The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society

Collection of Academic Presentations of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions

The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society

Collection of Academic Presentations of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions

Title:	**The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society : Collection of Academic Presentations of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions**
ISBN:	978-616-8344-27-9
First Published in	(500 Copies)
Published by	Office of the Constitutional Court, The Constitutional Court of the Kingdom of Thailand
Printed in Thailand by	Active Print Co., Ltd. 9 Soi Lat Phrao 64 Yaek 14 Wang Thonglang District, Bangkok 10310 Tel: 02 530 4114 Fax: 02 108 8951 E-mail : tanapress@gmail.com

Foreword

As the President of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) between 2023 and 2025, the Constitutional Court of the Kingdom of Thailand hosted the 6th Congress of the AACC, centered around the main theme : "The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society" during 17th - 21st September 2024 at the Athenee Hotel, Pathumwan District, Bangkok. This event aimed at providing the member countries with an opportunity to exchange academic perspectives on constitutional justice procedures, human rights protection, and promotion of the rule of law, encouraging cooperation among the Constitutional Courts and Equivalent Institutions in Asia, as well as serving as a forum for sharing and learning of insights into strengthening constitutional justice for a sustainable society between the members.

At the Congress, the Constitutional Court of the Kingdom of Thailand was honored to welcome the representative of the European Commission for Democracy through Law (Venice Commission), the presidents of other regional associations of constitutional jurisdiction, and the AACC members, who kindly delivered special and greeting remarks, together with giving academic presentations under several sub-themes. In addition, the member countries of the Association, altogether, adopted the Bangkok Declaration, a document indicating the outcome of the Congress concerning the AACC members' aims to cultivate relations and enhance the efficiency of constitutional justice in the region.

As for this publication of "The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society : Collection of Academic Presentations of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (the 6th Congress of the AACC)," all the speeches in various sessions, academic papers presented at the Congress, the Bangkok Declaration, and photos of different activities have been compiled. In this regard, the Office of the Constitutional Court hopes that this book would be not only an important academic document that identifies the role of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) in developing the constitutional justice procedures at the regional level, but also a useful source for further reference in the academic sphere.

Contents

	Page
Foreword	(i)
Contents	(iii)
I. Remarks of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions	**1**
(1) Opening Remarks by Hon. Professor Dr. Nakharin Mektrairat, President of the Constitutional Court of the Kingdom of Thailand and President of the Association of Asian Constitutional Court and Equivalent Institutions (AACC)	3
(2) Welcome Remarks by Hon. Professor Dr. Nakharin Mektrairat, President of the Constitutional Court of the Kingdom of Thailand and President of the Association of Asian Constitutional Court and Equivalent Institutions (AACC)	5
(3) Closing Remarks by Hon. Professor Dr. Nakharin Mektrairat, President of the Constitutional Court of the Kingdom of Thailand and President of the Association of Asian Constitutional Court and Equivalent Institutions (AACC)	9
II. Special Remarks and Greeting Messages	**11**
(1) Special Remarks by Hon. Mr. Gianni Buquicchio, President Emeritus, Special Representative of the Venice Commission of the Council of Europe	13

Contents

	Page
(2) Greeting Message by Hon. Ms. Elvira Azimova, Chairperson of the Constitutional Court of the Republic of Kazakhstan and President of the Eurasian Association of Constitutional Review Bodies (EACRB)	21
ПРИВЕТСТВЕННОЕ СЛОВО Председателя на 6-ом Конгрессе Ассоциации азиатских конституционныхсудов и эквивалентных институтов на тему «Конституционные суды иэквивалентные институты в укреплении конституционного правосудия для устойчивого общества»	24
(3) Greeting Message by Hon. Mr. Moussa Laraba, Justice of the Constitutional Court of the People's Democratic Republic of Algeria and Secretary-General of the Conference of Constitutional Jurisdiction of Africa (CJCA)	27
(4) Greeting Message by Hon. Mr. Enrique Arnaldo Alcubilla, Judge of the Constitutional Court of the Kingdom of Spain and President of the Ibero-American Conference on Constitutional Justice (CIJC)	31
(5) Greeting Message by Hon. Ms. Holta Zaçaj, President of the Constitutional Court of the Republic of Albania and President of the Conference of European Constitutional Courts (CECC)	34
(6) Greeting Message by Ms. Simona Granata-Menghini, Director and Secretary of the Venice Commission of the Council of Europe	37

Contents

Page

III. Speeches of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions **41**

(1) The Republic of Azerbaijan 43
"The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"
Hon. Mr. Farhad Abdullayev,
Chairman of the Constitutional Court
of the Republic of Azerbaijan

(2) The Republic of India 45
"The Role of Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"
Hon. Mr. Prashant Kumar Mishra,
Judge of the Supreme Court
of the Republic of India

(3) The Republic of Indonesia 57
"The Role of the Constitutional Court of the Republic of Indonesia in Enforcing the Principles of Sustainable Development"
Hon. Mr. Suhartoyo,
Chief Justice of the Constitutional Court
of the Republic of Indonesia

Contents

Page

(4) The Republic of Kazakhstan 77
"The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"
Hon. Ms. Elvira Azimova,
Chairperson of the Constitutional Court
of the Republic of Kazakhstan

Выступление Председателя Конституционного Суда Республики Казахстан Э.Азимовой на 6-ом Конгрессе AACC «Роль конституционных судов и эквивалентных институтов в укреплении конституционного правосудия для устойчивого общества» 82

(5) The Republic of Korea 87
"The Evolvement of Constitutional Justice for Sustainable Justice in the Changing World"
Hon. Mr. Youngjin Lee,
Justice of the Constitutional Court
of the Republic of Korea

(6) The Kyrgyz Republic 92
"The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"
Hon. Mr. Emil Oskonbaev,
Chairman of the Constitutional Court
of the Kyrgyz Republic

Contents

Page

Роль конституционных судов и эквивалентных институтов в укреплении конституционного правосудия для устойчивого общества

(7) Malaysia 100
"The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society – Perspectives from the Malaysian Judiciary"
Hon. Mrs. Tengku Maimun Binti Tuan Mat
Chief Justice of the Federal Court of Malaysia

(8)Mongolia 120
"Changing Conceptions of Constitutional Justice: the Evolution of Constitutional Adjudication in Mongolia"
Hon. Mr. Dashbalbar Gangabaatar
Justice of the Constitutional Tests of Mongolia

(9) The Republic of the Union of Myanmar 132
"The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"
Hon. Mr. Aung Zaw Thein
Chairperson of the Constitutional Tribunal of the Republic of the Union of Myanmar

(10) The State of Palestine 136
"The Evolvement of Constitutional Justice for Sustainable Justice in the Changing World
Hon. Mr. Ali Jamil Muhanna
President of the Supreme Constitutional Court of the State of Palestine

Contents

Page

(11) The Republic of the Philippines 139
"Refining the Role of Judicial Review
for Environmental Cases"
Hon. Mr. Marvic Mario Victor Leonen
Senior Associate Justice of the Supreme Court
of the Republic of the Philippines

(12) The Russian Federation 143
"The Principle of Legal Certainty in the Practice
of the Constitutional Court of the Russian Federation"
Hon. Mr. Sergey Kazantsev
Judge of the Constitutional Court
of the Russian Federation

(13) The Kingdom of Spain 155
"The Role of the Constitutional Courts and
Equivalent Institutions in Strengthening
Constitutional Justice for Sustainable Society"
Hon. Mr. Enrique Arnaldo Alcubilla
Judge of the Constitutional Court
of the Kingdom of Spain

(14) The Kingdom of Thailand 161
"Sustainable Society through Constitutional Justice"
Hon. Mr. Noppadon Theppitak
Justice of the Constitutional Court
of the Kingdom of Thailand

Contents

Page

(15) The Republic of Türkiye 170
"The Role of Constitutional Justice Within the Context of Sustainable Society"
Hon. Mr. Kadir Özkaya
President of the Constitutional Court of the Republic of Türkiye

(16) The Republic of Uzbekistan 180
"Constitutional Reform – a New Development Stage of the Constitutional Justice in the Republic of Uzbekistan"
Hon. Mr. Mirza-Ulugbek Abdusalomov
Chaiman of the Constitutional Court of the Republic of Uzbekistan

(17) The Islamic Republic of Pakistan 186
"The Role of Constitutional Courts in Strengthening Constitutional Justice for a Sustainable Society"
Hon. Mr. Qazi Faez Isa
Former Chief Justice of the Islamic Republic of Pakistan

IV. Bangkok Declaration of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions **193**

V. Photos of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions **197**

I. Remarks of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions

Opening Remarks

Hon. Professor Dr. Nakharin Mektrairat
President of the Constitutional Court of the Kingdom of Thailand & President of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC)
at the 6th AACC Congress 2024
Wednesday 18th September 2024
The Athenee Hotel, Bangkok

Honourable Presidents / Chief Justices /
Chairpersons of the AACC Members;

Dearest colleagues;

Distinguished guests;

Ladies and gentlemen,

As assuming over the chairmanship of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), I, on behalf of the Constitutional Court of the Kingdom of Thailand, am wishing to welcome all of you at the Opening Ceremony of the 6th AACC Congress.

The Constitutional Court of the Kingdom of Thailand is one of the seven co-founding members of the AACC. Therefore, we can witness how our regional association has been developed so far. It is undeniable that our mutual cooperation is one of the keys for this accomplishment. As a forum of the exchange on constitutional adjudication, implementation of the rule of law, protection of

people's rights and liberties, and so forth, the AACC Congress cannot be organised to reach its objective regardless of the contribution of all of you.

Ladies and gentlemen,

As you may be aware, our theme of this Congress is *"The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society,"* The Constitutional Court of the Kingdom of Thailand as a host for this Congress has realised that development will be unable to go sustainable if we have a lack of effective collaboration as it is not a single-faceted issue that could be handled by only one country or institution. Indeed, this Congress is open for us to share and learn from each other best practice.

Taking this opportunity, I would like to declare the 6th AACC Congress 2024 officially open and wish it particularly successful.

Welcome Remarks

Hon. Professor Dr. Nakharin Mektrairat,
President of the Constitutional Court of the Kingdom of Thailand & President of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC)
at the 6th AACC Congress 2024
Thursday 19th September 2024
The Athenee Hotel, Bangkok

The Honourable Presidents/ Chief Justices/
Chairman of Foreign Constitutional Courts,

The Honourable Presidents Emeritus,
Special Delegates of the Venice Commission,

The Honourable Justices/ Judges of
Constitutional Courts and Equivalent Institutions,

Delegates of Constitutional Courts and
Equivalent Institutions, and

Distinguished guests.

