element and content for this principle.

Despite the existence of a unique pattern of the principle of the rule of law in every country, it nonetheless constitutes the cornerstone of every legal system in the modern world, where it is integrally linked to democracy and the protection of human rights. The rule of law is a generally recognised principle, inseparable from the constitution itself. As a fundamental constitutional principle, it requires that the law be based on certain universal values, thus it is essentially inherent in every constitutional issue.

The prevalent modern concept of the rule of law refers to the “*governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.*”¹ The European Commission for Democracy through Law (Venice Commission) identified common core elements of the Rule of Law, which are legality, including a transparent, accountable and democratic process for enacting laws, legal certainty, the prohibition of arbitrariness, access to justice before an independent and impartial court, including judicial review of administrative acts, respect for human rights as well as non-discrimination and equality before the law.²

The constitutional courts and equivalent bodies are the predominant guardians of the legal order based on the supremacy of law and the constitution as the supreme law. Constitutional courts (or equivalent institutions), within the framework of their constitutional competence, ensure the respect for and the implementation of national constitutions and have a strong

¹ Report of the United Nations Secretary-General Kofi Annan; see Doc. S/2004/616, 23 August 2004, par. 6.

² Report on the Rule of Law (CDL-AD(2011)003rev) and the Rule of Law Checklist (CDL-AD(2016)007).

influence on shaping the content of the principle of the rule of law. Many different aspects of this principle are revealed in constitutional justice cases. The impact of constitutional justice in strengthening the state under the rule of law and ensuring the defence of individual rights is essential as is the interest to explore it.

Constitutional justice institutions can only carry out their function of safeguarding the supremacy of the constitution if they are genuinely independent. Therefore, notwithstanding the unquestionable importance of ensuring the respect for and the implementation of the fundamental principles, it is equally essential to guarantee that constitutional courts be able to fulfil their purpose. For that reason, it is indispensable to guarantee the independence of courts, which is one of the central elements of the principle of the rule of law.

A permanent dialogue on the rule of law and on the implementation of this principle contributes to the strengthening of common constitutional values throughout the world. In the majority of countries, certain constitutional values may be perceived in a similar way, whereas the understanding of others may differ eminently. Nonetheless, the on-going processes of global integration in the modern world contributes to the common understanding of constitutional values and, consequently, their transformation into universal ones. The topic chosen for the 4th Congress of the World Conference provides an opportunity to discuss different aspects of this principle, which despite its unchanging core elements, is constantly evolving and unfolding. It is also of particular interest to the Central and Eastern European region, which, as a result of the oppression and occupation it experienced for half of a century, was devoid of the existence of the rule of law and constitutional justice.

The 4th Congress congress offers the possibility for participants to share different experiences on the rule of law and prepare for new challenges in the field of constitutional justice. Constitutional case law reveals the issues that challenge or, in some circumstances, threaten the rule of law. Constitutional justice institutions would therefore benefit from looking into the problems raised by the topic of the 4th Congress . The global integration process also contributes to new challenges that appear in the field of constitutional justice, such as the issues related to the multi-level constitutionalism, data protection, etc.

Constitutional justice institutions could therefore use this international co-operation platform to share their relevant experiences in administering constitutional justice so as to provide guidelines for how to deal with relevant issues. For that purpose, participants of the 4th Congress of the World Conference on Constitutional Justice are invited to discuss the general topic "*The Rule of Law and Constitutional Justice in the Modern World*", sub-divided as follows:

- I. The different concepts of the rule of law;*
- II. New challenges to the rule of law;*
- III. The law and the state;*
- IV. The law and the individual.*