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4th Congress of the World Conference on Constitutional Justice

THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD

11–14 September 2017, Vilnius, Lithuania

QUESTIONNAIRE

The 4th Congress of the World Conference on Constitutional Justice will be subdivided into five sessions. Four of them will deal with the main topic of the Congress, “The Rule of Law and Constitutional Justice in the Modern World” (Part A). A special session will be devoted to a stocktaking exercise on the independence of the members of the World Conference (Part B): Constitutional Courts, Councils, Chambers and Supreme Courts exercising constitutional justice (hereinafter all “Courts”).

The Member Courts are kindly requested to reply to the questionnaire below by 30 November 2016 at the latest. The replies relating to the rule of law will be public, whereas the replies relating to the independence of the Courts will be available only to the Member Courts in the restricted Venice Forum.

A. The rule of law and constitutional justice in the modern world

Without attempting to give a definition, for the purpose of this questionnaire, rule of law shall refer to a state in which all persons, institutions and entities, public and private, including the state itself, are bound by and accountable to the law.

As a concept of universal validity, the rule of law is a characteristic of modern democratic legal systems. Even if some Member Courts of the World Conference on Constitutional Justice have very specific powers, they all ensure the supremacy of the Constitution, and thus they promote the rule of law.

The need for universal adherence to and implementation of the rule of law at both the national and international levels was endorsed by all Member States of the United Nations in the Outcome Document of the 2005 World Summit. In 2011, the United Nations published the Rule of Law Indicators and, in 2012, a high-level meeting of the General Assembly recognized that the rule of law applies to all states equally, and to international organizations.

At the regional level, the Inter-American Democratic Charter of the Organization of American States, the Constitutive Act of African Union and the Arab League refer to the rule of law. For

the Council of Europe, the rule of law is one of the three principles which form the basis of all genuine democracy, together with individual freedom and political liberty.

While the scope of the rule of law is not always defined in the same manner in these instruments, the work of the Venice Commission may be able to provide some guidance for the 4th Congress and for the replies to this questionnaire.

Following its 2011 Report on the Rule of Law (CDL-AD(2011)003rev), the Venice Commission, in March 2016, adopted its detailed Rule of Law Checklist (CDL-AD(2016)007), which provides an overview of the wide scope of the rule of law, *inter alia*, covering legality (supremacy of the law, relationship between international law and domestic law, law-making procedures, law-making powers of the executive, emergency situations, private actors in charge of public tasks), legal certainty (accessibility of legislation and court decisions, foreseeability, stability and consistency, legitimate expectations, non-retroactivity, *nulla poena sine lege*, *res judicata*), prevention of abuse of powers, equality in and before the law and non-discrimination, access to justice (independence and impartiality of the judiciary and judges, fair trial, including effectiveness of judicial decisions, autonomy of the prosecution service). These topics can help in order to identify elements which are part of the rule of law, even when they are used without an explicit reference to this principle.

In your replies to the questions below, please briefly present the case-law of your Court whenever applicable.

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?
2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?
3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?
4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.
5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.
6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?
8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?
9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African,

Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?
11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?
12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, *non bis in idem*, *nulla poena sine lege*, etc.).
13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?
14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

IV. The law and the individual

15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.
16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?
17. Has your Court developed case-law on other individual rights related to the rule of law?
18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

B. Stocktaking on the independence of the Member Courts

The 2nd Congress of the World Conference on Constitutional Justice was devoted to the topic "Separation of Powers and Independence of Constitutional Courts and Equivalent Bodies".

In view of the importance of this topic and frequent threats to the independence of some Member Courts, the Bureau of the World Conference had decided to include a special stocktaking session on the independence of the Members for all future congresses. As a consequence, already the 3rd Congress in 2014 in Seoul included such a session and this will be the case for the 4th Congress in Vilnius as well. The replies to the questions below will be important for the preparation for this session.

1. Has pressure been exercised on your Court by other state powers during the consideration (examination) of cases?

2. Has excessive pressure been exercised on your Court by the media during the consideration (examination) of cases?
3. Has your Court encountered resistance from other state powers following the adoption of decisions which they disliked?
4. Have the decisions of your Court been duly published?
5. Are the decisions of your Court being executed? Are there special mechanisms for the execution of the decisions of your Court?
6. Are there problems in the execution of specific types of decisions?
7. Have there been attacks on the Court following the adoption of decisions?
8. Have there been any legislative initiatives or actions leading to creating obstacles to the activity of your Court?
9. How did your Court deal with cases of pressure from other state powers, media, etc.?
10. Has your Court received assistance from other bodies at the national or international level? Please specify the provided assistance.
11. Does your Court consider that it is prevented by judicial restraint from defending itself in the media or from seeking assistance?

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