On behalf of the Constitutional Court of the Kingdom of Thailand and the President of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), I would like to welcome all participants and thank you for your kindness in attending today's 6th Congress of the AACC under the theme: **"The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"**

Today's congress is academic in nature, which is one of the key functions outlined in the AACC Statute with the objective of enabling the presentation of academic papers on relevant subjects by both members and foreign countries. This will facilitate the sharing of knowledge, perspectives, and experiences in carrying out the responsibilities of the AACC, especially the role in protecting rights and liberties of the people, including strengthening the democratic governance of member countries.

The main theme of today's congress is **'The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society,'** which is divided into three following sub-themes:

I: The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society;

II: The Evolvement of Constitutional Justice for Sustainable Justice in the Changing World; and

III: Constitutional Justice as the Foundation of Sustainable Social Development

All three sub-themes are honored by the Presidents/ Chief Justices/ Chairmans/ Representatives of other Constitutional Courts/ Equivalent Institutions acting as the Chairperson with the Justices of the Constitutional Court of the Kingdom of Thailand acting as the Co-chairperson of the Congress.

Before entering into the Congress under the first sub-theme, the Constitutional Court of the Kingdom of Thailand and the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) would like to invite the Presidents/ Chairpersons/ Representatives of other Associations of the Constitutional Courts

from various regions who have traveled to attend the Congress today and who have sent electronic messages to kindly greeting messages the Congress in the following order:

First, I would like to invite **Hon. Ms. Elvira Azimova**, Chairperson of the Constitutional Court of the Republic of Kazakhstan and the President of the Eurasian Association of Constitutional Review Bodies (EACRB).

Second, I would like to invite **Hon. Mr. Moussa Laraba**, Justice of the Constitutional Court of the People's Democratic Republic of Algeria and Secretary-General of the Conference of Constitutional Jurisdictions of Africa (CCJA).

Third, I would like to invite **Hon. Mr. Enrique Arnaldo Alcubilla**, Judge of the Constitutional Court of Spain and President of the Ibero-American Conference on Constitutional Justice (CIJC).

Forth, I would like to thank for a pre-recorded video from **Hon. Ms. Holta Zaçaj**, President of the Constitutional Court of the Republic of Albania and President of the Conference of European Constitutional Courts (CECC).

And Finally, I would like to invite **Ms. Simona Granata-Menghini,** Director and Secretary of the Venice Cammission of the Council of Europe.

On behalf of the Constitutional Court of the Kingdom of Thailand and the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), I would like to thank the Presidents/ Chairpersons/ Chairmans/ Representatives of other Associations of the Constitutional Courts from various regions for honoring us with their greetings. Without further ado, I would like to introduce everyone to the first academic conference on the sub-theme of "The Role of the Constitutional Courts and Equivalent Institutions in

Strengthening Constitutional Justice for Sustainable Society". And, please welcome Hon. Mr. Dashbalbar Gangabaatar, Justice of the Constitutional Court of Mongolia to act as the chairperson of the conference together with Hon. Mr. Noppadon Theppitak, Justice of the Constitutional Court of the Kingdom of Thailand. Thank you.

Closing Remarks

Hon. Professor Dr. Nakharin Mektrairat
President of the Constitutional Court of the Kingdom of Thailand & President of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC)
at the 6th AACC Congress 2024
Thursday 19th September 2024
The Athenee Hotel, Bangkok

....

Honourable Presidents / Chief Justices /
Chairpersons of the AACC Members;

Dearest colleagues;

Distinguished guests;

Ladies and gentlemen,

We have reached the end of the 6th AACC Congress 2024. It is a sad task because we shall be closing the door very soon on our lively – but in-depth – discussion, as well as bidding a farewell to my colleagues. However, it would be my privilege and honour to do so as entrusted at the assembly of such renowned and outstanding constitutional professionals from all around Asia and beyond.

This Congress could not come to its end successfully without your active participation, for which I would like to thank all of you. The Congress has not only led the Constitutional Court of the Kingdom of Thailand to carry out more engagement with the others in the crucial role as a host institution, but also

brought us to our shared values under the same umbrella of sustainable development, which all of us completely agree that we, constitutional review organs, play a significant role in for a balance of constitutional justice.

Ladies and gentlemen,

The Bangkok Declaration can be said to be one of the most important outputs of our Congress. It recognises our position; it cherishes our common goals; and it encourages our mutual development. This is not the achievement constituted by me nor the Constitutional Court of Thailand – but all the participants of this Congress.

I fully appreciate such remarkable efforts. Now, it is time to declare that the 6th AACC Congress 2024 closed. Once again, thank you very much.

II. Special Remarks and Greeting Messages

Special remarks
Hon. Mr. Gianni Buquicchio,
President Emeritus, Special Representative
of the Venice Commission
at the 6th Congress of the Association of
Asian Constitutional Courts and Equivalent Institutions (AACC)
18 September 2024, Bangkok, Thailand

Introduction

Mr President of the Constitutional Court, and of **the Association of Asian Constitutional Courts and Equivalent Institutions**, presidents and judges, ladies and gentlemen, and distinguished guests,

It is a great honor and privilege to address you today at the 6th Congress of the Association of Asian Constitutional Courts, hosted by the Constitutional Court of the Kingdom of Thailand, even if I deeply regret that I cannot be with you in person.

Gratitude to the Host Court

Firstly, I would like to extend my sincere gratitude to the Constitutional Court of the Kingdom of Thailand for hosting this prestigious Congress. The hospitality and meticulous organization provided by our hosts have created an ideal environment for fruitful discussions and meaningful exchanges. I also wish to express my sincere thanks to Mr. Nakharin Mektrairat, President of the Constitutional Court of Thailand, and Justice Noppadon Theppitak, for their exemplary leadership and cooperation, particularly for presiding over the 21st Bureau meeting of the World Conference on Constitutional Justice, held in Venice in March 2024. Their

contributions have been instrumental in strengthening our collective efforts toward advancing constitutional justice.

Constitutional Justice has been at the core of the mission of the Venice Commission since its very beginning in 1990. The Venice Commission has supported independent constitutional courts, by developing and upholding the principles and standards which they must protect, by providing guidance through amicus curiae briefs, by making public declarations in support of those courts which faced political pressure, and by encouraging the creation of a community of constitutional courts which can support each other.

The Venice Commission has thus actively promoted cooperation, coordination and cross-fertilization, particularly through the sharing of case-law among constitutional courts and the setting up of regional and linguistic networks. The AACC is one of these networks.

The Venice Commission and myself have a long-standing relationship with the AACC, actively contributing to its establishment and development over the years. Our journey began with bilateral contacts, including significant engagement with the Constitutional Court of Indonesia and the participation in the 3rd Seminar for Asian Constitutional Court Judges in Ulaanbaatar in 2005. This seminar marked the beginning of our cooperation, leading to the inclusion of Asian case law into our CODICES database. Our collaboration intensified with the participation of the Republic of Korea in the Venice Commission's Joint Council on Constitutional Justice in 2006, following its full membership. This partnership was further solidified when we discussed the importance of involving Asian Constitutional Courts in the first World Conference on Constitutional Justice held in Cape Town in 2009. The Asian Courts played a pivotal role in

the 3rd Congress of the World Conference on Constitutional Justice in Seoul in 2014, where the Seoul Communiqué was adopted. This communiqué has since become a model for the World Conference's declarations, demonstrating the significant contributions of Asian Courts to global constitutional justice. The AACC has been instrumental in broadening the scope of constitutional justice across Asia. Initially focused on East and Southeast Asia, the AACC now embraces Central Asia, promoting a comprehensive approach to constitutional justice throughout the continent. This inclusivity is crucial for addressing the diverse challenges faced by our societies and ensuring that constitutional justice remains a cornerstone of sustainable development.

The AACC's dynamism is evident in its scientific symposia, training programs, and comparative literature initiatives, driven by its three complementing secretariats in the Republic of Indonesia, the Republic of Korea, and the Republic of Türkiye. These activities foster a culture of continuous learning and adaptation, essential for maintaining the relevance and efficacy of constitutional justice. One of the most significant aspects of our cooperation has been the focus on human rights protection. Former President Park Han-Chul of the Constitutional Court of the Republic of Korea proposed the establishment of an Asian Court of Human Rights during the 3rd Congress of the World Conference on Constitutional Justice in Seoul. This proposal aims to provide a regional platform for individuals in Asia to claim and defend their fundamental rights, inspired by the European Court of Human Rights.

The Venice Commission has supported these reflections, advocating for a phased approach where likeminded countries establish the court, setting high standards for human rights protection

before gradually including other countries. This strategy ensures the preservation and enhancement of human rights standards across Asia.

The theme of this year's Congress, "The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society," is both timely and pertinent. As we navigate an era marked by rapid change and unprecedented challenges, the role of constitutional courts in upholding justice and fostering sustainable societies cannot be overstated. Constitutional justice serves as the bedrock for sustainable development by ensuring that the principles of justice, equity, and human rights are upheld. This Congress provides an invaluable platform for discussing how constitutional courts and equivalent institutions can adapt to evolving societal needs and global challenges. The sessions will explore various dimensions of constitutional justice, including its role in social integration, environmental protection, and economic stability. One of the critical aspects to be examined is how constitutional courts can address the growing threats to democracy and the rule of law. In many parts of the world, including Asia, we are witnessing challenges to democratic principles. Constitutional courts have a pivotal role in safeguarding these principles, ensuring that governments remain accountable and that the rights of citizens are protected.

Moreover, we will discuss the innovative ways in which constitutional courts can contribute to sustainable development. This includes addressing issues such as climate change, which poses significant threats to societal stability and human rights. Constitutional courts can play a crucial role in interpreting and enforcing environmental laws, ensuring that development is pursued responsibly and sustainably. Finally, the Congress will

provide an opportunity to share best practices and experiences from different jurisdictions, as well as to exchange information and enhance cross-fertilisation between courts. By learning from each other, we can enhance our approaches to constitutional justice, ensuring that they remain relevant and effective in addressing contemporary challenges. In partnership with the Venice Commission, the World Conference on Constitutional Justice (WCCJ) acts as a global platform for the exchange of experiences and best practices among constitutional courts. As of today, the WCCJ brings together 120 Constitutional Courts and Councils, as well as Supreme Courts, across Africa, the Americas, Asia, Australia/Oceania, and Europe. It emphasizes constitutional justice, encompassing constitutional review and human rights case-law, as an essential element for democracy, human rights protection, and the rule of law.

According to its Statute, the WCCJ has three main organs: the General Assembly, the Bureau, and the Secretariat. The General Assembly is led by the Host Court of the Congress, while the Bureau's Presidency rotates annually among different groups. The Venice Commission serves as the Secretariat of the WCCJ. The WCCJ achieves its mission through regular congresses, regional conferences, seminars, experience and case-law sharing, and providing support to members upon request. The independence of Constitutional Courts is an essential prerequisite for their effective operation and serves as a critical safeguard for the rule of law. The World Conference on Constitutional Justice is fundamentally tasked with promoting the independent functioning of its member courts on a global scale. It is noteworthy that the independence of Constitutional Courts is a permanent and integral component of the agenda at every congress of the World Conference. The primary goal of the WCCJ

is to facilitate judicial dialogue between constitutional judges on a global scale. This information exchange promotes reflection on arguments that uphold the core objectives of national constitutions. Despite the significant differences in these texts, discussions on fundamental constitutional concepts unite judges worldwide, all committed to advancing constitutionalism in their own countries.

Looking ahead, I am delighted to announce that the 6th Congress of the World Conference on Constitutional Justice will take place in October 2025 in Madrid. This significant event will focus on the theme "Human Rights for Future Generations." We hope that Asian constitutional courts will be well-represented at this congress, contributing to vital discussions on how we can protect human rights for future generations. I want to recall that the 5th Congress of the World Conference on Constitutional Justice took place here in Asia, specifically in Bali, Indonesia, and was organized in a remarkably brilliant manner.

Ladies and Gentlemen,

Before concluding, I would like to stress once more that constitutional courts and equivalent bodies are the guardians of the constitution and of constitutionalism. Independent constitutional courts are a guarantee of separation and balance of powers among state institutions; they play a crucial role in ensuring that governmental action and legislation conform to the constitution and to international standards. They protect the fundamental rights of every citizen. Through their interpretation of the Constitution, constitutional courts have the potential to address societal concerns and aspirations, and to contribute to sustainable development

and just societies. Constitutional courts have the great responsibility to uphold the democratic principles. Nowadays, democracy is facing many challenges, all over the world. The very concept of democracy is being questioned. Pluralism, which is a democratic pillar and a precondition for political participation and public trust in the institutions of the state, is instead increasingly seen as a threat. The Venice Commission has been called on many occasions to provide clarifications and guidance on the rights of political parties, on their duties, on the rules for their funding, on the sanctions applicable to them, including, in very extreme cases, their suspension and even their dissolution. The issue of the dissolution of a political party has recently been the object of a decision also here in Thailand. A few months ago, we have provided opinions on the conditions for banning a political party and on the consequences for its members in Europe. The Commission has underscored the importance of the fundamental right of freedom of association; it has reminded that even when sanctions to political parties are aimed to preserve the integrity of the democratic process, they need to respect the principle of proportionality and be exempted from arbitrariness. It has recalled that the suspension and the dissolution of a political party may only be a measure of last resort, in cases when the party has advocated the violent overthrow of the democratic constitutional order, and only after providing a full range of procedural safeguards. It has underlined that persons subject to ineligibility need to be given judicial review. These fundamental principles are part of our common constitutional heritage.

Mister President, Ladies and Gents,

In conclusion, I would like to praise the longstanding and close cooperation between the AACC and the Venice Commission. This partnership, which began well before the formal establishment of the AACC, has been instrumental in advancing constitutional justice in Asia and beyond. The Venice Commission remains committed to deepening our exchanges and collaboration with the AACC, ensuring that our collective efforts contribute to the advancement of constitutional justice worldwide. Your contributions to the upcoming 6th Congress of the World Conference in Madrid next year will be crucial for its success, and I look forward to continuing our fruitful partnership.

Thank you, and I wish you all a productive and inspiring Congress.

Greeting Message
Hon. Ms. Elvira Azimova,
Chairperson of the Constitutional Court of the Republic of Kazakhstan and President of the Eurasian Association of Constitutional Review Bodies (EACRB)

Dear Ladies and Gentlemen,

I welcome you on behalf of the Constitutional Court of the Republic of Kazakhstan and the Eurasian Association of Constitutional Control Bodies.

Let me express my gratitude to Honourable Chairman, Mr. Nakharin Mektrairat, for highly organising the Asian Association Congress.

First of all, I would like to emphasise the relevance of the chosen theme of the Congress, which underlines our unity in our endeavour to ensure decent living conditions for every human being.

Law and order are fundamental conditions not only for ensuring public and personal safety. This is the key to the sustainable development of the state, society and the individual.

The people of Kazakhstan today live in a new political reality. Over the past five years, large-scale reforms have been carried out and the political system has undergone a fundamental transformation. As a consequence, at present, fundamental changes are taking place in public consciousness.

A renewed culture of the rule of law grows in the concept of Fair Kazakhstan outlined by the Head of State. The strategic priority remains to ensure the safety of citizens as a fundamental value for each individual and society as a whole.

One of the main goals is to make Kazakhstan comfortable and safe.

A sustainable state, a sustainable society leads to sustainable personal development, all of which together contribute to progress. Therefore, Kazakhstan continues to reform the rule of law and constitutional review is an important part of it.

Each and every one of us in this Hall will firmly reaffirm that the rule of law is crucial for sustainable development.

First, it guarantees equal treatment, protection and fair opportunities, thereby eliminating social and economic inequalities.

Secondly, it ensures predictability, clarity and legality, guaranteeing the transparent application and compliance of laws and regulations, enabling the possibility of living in a stable and reliable legal system.

Third, it establishes processes and mechanisms aimed at balancing the economic, social and environmental dimensions of sustainable development, promoting sustainable practices, responsible resource management and environmental protection.

Fourth, it promotes the peaceful resolution of disputes, access to fair and impartial judicial systems, helping to prevent conflicts and establishing political stability in order to create an enabling environment for social progress and economic prosperity.

Therefore, ensuring peace and security, protecting nature and climate in the interests of present and future generations, intergenerational justice is an integral part of political stability, social progress, economic prosperity and the development of the rule of law.

Constitutional justice and the adoption of laws in compliance with the principles of the rule of law and the protection of human rights is an important condition for the formation of legal behavior of a person in society and the harmonious development of society itself, contribute to the formation of trust between the individual, society and the state.

In conclusion, I would like to reiterate my gratitude to the Constitutional Court of Thailand for the excellent organization of the Congress and wish all participants a constructive dialogue and success.

Thank you for your attention.

ПРИВЕТСТВЕННОЕ СЛОВО
Председателя на 6-ом Конгрессе Ассоциации азиатских конституционных судов и эквивалентных институтов на тему «Конституционные суды и эквивалентные институты в укреплении конституционного правосудия для устойчивого общества»

Уважаемые дамы и господа!

Позвольте поприветствовать Вас от имени Конституционного Суда Республики Казахстан и Евразийской ассоциации органов конституционного контроля.

Уважаемый Председатель, г-н Накхарин Мектрайрат, выражаю благодарность за высокую организацию Конгресса Азиатской Ассоциации.

Актуальность выбранной темы Конгресса подчеркивает наше единство в стремлении обеспечить достойные условия жизни для каждого человека.

Закон и порядок – это основополагающие условия не только обеспечения общественной и личной безопасности. Это – залог устойчивого развития государства, общества и личности.

Народ Казахстана сегодня живет в новой политической реальности. За последние пять лет были осуществлены масштабные реформы и политическая система претерпела коренную трансформацию. В настоящее время происходят фундаментальные изменения в общественном сознании.

В обозначенной Главой государства концепции Справедливого Казахстана вырастает обновленная культура верховенства права. Стратегическим приоритетом остается обеспечение безопасности граждан – основополагающей ценности для каждого человека и общества в целом.

Одна из главных целей - сделать Казахстан комфортным и безопасным.

Устойчивое государство, устойчивое общество ведут к устойчивому развитию личности, все это в совокупности способствует прогрессу. Поэтому Казахстан продолжает реформы по верховенству права и конституционный контроль является важной его частью.

Каждый из нас, находящихся в этом зале, твердо подтвердит, что верховенство права имеет решающее значение для устойчивого развития.

Во-первых, оно гарантирует равное обращение, защиту и справедливые возможности, позволяя тем самым устранить социальное и экономическое неравенство.

Во-вторых, обеспечивает предсказуемость, ясность и законность, гарантируя прозрачное применение и соблюдение законов и нормативных актов, придавая возможность проживания в стабильной и надежной правовой системе.

В-третьих, устанавливает процессы и механизмы, направленные на обеспечение баланса между экономическими, социальными и экологическими аспектами устойчивого развития, поощряя устойчивую практику, ответственное управление ресурсами и защиту окружающей среды.

В-четвертых, способствует мирному разрешению споров, доступ к справедливым и беспристрастным судебным системам, помогая предотвращать конфликты и устанавливая политическую стабильность в целях создания благоприятных условий для социального прогресса и экономического процветания.

В свою очередь, обеспечение мира и безопасности, защиты природы и климата в интересах нынешнего и будущих поколений, межпоколенческой справедливости является неотъемлемой частью политической стабильности, социального прогресса, экономического процветания и развития правового государства.

Конституционное правосудие и принятие законов с соблюдением принципов верховенства права и защиты прав человека является важным условием формирования законного поведения человека в обществе и гармоничного развития самого общества, содействуют формированию доверия между человеком, обществом и государством.

В завершение своего выступления хочу еще раз подтвердить благодарность Конституционному Суду Таиланда за высокую организацию Конгресса и пожелать всем участникам конструктивного диалога и успехов.

Благодарю за внимание.

Greeting Message
Mr. Moussa Laraba,
Justice of the Constitutional Court of the People's Democratic Republic of Algeria and Secretary-General of the Conference of Constitutional Jurisdiction of Africa (CJCA)

Excellency Mr. President of the Constitutional Court
Ladies and Gentlemen, Presidents and Judges of the Courts,

Ladies and Gentlemen

I would like to begin by expressing my thanks and gratitude to His Excellency Mr. President of the Constitutional Court of the Kingdom of Thailand for giving our organization the opportunity to participate and address the Sixth General Assembly of the Asian Association of Constitutional Courts, which is being held in the beautiful city of Bangkok.

Ladies and Gentlemen

The Conference of African Supreme and Constitutional Courts, established in May 2011, held at the headquarters of the Algerian Constitutional Council the founding congress of the African Supreme and Constitutional Courts, which they named "the Conference of African Constitutional Jurisdictions" (CJCA).

Twenty-five (25) African Supreme and Constitutional Courts participated in this constitutive Congress.

The Conference, whose headquarters is in Algiers, is ensured by the secretariat and the administration of the Conference.

The host country, Algeria, provides the Conference with the human, material and financial resources necessary to ensure its proper functioning.

The host country, Algeria, provides the Conference with the necessary human, material and financial resources to ensure its effective functioning.

Ladies and Gentlemen

The creation of this space responds to the imperative of unifying the African Supreme Courts and Constitutional Councils in charge of constitutional control, which have equipped themselves with a mechanism to ensure the supremacy of the Constitution and respect for its provisions, in a single continental space, allowing them to consolidate their presence and promote the judicial and constitutional culture in Africa, which would contribute to the promotion and dissemination of the universal values and principles of the rule of law, democracy and human rights.

The creation of this space is the culmination of what African countries have done, individually and progressively, to include in their constitutions a judicial mechanism for constitutional control, and it aims to complement the various mechanisms put in place by the African Union to establish the rule of law, democracy and human rights in the countries of the continent.

The Conference of Constitutional Jurisdictions of Africa (CJCA) is currently in its thirteenth year since its founding. During these years, it has done important work that has enabled it to achieve the objectives for which it was created, the most important of which was the integration of a large number of African supreme and constitutional courts, in a single space, which has allowed

it to establish itself definitively in the global movement for constitutional justice .

Our organization' s presence in similar regional organizations as well as in the World Conference on Constitutional Justice has enabled it to make a positive contribution to the consolidation of democracy, the rule of law and human rights on the African continent.

Today, our Organization brings together 48 supreme and constitutional courts from 54 African countries, and 4 non-African constitutional courts, with the status of "observer member", such as Brazil, Iraq, Turkey and Russia.

This significant increase in the number of members of our Organization, which has gone from 25 members at its creation in 2011 to 48 today, expresses the will of African constitutional courts to unify their energies, in a common space, to promote and disseminate constitutional culture and the universal values and principles shared by humanity.

Today, our organization benefits from undeniable experiences due to the exchanges and cooperation between its members and between itself, on the one hand, and similar regional spaces in Asia, Europe and South America on the other hand. It has had a significant positive impact on strengthening ties and solidarity between its members and has strengthened the dynamism of international cooperation.

Ladies and gentlemen

The cooperation relations between our CJCA and the Asian Association of Constitutional Courts began in 2012, and were strengthened in August 2017, by the signing of a Memorandum

of Understanding and Cooperation between the two associations, in Sura Karta, Indonesia.

Among the objectives set out in this protocol, we mention:

- Exchange of experiences and expertise in the field of constitutional jurisprudence
- Exchange of visits between members of the two associations
- Organize joint scientific and legal conferences and forums

This cooperation was further strengthened in October 2022, by holding on the sidelines of the World Conference on Constitutional Justice, which took place in the Indonesian city of Bali, the first joint Afro-Asian meeting which brought together the Constitutional Courts and Councils members of the two associations, which was, on the theme: “Strengthening Asia-Africa cooperation for the protection of peoples’ human rights”.

Given the success of this meeting, the organizers intend to organize the second edition in Angola in 2025.

I also take this opportunity to renew the invitation to your esteemed Association to participate in the Seventh General Assembly of the Supreme and Constitutional Courts of Africa, which will meet in Victoria Falls, Zimbabwe, during the first week of November.

In conclusion, I would like to take this opportunity to reiterate my thanks and gratitude to the organizers of this conference for the warm welcome and excellent organization of this Asian legal event.

Thank you for your kind attention.

Greeting Message
Hon. Mr. Enrique Arnaldo Alcubilla, Judge of the Constitutional Court of the Kingdom of Spain and President of the Ibero-American Conference on Constitutional Justice (CIJC)

Honorable President and Honorable Justices of the Constitutional Court of the Kingdom of Thailand,

Honorable Presidents and Justices of different Constitutional Courts of Asia and Equivalent Institutions,

Ambassadors, especially the Ambassador of the Kingdom of Spain

Dear colleagues,

Dear friends, especially the civil servants of the Constitutional Court of Thailand,

As a Judge of the Constitutional Court of Spain and President of the Ibero-American Conference on Constitutional Justice, I would like to express my sincere thanks for having been invited to participate in this magnificent Congress.

First of all, let me say that it is a real pleasure to be here with all of you. Thailand is a country far away from my own Spain and also from European and American continents. But for us, Thailand is a valuable for its history, for its traditions, for its customs, for its dynamic million inhabitants, for its capacities.

Honorable President, the programme you have prepared for this event is remarkable, extraordinary, worthy of the importance of the occasion we are celebrating, a very important event in the

history of the Asian conference. The Congress invites us to reflect on the value of Constitutions in ensuring coexistence in fundamental rights and sustainability.

Dear colleagues, the activity of constitutional jurisdiction is more necessary and more important than ever. The success of constitutional justice is clear, doubtless. Today 32 of the 46 member countries of the Council of Europe have a constitutional court. If we talk about the Ibero American continent, except in four countries that follow the North American model, the rest have established a constitutional court according to the Kelsenian model - special and concentrated.

Our primary function has always been the same for the Constitutional Court and for the Supreme Court or for the concentrated model or for non-concentrated model. A primary function is to underpin to assure the preeminence of the Constitution. The Supreme law of the land in expression of a good Judge Marshall in 1803 on the Supreme Court of the United States, *the Constitution is the expression of popular will, the essential manual for shaping forms of exercise of power and setting its limits.* It is, of course, the guarantee of fundamental rights.

Dear President, dear friends, I conclude. As you know, the Spanish Constitutional Court is committed to the promotion of constitutional jurisdiction and effective multilateralism. For this reason, the Spanish Constitutional Court will be the host of the 6th Congress of the World Conference of Constitutional Justice. The Spanish Court was unanimously elected by the Conference´s Executive Board on 11 March in Venice.

The 6th Congress of the World Conference on Constitutional Justice will therefore be held in Spain in October 2025. I must say that we are delighted to have been elected, and I would like to take this opportunity to invite you all to the Congress. About an important issue: *The rights of the new generation*, the Spanish Constitutional Court will welcome all the participants the delegations with the greatest hospitality, in the certainty that the meeting will be a great success, both from a scientific and doctrinal point of view and from a purely diplomatic and institutional point of view.

Ladies and Gentlemen, I would like to take this opportunity to reiterate my warmest thanks.

Greeting Message
Hon. Ms. Holta Zaçaj
President of the Constitutional Court of the Republic of Albania and President of the Conference of European Constitutional Courts (CECC)

Honorable Representative of His Majesty the King of the Kingdom of Thailand,

Honorable President of the Constitutional Court of the Kingdom of Thailand and President of the Association of Asian Constitutional Courts and Equivalent Institutions,

Honorable Presidents and Justices of the Constitutional Courts,

Members of the AACC,

Excellencies,

Esteem guests,

I am truly honor and privilege to address this prominent audiences as President of the Constitutional Court of the Republic of Albania and President of the Conference of European Constitutional Courts.

First of all, I would like to express our heartfelt gratitude and congratulations to the Constitutional Court of the Kingdom of Thailand for the remarkable commitment to holding such a significant high-level event and providing an excellent organization in every aspect.

Constitutional Court of Albania has been elected very recently in May 2024 to held and to head the Conference of the European Constitutional Courts for three years until 2027.

The Conference of European Constitutional Courts promotes the exchange of information among its members on matters and practices of constitutional review and provides a forum for participants to share opinions on institutional, structural, and practical problems in the area of public law and constitutional justice.

The 19th Congress of the CECC focus on experiences of constitutional courts related to the forms and limits of judicial deference. Interventions and discussions between representatives of the CECC Courts on this topic were a remarkable extent and thoroughness. That demonstrates their efforts and commitments to achieving the goal of strengthening the independence of the constitutional courts as an essential element in guarantee democracy and the rule of law while paying particular attention to the protection of fundamental rights and human dignity.

This is also the philosophy underline the memorandum of understanding signed in 2021 between the Conference of European Constitutional Courts and the Association of Asian Constitutional Courts and Equivalent Institutions.

In the framework of this memorandum, both organizations will promote and develop judicial cooperation between the courts based on reciprocity and mutual benefits and in this framework under the chairmanship of the Constitutional Court of Albania, the Conference of European Constitutional Courts will take the necessary steps and organize activities to implement this agreement and transform it into a profitable and effective collaboration.

Distinguish participants, you are gathered today in the 6th Congress to discuss on the role of the Constitutional Courts in strengthening constitutional justice for sustainable society. This is the tremendous and complex task which required continue vigilance and commitment as it is an ongoing process which needs collective wisdom and serious consideration as well.

I firmly believe that valuable lessons will derive from the shared experiences during the sessions of the Congress and experiences of the outcome discussions on issues and concerns of constitutional justice in the interest of strengthening the rule of law, democracy, and human rights will make this Congress as successful event.

I would like to conclude by expressing on behalf of the Conference of European Constitutional Courts the beast wishes for having successful conference and very productive discussion.

Thank you.

Greeting Message
Ms. Simona Granata-Menghini
Director and Secretary of the Venice Commission of the Council of Europe

President of the Constitutional Court of Thailand,

President of the Constitutional Courts of Asia,

Justices of these Courts,

Justices of Courts of other regions of the World,

Colleagues from the Secretariats from the organizing teams,

Ladies and Gentlemen,

Dear friends,

It is a great honor for me to be present here today and to represent the Venice Commission of the Council of Europe at the 6th Congress of the Association of Asian Constitutional Courts. I wish to thank the President of the Association for giving me this opportunity, while of course I regret that Mr. Gianni Buquicchio cannot be present here today.

Constitutional justice has always been at the core of the mission of the Venice Commission, and constitutional courts' networks have always been supported, promoted, and defended by the Venice Commission.

And the reason for the attachment of the Commission to constitutional justice networking is quite simple. There is much law in common between the philosophy of the Venice Commission

and the philosophy of the Association of Asian Constitutional Courts and of the other regional and linguistic associations of constitutional courts, as well as the World Conference of Constitutional Justice.

Let me try to list the most important ones: I have identified ten of them.

First, the strong commitment to the role of independent constitutional courts as guarantors of the supremacy of the Constitution, constitutionalism, democracy, respect for human rights and the rule of law. As we will discuss today, constitutional courts have in particular the potential and the capacity to address societal concerns and aspirations and to contribute to sustainable development and to a just society.

Second, the conviction that diversity means richness, that alignment to international standards does not mean negating national specificities.

Third, the interest in and the commitment to regional and "beyond regional" - and I like to say "more than regional" - multilateral cooperation: because looking beyond our national borders, we find more things that unite us than things that divide us. And because what differentiates us does not necessarily render us incompatible.

Fourth, the choice of multilateral, sincere, genuine cooperation to achieve cross fertilization: because cross fertilization can only be achieved through the open and sincere exchange of practices, the non-judgmental sharing of successes and mistakes and the readiness to humbly recognize our failures.

Fifth, the trust, the respect and, allow me to say, the friendship: because there cannot be effective and fruitful cooperation without them; because we cannot learn from each other if we do not

respect and value our differences. Because we value inclusive and transparent working methods.

Sixth, respect for national sovereignty and for the principle of subsidiarity: because we recognize and we respect that, after the exchanges, the choices and the responsibility for such choices belong to each country.

Seventh, a vision: because to build and develop constitution justice networking, it is necessary to have imagination and wisdom, and a sense of direction.

Eighth, the resilience to overcome the resistance and the inevitable difficulties of this complex exercise: because constitutional justice networking renders constitutional court stronger.

Ninth, the commitment to more democracy, more respect for human rights, and more rule of law: because this is the ultimate aim of constitutional justice networking.

Finally, the women and men who have had this vision, who have shared this vision, who have carried it and who will carry this vision through the years and through the difficulties, sometimes at a personal cost.

Ladies and gentlemen, today I wish to pay tribute to these women and men of the past, of the present, and of the future. I pay tribute to them and to you all and I wish to thank once again, the Constitutional Court of Thailand and its wonderful team for this impeccable, professional, and generous organization of this event.

Thanks for your attention.

III. Speeches of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions

"The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"

Hon. Mr. Farhad Abdullayev
Chairman of the Constitutional Court
of the Republic of Azerbaijan

Dear Colleagues,

On behalf of the Constitutional Court of the Republic of Azerbaijan, allow me please greet each of you and convey my best wishes to you. I extend my special greetings to the President of the Constitutional Court of the Kingdom of Thailand, Mr. Nakharin Mektrairat, all Judges and the Staff of the Court. And I wish successful holding of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions.

Our Association is expanding and becoming a very important legal platform. As we are aware, in any state governed by the rule of law, Constitution is the basis of the entire legislative system. The Basic Law is a supreme document that contains the legal basis for the effective protection of human rights and freedoms and at the same time ensures the stability and development of country.

Constitution, being the foundation of the state's legal system, ensures the implementation of the principle of social justice. And this, in its turn, is very important and significant for the development of the state governed by the rule of law.

Today, constitutional justice is one of important and effective mechanisms for ensuring the supremacy of Constitution, and it is also one of the integral attributes of the state governed by the

rule of law. The main function of constitutional review bodies is to control the compliance of laws and other normative legal acts with the state's Constitution. By this, the constitutional justice makes a significant impact on society as a whole and its development process, as well as on the legal stability of society. And the main purposes of the Constitutional Court in the Republic of Azerbaijan are also to ensure the supremacy of Constitution and to protect the basic rights and freedoms of everyone.

Dear friends, the 6th Congress of the Association is held on the eve of the 29th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 29), which will be held in November of this year in Baku, capital city of Azerbaijan. This prestigious and global event brings together all the countries of the world and is an important opportunity for all nations to pay attention to climate change and many other important problems on Earth that is our common home and to think over a healthy life for present and future generations. I am confident that the AACC members Courts will attentively keep track this event.

Once again, I greet and thank the Constitutional Court of the Kingdom of Thailand, which hosts the 6th Congress of Association, and wish success to all Congress participants.

Thank you for your attention.

"The Role of Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"

Hon. Mr. Prashant Kumar Mishra
Judge of the Supreme Court of the Republic of India

> *"What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on; and that will be bad for both"* - Lord Denning

1. Introduction

As guardians of the Constitution, the Apex court bears a profound responsibility to not only interpret the law but to ensure that constitutional justice serves as the foundation for a sustainable and equitable society. Constitutional courts, and equivalent institutions, are entrusted with the supreme duty of preserving the rule of law, safeguarding fundamental rights, and maintaining the delicate balance of power among various organs of government. The role of the Apex institution is not merely to adjudicate disputes but to act against any encroachments on constitutional principles and to settle issues involving constitutional interpretation, ensuring that the promises of justice, equality, and freedom embedded in our Constitutions are fulfilled.

The decisions of the courts have far-reaching consequences on governance, individual liberties, and the collective good. A judgment has a cascading effect on the parties of the proceeding,

their families and society at large. For eg. Orders like injunctions, bail, which give interim relief to the parties but also serve the larger societal purpose. Every trial is a quest for justice[1], and inquisitorial proceedings help to unearth the truth.

A sustainable society, in its essence, is one that balances the needs of the present without compromising the ability of future generations to meet their own needs. Sustainability is not limited to environmental concerns; it encompasses economic and social dimensions as well. In other words, it transcends environmental concerns, extending into social, economic, and political realms. Constitutional justice, therefore, becomes the linchpin for ensuring that this balance is achieved.

2. Constitutional Justice and Constitutional Supervision

The Constitution of India, the supreme law of the land, derives its legitimacy from the people, embodying their collective will and sovereignty. Far more than a legal instrument, the Constitution is a social document crafted to engineer a societal transformation by balancing individual and collective interests. It reflects the ideals, aspirations, and socio-economic realities of the nation, seeking to achieve social justice, equality, and fraternity while ensuring the dignity of every individual. As an organic and evolving document, it must be interpreted and applied to meet the ever-changing challenges of contemporary society.

Constitutional courts, including the Supreme Court of India, are entrusted with the vital responsibility of interpreting this living document in ways that not only resolve legal questions but also address the broader concerns of sustainable development.

---

[1] Ram Rameshwari Devi v. Nirmala Devi, by Justice Bhandari

Constitutional justice, in this context, aligns closely with the United Nations' Sustainable Development Goals (SDGs), particularly those related to justice (SDG 16), reducing inequalities (SDG 10), and environmental sustainability (SDG 13). By applying constitutional principles, constitutional courts play a pivotal role in ensuring fairness, equality, and the protection of fundamental rights, thereby contributing to the global mission of creating a more just and sustainable world.

Every action of the government must be consistent with the foundational principles set forth in the Preamble to the Constitution of India. The rule of law is paramount, as arbitrariness has no place in a constitutional democracy. The Constitution guarantees fundamental rights to individuals, and any violation of these rights allows citizens to directly approach the Supreme Court for redress.

Moreover, the Constitution recognizes that the state's efforts alone are insufficient; individual citizens must also contribute to the nation-building process. This notion of shared responsibility is enshrined in the Constitution through the inclusion of fundamental duties, which complement the rights and responsibilities of the people.

From the Magna Carta of 1215[2] to modern constitutions, constitutional documents have traditionally served as social contracts between the rulers and the ruled. They establish a purposeful division of powers among the executive, legislative, and judicial branches of government, ensuring that governance

---

[2] https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparlia ment/overview/magnacarta/#:~:text=Magna%20Carta%20was%20issued%20in,as%20a%20power% 20in%20itself.

is conducted within the framework of the rule of law. The Indian Constitution, born out of the struggles and aspirations of the freedom movement, reflects this historical legacy. It was designed not only to commemorate the fight for independence but also to shape the social fabric of the nation by striving to achieve the ideals of social, economic, and political justice as promised in the Preamble.

Constitutional supervision is a critical function performed by constitutional courts and equivalent institutions. This involves overseeing and ensuring that government actions are in compliance with the Constitution.

3. The Rule of Law: Ensuring Justice for All

At the heart of constitutional justice lies the unwavering commitment to the rule of law. The British Jurist A.V. Dicey explained the rule of law in terms of three principles (1) the absolute supremacy of law, (2) equality before law and (3) predominance of legal spirit. In the landmark Kesavananda Bharati decision of 1973, a 13-judge bench of the Supreme Court of India held[3] that the 'basic structure' of the Constitution of India could not be amended. The Rule of law and supremacy of the Constitution were held to be elements of this basic structure.

The Constitution of India envisages power and authority flowing from the Constitution itself and distributes these powers among three organs of the State. This separation of powers

[3] Kesavananda Bharati v. Union of India, 1973

ensures that there is no concentration of power in any one arm of government and safeguards against the abuse of power by providing checks and balances. Lord Macnaghten said, "There is no such thing as a perfect law. Doubtless the law is imperfect, and it would be imperfect even if it were made by a committee of archangels." Therefore, on several occasions a certain amount of transgression and encroachment of the functions between one by the other is a common phenomenon.

4. Constitutional Courts upholding constitutional morality and Constitutionalism

The successful working of a constitution depends upon the democratic spirit, that is, a spirit of, fair play, self-restraint, and mutual accommodation of differing interests and opinions. There can be no constitutional government unless the wielders of power are prepared to observe the limits upon governmental powers. All modern Constitutions and political thoughts have laid emphasis on the difference between Constitution and Constitutionalism. According to Prof. K.C. Wheare, *"Constitutionalism means government according to rule as opposed to arbitrary government"*. It means the government is limited by the terms of the Constitution, not government limited only by the desires and capabilities of those who exercise power.

Constitutionalism recognizes the need for the government but also insists upon limitations being placed upon government powers. Constitutionalism is about checks and balances and about limiting the totality of governmental powers. This ensures the rule of law, transparency, and accountability in governance, and protects the fundamental rights of citizens.

5. Access to Constitutional courts in India

The Constitution of India through Article 32 and Article 226 promises an effective mechanism to citizens hoping to secure the enforcement of their fundamental rights of every person to get access to courts in India. M. V. Pylee, Indian scholar and educationist writes in his book Constitutional Government in India that *"The first three clauses of the article 32, taken together make fundamental rights under the Indian Constitution real and as such that they form the crowing part of the entire fundamental right chapter*[4].

Describing Article 32 as the essence of the constitution, the Chief Architect of the Indian Constitution, Dr. BR Ambedkar once said, *"If I was asked to name any particular article in this Constitution as the most important-an article without which this Constitution would be a nullity, I could not refer to any other article except Article 32. It is the very soul of the Constitution and the very heart of it."*

A mechanism to ensure constitutional justice is the system of **writs**, which includes *habeas corpus, mandamus, certiorari, prohibition,* and *quo warranto*. These writs are issued by the courts to ensure that the government and its officials act in accordance with the law and do not violate the rights of citizens. Through this jurisdiction, individuals can file petitions with the High Court or the Supreme Court to seek the enforcement of their fundamental rights under Articles 32 and 226 of the Indian Constitution. Whereas under Article 226 writ can be issued to enforce the rights in Part III of the Constitution and for other purposes, even against the government.

---

[4] Nirmalendu Bikash Rakshit, Right to Constitutional Remedy : Significance of Article 32, Economic and political weekly, August- September 1999, Vol. 34, No. 34/35.

One of the most powerful tools in the hands of constitutional courts to strengthen constitutional justice for a sustainable society is **Public Interest Litigation (PIL)**. The expression 'Public Interest Litigation' means a legal action initiated in an appropriate court for the enforcement of public interest or generated interests in which the public or a class of the community has an interest founded on their constitutional or legal rights[5].

Even when no particular person has been legally injured but a public injury has been caused by the violation of constitutional principle, such as their independence of the judiciary, any person who is likely to be affected by such public injury, such as a lawyer, would be allowed to complain of such violation through a Public Interest Litigation.[6] In appropriate case, where the petitioner might have moved a Court in his private interest and for redressal of his personal grievance, the Court may in furtherance of public interest, treat it as an occasion and a necessity to inquire into the state of affairs of the subject of litigation. Thus, a private interest case can also in special circumstances transmit itself as a public interest cause.[7]

Hence, we can say that from halting deforestation to ensuring clean air and water, PIL has empowered the judiciary to act decisively in cases where executive and legislative actions have fallen short of constitutional mandates. It allows courts to take a proactive role in safeguarding the public interest.

---

5 Fertilizer Corporation Committee Kamgar Union V. Union of India, (1981) 1 SCC 568, Janata Dal v. H.S. Chowdhary, [1993] SC 892 (AIR)

6 S.P. Gupta v. Union of India, AIR 1982 SC 149.

7 Indian Bank's Association V. Devkala Consultancy Service, (2004) 11 SCC 1: AIR 2004 SC 2615.

6. Expanding the scope of Article 21

Iin creatively expanding the scope of Article 21 of Indian Constitution, Supreme Court in Maneka Gandhi v. Union of India,[8] read the 'due process guarantee' into the language of Art. 21. Prior to this decision courts had applied the lower threshold of 'procedure established of law'. This decision heavily drew from U.S. decisions and laid down the position of governmental action is subject to scrutiny on multiple grounds such reasonableness and non- arbitrariness.

Therefore, now the right to life, enshrined in the Constitution, is interpreted expansively to include the right to a healthy environment. In the landmark case of Justice K.S. Puttaswamy(Retd) v. Union of India,[9] the Supreme Court held "Right to privacy as a facet of Right to life." Thus, making the Right to privacy as the Fundamental Right of every person.

Timely justice is another important facet of access to justice. It is trite to add that in the endeavour to achieve speedy justice, the qualitative component of justice must not be lowered or compromised.[10] Therefore, in the catena of cases the courts have held that Fair trial and avoiding inordinate delay are an integral part of Article 21 of the Constitution.

[8] AIR 1978 SC 597

[9] AIR 2017 SC 4161, (2017) 10 SCC 1, [2017] 10 SCR 569

[10] Law Commission of India, 245th Report titled "Arrears and Backlog: Creating Additional Judicial (Wo)manpower"

7. Role of judges in dealing with dynamic legal issues and anomalies in statutes

> "The Constitution is not a mere lawyer's document, it is a vehicle of Life, and its spirit is always the spirit of Age."
> -Dr. B.R. Ambedkar

Even though almost the entire domain of law has been covered by multiple enactments made by the legislature, the ever evolving and growing principles have not yet reached the saturation point. Given the endless permutations and combinations of circumstances which may arise in future or which are outside the domain of existing legal recourses, it is clear that the legislature cannot predict and provide for all the exigencies. Hence, it is bound to be a vacuum between the existing laws made by the legislature and realities of life. Even if the legislature enacts legislation for 24 hours a day and 365 days a year, the quantum would not be enough for the dynamic needs of the modern society.[11] In such circumstances, a Judge must infuse life and blood into the dry skeleton provided by the legislature and create a living organism appropriate and adequate to meet the needs of the society.[12]

[11] A Prof. Dr. G.B. Reddy & Pavan Kasturi, A Comprehensive Analysis on Judicial Legislation in India, https://www.scconline.com/blog/post/2022/03/04/a-comprehensive-analysis-on-judicial-legislation-in- india/#:~:t ext=Judicial%20legislation%20is%20nothing%20but,constitutional%20prerogative%20of%20the%20legislatur

[12] Chief Justice P.N Bhagwati, Judicial Activism in India, https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf

Lord Denning, J. once observed that *"when a defect exists in a statute, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of parliament,... and then he must supplement the written words so as to give force and life to the intention of legislature." In other words, a Judge cannot blame the draftsmen for not making a provision for a certain kind of situation and say we will also do nothing. It is the duty of the judge to look for an answer or use his mind and creativity to settle the matter.*

However, this is based on the fact to fill the gap between the existing legal framework and the need for justice. while acting under a rule of law consciousness it involves a balance between *"Fiat justitia ruat caelum"* ('Let justice be done though the heavens fall') and *"Salus populi suprema lex esto"* ('The health of the people should be the supreme law' or 'Let the good (or safety) of the people be the supreme (or highest) law')

Time and again, broad guidelines have been issued by the Supreme Court to preserve human rights and constitutional values, thereby impacting the lives of millions. These beneficial changes inter alia include inter country adoption[13], tribals affected by the development projects of the State[14], recognising the transgender's right and identity, guidelines to be followed while arresting a person, guidelines for juvenile detainees[15], decriminalising passive euthanasia, guidelines on honour killings[16], placing limitations

[13] Laxmi Kant Pandey v Union of India [(1984). 2 SCC 244]

[14] Karjan Jalasay YASAS Samiti v State of Gujrat [AIR 1987 SC 532]

[15] Munna V State of U.P [AIR 1982 SC 928]

[16] Shakti Vahani v. Union of India [(2018) 7 SCC 192]

on the Presidential's rule and witness protection scheme[17] etc., to name a few. In cases of eminent necessity, the Hon'ble Supreme Court has played a proactive role in ensuring that policies adhere to constitutional morality. Landmark judgments such as the Vishaka case (1997), which addressed sexual harassment at the workplace, and the Bandhua Mukti Morcha case (1984), which focused on bonded labor, exemplify the Court's commitment to protecting vulnerable workers and upholding their dignity.

It is necessary to remember that judicial activism and judicial restraint are two sides of the same coin. Judicial restraint in the exercise of its functions is of great importance for the judiciary while discharging its judicial obligations under the Constitution. With a view to see that judicial activism does not become "judicial adventurism" and lead a Judge going in pursuits of his own notions of justice, ignoring the limits of law, the bounds of his jurisdiction and the binding precedents, the courts must act with proper restraint and self-discipline.[18] Judicial overreach refers to a situation in which a court, particularly a higher court, exceeds its authority or interferes excessively in the realm of other branches of government (such as the legislative or executive branches) or infringes on individual rights.[19]

---

[17] Mahender Chawla v. Union of India [(2019) 14 SCC 615]

[18] Anand, A.S. (1999, August 29). Inaugural Address of Hon'ble Dr. Justice A.S. Anand, Chief Justice of India at the Golden Celebrations of the Rajasthan High Court. Jodhpur, India. Available at: https://www.ebc-india.com/lawyer/articles/9907a1.htm#Note*

[19] David Landau and Rosalind Dixon, 'Abusive Judicial Review: Courts Against Democracy', (2020) 53 UC Davis Law Review 1313

8. Conclusion

The judiciary in India has also been provided with the power of judicial review, which enables it to review the constitutionality of laws, executive actions, and decisions of the government, and strike down any law or action of the government that violates the fundamental rights of individuals or is inconsistent with the Constitution. Article 13 of the Constitution of India declares that any law made in contravention of Fundamental rights can be declared null and void. Judicial review has implicit sanction under Articles 13, 32, and 226. The judiciary, therefore, plays a vital role in ensuring that the government does not overstep its bounds and adheres to the principles of the Constitution.

The Supreme Court is the guardian of the Constitution and takes steps to do complete justice. Article 142 of the Indian Constitution empowers the Supreme Court to pass any order necessary for doing complete justice in any matter pending before it. For example, in the case of MC Mehta v. Union of India, the Supreme Court ordered the closure of polluting industries in Delhi until they met certain pollution control standards. The court did this under Article 142, despite the fact that there was no specific provision in the law for such an order.

To conclude, The Constitution of India is the supreme law of the land, ensuring that all laws and policies conform to its provisions. The Constitution's supremacy is a cornerstone of the Indian democratic system, guaranteeing the rule of law and the protection of fundamental rights. Overall, the Indian Constitution has evolved over time, reflecting the changing needs and aspirations of the Indian people. The system of checks and balances, combined with the role of the judiciary in supervising the implementation of the Constitution, has helped to ensure that India remains a vibrant and functioning democracy.

"The Role of Constitutional Courts of the Republic of Indonesia in Enforcing the Principles of Sustainable Development*"

Hon. Mr. Suhartoyo, S.H, M.H.,
Chief Justice of the Constitutional Court
of the Republic of Indonesia

The Constitutional Court of the Republic of Indonesia has the authority, as stated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely to try, at the first and final level, the decision of which is final, to test laws against the Constitution, to decide on disputes over the authority of state institutions whose authority is granted by the Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding the results of general elections. Based on this authority, the Constitutional Court of the Republic of Indonesia carries out five functions: an observer of the Constitution, final interpreter of the Constitution, guardian of democracy, protector of citizens' constitutional rights, and protector of human rights.

The Constitutional Court handles cases by prioritizing the protection of citizens' constitutional rights as stated in the 1945 Constitution of the Republic of Indonesia, which is the basis for the implementation of national and state life, which contains citizens' constitutional rights, including the fundamental rights of citizens

* Paper presented during the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) under the theme of "The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society" in Bangkok, 19 September 2024.

to a clean, healthy and responsible environment in the context of sustainable management of natural resources, which is also contained in the goals of sustainable development.

Sustainable Development Goals (SDGS) are a manifestation of the agreement of 193 UN member countries in the framework of sustainable development, which contains seventeen sustainable development goals divided into 169 targets that correlate with each other with the intention that state development pays attention to these principles so that by 2030 the SDGs goals can be realized. Regarding the seventeen development goals, they can be simplified into four main SDGs goals, namely maintaining an increase in the economic welfare of the community in a sustainable manner, maintaining the sustainability of the community's social life, maintaining the quality of the environment and inclusive development, and implementing governance that can maintain an increase in the quality of life from one generation to the next. To realize the SDGs goals, a balance is needed between three important aspects of sustainable development, namely environmental protection, economic development, and social development, to realize the community's welfare and ensure sustainable development that involves the current generation and future generations.

In this regard, the objectives of the Indonesian state are stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely to protect all the people and all of Indonesia's territory; to advance public welfare; to educate the nation's life; and to participate in implementing world peace, based on independence, eternal peace, and social justice. Indonesia is a state based on the rule of law based on Pancasila, where the

implementation of its Government is based on the five principles of the state contained in the Preamble to the 1945 Constitution of the Republic of Indonesia with the principles of the One Almighty God, just and civilized humanity, the Unity of Indonesia, democracy guided by the wisdom of deliberation/representation, and social justice for all Indonesian people.

Sustainable development covers three policy areas: environmental protection, social development, and economic development, where the three are interrelated and become pillars driving sustainable development. The Constitutional Court of the Republic of Indonesia, concerning its contribution to sustainable development, can be reviewed from the implementation of its authority as stated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia and its function as the final interpreter of the Constitution.

The Constitutional Court of the Republic of Indonesia handled 1,852 cases of judicial review of laws from August 2003 to October 2024, with details of 322 cases granted, 711 cases rejected, 562 unacceptable, 209 cases withdrawn, 32 cases dropped, and 15 cases not authorized. In this regard, in this paper, the Constitutional Court will explain several Constitutional Court Decisions that are closely related to three aspects of sustainable development: environmental protection, social development, and economic development.

A. Environmental Protection

In case Number 35/PUU-XXI/2023, the Limited Liability Company (PT) Gema Kreasi Perdana as the Applicant filed a judicial review of the norm prohibiting mining in coastal areas and small

islands contained in Article 23 paragraph (2) and Article 35 letter k of the Law on Management of Coastal Areas and Small Islands against the 1945 Constitution of the Republic of Indonesia. In essence, the Applicant explained that there was an error in interpretation in the Decision of the Supreme Court of the Republic of Indonesia which interpreted that the prohibition on mining in coastal areas and small islands was unconditional so that the Applicant was threatened with not being able to continue his business activities.

Regarding the request to relax the mining prohibition requirements in coastal areas and small islands, the Constitutional Court considered by taking into account the background that Indonesia is an archipelagic country that also consists of coastal areas and small islands that generally have a variety of natural resource potentials as a gift from God Almighty and function, among others, as a buffer for the sovereignty of the Indonesian nation. If the small islands along the territory of the Unitary State of the Republic of Indonesia are not managed properly, they will gradually disappear or sink. Therefore, coastal areas and small islands need to be preserved and utilized for the greatest prosperity of the people, both for the present generation and for future generations.

Protection of coastal areas and small islands is in line with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This provision is the constitutional basis for realizing social justice in managing natural resources. Furthermore, to confirm the importance of balance between the environment, economy, and social justice, the norm of Article 33 paragraph (4) of the 1945 Constitution of the Republic

of Indonesia states that “The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.” This means that the goal of people’s prosperity as intended in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia cannot be denied that it is very dependent on the sustainability of natural capital resources and healthy ecosystems, so it is important to maintain and use natural resources sustainably, as well as maintain the condition of the ecosystem so that it remains healthy. The provisions of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia require sustainable development that is environmentally aware and just.

The Constitutional Court in its decision noted that one of the important characteristics of small islands and coastal areas is that their ecosystems are among the most vulnerable to extreme events caused by climate change. Based on a comprehensive academic study, it shows that small islands have a very high environmental risk and are very vulnerable to pollution and damage due to natural disasters or environmental changes, both natural and non-natural. Likewise, coastal areas are also very vulnerable to environmental pressures from the sea and land.

Furthermore, the Constitutional Court Decision Number 35/PUU-XXI/2023 emphasizes that the management of natural resources does not merely pay attention to the principle of efficiency to obtain maximum results, let alone only to benefit a small group of capital owners, but must be able to improve people’s welfare in a just manner. Therefore, in managing coastal

areas and small islands that are very vulnerable, it must be carried out carefully so that its activities do not cause very dangerous damage or are included in the doctrine of abnormally dangerous activity. This means that in the event of an interest in managing coastal areas and small islands that have implications for economic growth that impacts environmental damage if faced with the interests of maintaining environmental sustainability, then maintaining and preserving environmental sustainability must be a priority.

Considering the vulnerability of small islands and coastal areas, the Constitutional Court considers that the utilization of small islands and the surrounding waters is still possible, as long as the management of the small islands does not threaten environmental sustainability. Therefore, utilization interests other than those prioritized must meet the cumulative requirements, namely:

1. Fulfill environmental management requirements;
2. Pay attention to the capacity and sustainability of the local water system;
3. Use environmentally friendly technology; and
4. Pay attention to legislation related to using small islands and the surrounding waters.

The requirements are intended to prevent small islands and their surrounding waters from interests that can damage environmental sustainability and harm the constitutional rights of the people guaranteed by the Constitution, including threatening the sovereignty of the Unitary State of the Republic of Indonesia. Such threats include activities that meet the elements of abnormally dangerous activity that can cause extensive and ongoing damage, and cannot be restored to their original state. This cannot be separated from the purpose of establishing the Law on Coastal

Area and Small Islands Management, namely to protect, conserve, rehabilitate, utilize, and enrich coastal resources and small islands and their ecological systems sustainably.

Therefore, in this case, the Constitutional Court assessed all activities that are not intended to support the life of the ecosystem above it, including but not limited to interests outside of those prioritized, in this case, mining, which can be categorized as abnormally dangerous activities which in environmental law doctrine must be prohibited from being carried out. The Constitutional Court is of the opinion that the provisions of Article 23 paragraph (2) and Article 35 letter k of the Law on Coastal Area and Small Islands Management which the Applicant tested have not been proven to be contrary to fair legal certainty and discriminatory treatment as regulated in Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, not as argued by the Applicant. Thus, the Constitutional Court rejected the Applicant's application in its entirety.

B. Social Development

In case Number 22/PUU-XV/2017, Endang Wasrinah, Maryanti, and Rasminah, who work as housewives, filed the petition. The three Petitioners were married at the age of 13-14 years where after getting married, the Petitioners experienced economic difficulties and dropped out of school. The Petitioners are testing Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage (Marriage Law) which contains the provision "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years". According to the Petitioners,

the norm is considered a form of discrimination against women because it has a lower age limit for marriage than men.

Concerning the petition, related to the potential increase in the number of child marriages, the Constitutional Court considered that this would cause difficulties for the state in realizing the agreement on the new universal development agenda as stated in the document Transforming Our World: the 2030 Agenda for Sustainable Development Goals (SDGs) which contains 17 goals with 169 targets. The targets defined are aspirational and global, where each country's government can set its own national targets by referring to the spirit at the global level but adjusted to the national situation. The purpose of agreeing to this SDGs document is that by 2030 no one will be left behind in the context of poverty alleviation, one of which is by reducing the number of child marriages as stated in the Fifth Goal of the SDGs, namely "Achieve gender equality and empower all women and girls". One of the goals to be realized in Goal 5.3 of the SDGs is to eliminate child marriage (Eliminate all harmful practices, such as child, early and forced marriage).

The Constitutional Court observed that the development of the Indonesian state system marked by the amendment to the 1945 Constitution of the Republic of Indonesia in 1999 to 2002, there was a strengthening of the guarantee and protection of human rights in the Constitution with the inclusion of articles on the guarantee of human rights, including the right to form a family and the rights of children. The guarantee and protection of human rights in question is also a national agreement and is explicitly formulated in the Constitution. Strengthening the guarantee and protection of human rights requires the Indonesian nation to adjust past legal policies that are no longer in accordance with legal developments

and societal developments. In this case, including if there are legal products that contain different treatment based on race, religion, ethnicity, skin color, and gender, then they should also be adjusted to the wishes of the 1945 Constitution of the Republic of Indonesia which is anti-discrimination.

The Constitutional Court considers that child marriage is a form of violation of children's rights that can cause harm. This right is actually guaranteed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia that "Every child has the right to survival, growth, and development and has the right to protection from violence and discrimination". Furthermore, it is also emphasized in the Child Protection Law that children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, family, society, state, Government, and local Government. Children whose rights must be guaranteed, protected, and fulfilled are not yet 18 (eighteen) years old.

The Constitutional Court believes that Article 7 paragraph (1) of the Marriage Law is discriminatory because the difference in the minimum age limit for marriage contained therein has caused women to be treated differently from men in fulfilling their constitutional rights, both civil and political rights as well as economic, social and cultural rights, solely because of their gender. The constitutional rights in question include the following:

1. The right to equal treatment before the law
   The right to equal treatment before the law contained in Article 28D paragraph (1) of the 1945 Constitution has the potential to be violated because according to the Child Protection Law, the age of 16 for a woman is still classified

as a child, while in the Marriage Law, the minimum age limit for women to marry is 16 years where if they are married their status will change to that of an adult, while for men such a change is only possible if they have married at the age of 19;

2. Women's rights to grow and develop as children

   Women's rights to grow and develop as children have been guaranteed in Article 28B paragraph (2) of the 1945 Constitution, and have the potential to be violated due to norms that cause different treatment between women and men where men will enjoy the right to grow and develop as children for a longer period compared to women because the Marriage Law allows a woman to marry at the age of 16 while men are allowed to marry at the age of 19;

3. The right to have the opportunity to obtain an education that is equal to that of men

   The right to have the opportunity to obtain an education for women also has the potential to be obstructed because by allowing a woman to marry at the age of 16, her access to education will tend to be more limited compared to men, even to simply fulfill basic education, even though the right to education is a constitutional right of every citizen according to Article 28C paragraph (1) of the 1945 Constitution which should be enjoyed equally with men. In this regard, a woman who does not fulfill her basic education will potentially be considered to have violated her constitutional obligations because according to Article 31 paragraph (2) of the 1945 Constitution, every citizen must follow basic education. This means that if the minimum age limit for marriage of 16 years for women is maintained, this is not in line with the Government's

agenda regarding compulsory 12-year education because if a woman marries at the age of 16, she will lose the opportunity to obtain 12 years of education.

Based on these three rights, the regulation of different minimum age limits for marriage between men and women not only causes discrimination in the context of implementing the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, but also has caused discrimination against the protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In this case, when the minimum age for marriage for women is lower than for men, legally, women can form a family faster. This is different from the minimum age limit for marriage for men which requires waiting longer than for women. In addition, the difference in the minimum age limit more space for boys to enjoy fulfilling their rights as children because the minimum age limit for marriage for men exceeds the minimum age for children as regulated in the Child Protection Law.

Meanwhile, for women, the minimum age limit which is lower than the age of the child has the potential to cause children not to be able to fully enjoy their rights as children at the age of children, as mentioned above. The Constitutional Court also noted the differences and inconsistencies in several laws regulating the age limit for children, which cannot be separated from the age of marriage in the Marriage Law. In this case, the inconsistency in question is clearly seen in the provisions contained, among others, in the Child Protection Law. Article 7 paragraph (1) of the Marriage Law states, "Marriage is only permitted if the man has reached the

age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years." Meanwhile, Article 1 number 1 of the Child Protection Law states, "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb." Thus, the age limit for marriage for women as stipulated in Article 7 paragraph (1) of the Marriage Law, namely reaching the age of 16 (sixteen) years for women, is still categorized as a child according to Article 1 number 1 of the Child Protection Law. Therefore, the Constitutional Court is of the view that a marriage that is carried out below the age limit specified in the Child Protection Law is a child marriage.

When placed in a broader context, child marriage is very likely to threaten and have a negative impact on children, including their health because the ideal reproductive maturity limit has not been reached. Not only a health problem, marriages that have not exceeded the age limit for children are very likely to result in child exploitation and increased threats of violence against children. Above all, child marriage will have a negative impact on children's education. Within the limits of reasonable reasoning, if children's education is threatened, this has the potential to threaten one of the goals of the state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely to educate the nation's life, which will be difficult to achieve if the number of child marriages cannot be prevented in such a way.

Constitutional guarantees of children's rights give rise to obligations for all parties, including parents, families, the Government and the state, to protect, respect and fulfill children's rights. At the same time, these obligations are also accompanied by guarantees of children's rights during the period of care as children. In this

regard, the Constitutional Court believes that children's rights to be free from all forms of discriminatory treatment; exploitation, both economic and sexual, neglect, cruelty, violence and abuse, and injustice as regulated in Article 13 of the Child Protection Law must be enforced through guarantees of legal certainty for the absence of child marriage. At the time when legal policy, in Article 7 paragraph (1) of the Marriage Law, opened up space for child marriage to take place, this norm actually provided an opportunity for child exploitation to occur, both economically and sexually.

Even though the provisions of Article 7 paragraph (1) of the Marriage Law are a discriminatory legal policy based on gender, the Constitutional Court cannot immediately determine the minimum age limit for marriage. The Constitutional Court only emphasized that the policy that differentiates the minimum age limit for marriage between men and women is discriminatory, but determining the age limit for marriage remains the realm of the legal policy of the legislators where policies related to determining the minimum age limit for marriage can change at any time under the demands of the development needs of various aspects in society. Suppose the Constitutional Court determines a certain age limit as requested by the Applicants. In that case, this will certainly hinder the legislators in making changes when they have to adjust to society's development. Although determining the minimum age limit for marriage is a legal policy of the legislators, the legislators must carefully ensure that such a policy does not create legal uncertainty regarding protecting children's rights as part of human rights. Which legal uncertainty will arise due to differences in determining the age limit for children. The legislators must be consistent in determining their choice of legal policy regarding the age of the child in question. Furthermore,

through the Constitutional Court Decision 22/PUU-XV/2017, the Constitutional Court stated that it granted the Petitioners' petition in part. It stated that Article 7 paragraph (1) along the phrase "age 16 (sixteen) years" of the Marriage Law is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. Furthermore, the Constitutional Court stated that the provisions of Article 7 paragraph (1) of Law Number 13 of 2017 concerning Marriage remain in effect until changes are made following the time limit as determined in this decision and ordered the legislators to make changes to the Marriage Law within a maximum period of 3 (three) years, especially regarding the minimum age of marriage for women.

C. Economic Development

The third goal of the SDGs is to ensure a healthy and prosperous life. In contrast, the eighth goal includes another goal, namely increasing inclusive and sustainable economic growth. Regarding these two aspects, it can be concluded that in implementing economic growth, it is not only focused on per capita profits or orientation towards massive development that does not pay attention to sustainability but must also ensure that the community continues to have a healthy and prosperous life. In case Number 129/PUU-XIII/2015, the Applicants filed a petition based on the provisions of Article 36C paragraph (1) and (3), Article 36D paragraph (1), and Article 36E paragraph (1) of Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Animal Health (Law on Animal Husbandry and Animal Health) which in essence contains

provisions on the zone system in determining the entry/import of livestock or livestock/animal products into the country which according to the Applicants poses a risk of threatening the security, safety of humans, animals, and the environment, thus violating the constitutional rights of the Applicants as livestock breeders, livestock traders, veterinarians, and consumers of livestock products. Therefore, the Applicants requested that strict conditions be included in importing livestock products. After the Constitutional Court examined the norms submitted by the Applicants, it was found that there were no constitutional problems because they had included conditions and restrictions on using the zone system. However, in the implementation of imports of animal products, the Constitutional Court considers it necessary to provide confirmation of the conditions for importing animal products, especially because Article 36E paragraph (1) of the Animal Husbandry and Animal Health Law, which is also requested in this application, allows for the import of animal products originating from countries or zones within a country under certain circumstances.

The Constitutional Court is of the opinion that the issue of importing livestock and/or animal products from abroad into the territory of the Unitary State of the Republic of Indonesia, especially those originating from zones within a country, must also be based on maximum security requirements. Based on expert statements and facts at the trial, it was revealed that it is true that the current Government has technically prepared anticipatory measures related to meat imports into Indonesia, however, this does not necessarily guarantee that disease outbreaks cannot be fully guaranteed not to enter Indonesia.

After the Court examined expert statements related to meat import production practices, it was found that in the implementation of imports, if the amount of domestic meat production does not meet overall national needs, then the path that must be taken is to import from other countries either based on a country-based system (from a particular country) or with a zone system (from a particular zone within a country). The Constitutional Court observed that this is the implementation of the state's responsibility in meeting the food consumption needs of the community, especially the availability of animal products. Such import actions are part of an effort to create social welfare which is the state's obligation to make maximum efforts so that no citizen is hindered in their access to fulfilling their life needs. However, the fulfillment of these needs must not deny the rights of citizens to receive protection from all types of infectious diseases that enter the territory of the Republic of Indonesia through international trade activities, in this case the import of animal products where the constitutional rights of citizens to live in prosperity in a healthy environment are guaranteed in Article 28H paragraph (1) of the Constitution of the Republic of Indonesia which states, "Everyone has the right to live in prosperity physically and mentally, to have a place to live, and to have a good and healthy living environment and has the right to receive health services". Therefore, to avoid the entry of foot and mouth disease, every import of animal products that is needed must have a certificate of freedom from foot and mouth disease (PMK) from the veterinary authority of the country of origin per the provisions set by the world animal health agency and recognized by the Indonesian veterinary authority.

In the international environment, the precautionary principle in imports is also manifested in the agreements and provisions of the World Trade Organization (WTO), which essentially states that every WTO member country has the right to protect the life and health of humans, animals and plants in its territory by implementing technical requirements for animal health and plant health in line with the SPS (Sanitary and Phytosanitary) agreement. The principles contained in the SPS are harmonization, equivalence, and transparency. The state must apply the principle of maximum caution and security in importing any goods from outside into the territory of the Unitary State of the Republic of Indonesia. Therefore, importing animal products into the territory of the Unitary State of the Republic of Indonesia, especially through the zone system, must be seen as a temporary solution that can only be done under certain circumstances. Article 36E paragraph (1) of the Animal Husbandry and Animal Health Law states, “In certain cases, while still paying attention to national interests, the import of Livestock and/or Animal Products from a country or zone within a country that has fulfilled the requirements and procedures for importing Livestock and/or Animal Products may be carried out.” The explanation of Article 36E paragraph (1) of the Animal Husbandry and Animal Health Law then states, “What is meant by “in certain cases” is an urgent situation, including, among others, due to a disaster, when the community needs a supply of Livestock and/or Animal Products.” This condition must be applied in the use of the zone system when a country imports Animal Products into the territory of the Unitary State of the Republic of Indonesia, so that a contrario the Constitutional Court considers that without fulfilling the conditions in Article 36E paragraph (1) and its explanation,

the import of Animal Products from a zone within a country or with a zone system into the territory of the Unitary State of the Republic of Indonesia is unconstitutional.

Thus, in Decision Number 129/PUU-XIII/2015, the Constitutional Court granted the Petitioners' petition in part and stated that Article 36E paragraph (1) of Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Animal Health is conditionally contradictory to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as considered by the Constitutional Court in the decision. Furthermore, in case Number 105/PUU-XX/2022 with the same issue regarding the import of livestock and/or animal products from a country or zone within a country, the Constitutional Court in case 105/PUU-XX/2022 reminded the importance of state sovereignty over food security for the community where the governance and trade of livestock products need to be maintained in terms of both quantity and quality. The aspect of the quantity of livestock products needs serious attention from the Government to ensure the availability of domestic livestock products in sufficient quantities, empower domestic livestock farmers, and emphasize the importance of the state/government's support for domestic livestock farmers.

The Constitutional Court considers that the state/government's support for domestic livestock farmers is important to be attempted and implemented to encourage and create governance and trade in domestic livestock products so that they grow well, livestock farming becomes more enthusiastic, innovation in the livestock sector will be more advanced both through intensification and extensification methods of livestock products,

dependence on import substitution is getting lower, the livestock business climate becomes more conducive, and the welfare of livestock farmers is increasing. Regarding quality, the livestock products should meet maximum health standards to avoid disease outbreaks that can harm all parties.

This aspect is the responsibility of the Government together with livestock farmers and entrepreneurs in the livestock sector to work together to carry out efforts and procedures that meet livestock health standards, by the principles of maximum caution and safety. Likewise, increasing the aspect of supervision, both internally by the Government and externally by the House of Representatives, regarding the implementation of import policies implemented by the state so as not to harm national interests, especially environmental and public health.

Furthermore, the Constitutional Court re-cited the considerations of the Constitutional Court Decision Number 129/PUU-XIII/2015, which was pronounced in a plenary session open to the public on February 7, 2017, because the issue of unconstitutionality of the norm of the article requested for review by the Applicants along with the arguments or arguments used as the basis for the Applicants' request are substantially the same. The legal considerations in the decision also become legal considerations for the case regarding the Explanation of Article 36E paragraph (1) of Law 41/2014. Therefore, the argument of the request is legally groundless. Based on several examples of Constitutional Court Decisions above, it shows the importance of the role of the Constitutional Court in overseeing and upholding the 1945 Constitution of the Republic of Indonesia and protecting the constitutional rights of citizens which also contain and overlap with the principles and objectives of sustainable development.

Bibliography

1945 Constitution of the Republic of Indonesia

Decision of the Constitutional Court of the Republic of Indonesia Number 129/PUU XIII/2015

Decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU XV/2017

Decision of the Constitutional Court of the Republic of Indonesia Number 105/PUU XX/2022

Decision of the Constitutional Court of the Republic of Indonesia Number 35/PUU XXI/2023

"The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice For Sustainable Society"

Hon. Ms. Elvira Azimova
Chairperson of the Constitutional Court
of the Republic of Kazakhstan

Dear Ladies and Gentlemen!

By welcoming you on behalf of the Constitutional Court of the Republic of Kazakhstan, I would like to express my sincere gratitude to the Chairman of the Constitutional Court of the Kingdom of Thailand, Mr. Nakharin Mektrairat for organizing this significant event of our esteemed Association.

Constitutional Courts and Equivalent Institutions are the guardians of the principles of the Constitution which play an essential role in ensuring the rule of law and protecting the rights and freedoms of citizens. Being the cornerstone of the legal system of any state, they not only protect fundamental rights but also contribute to the stability and sustainability of society in the face of challenges and changes of our time.

Being committed to the Sustainable Development Goals, Kazakhstan carried out four comprehensive packages of political and constitutional reforms in 2022, in which the protection of human rights and freedoms is the main priority.

All reforms are based on the concept of the "Listening State," the main component of which was the transition from state-building on the principle of 'top-down' to the development of democracy of the principle of 'bottom-up'.

The main results of these reforms, which laid the institutional foundation of the human rights system of our country restoration of the Constitutional Court and the strengthening of national human rights institutions. Now, along with the subjects of state power, citizens, the Ombudsman, and the Prosecutor General can be subjects of appeal (to date, 2 appeals have been received from the General Prosecutor of the Republic of Kazakhstan).

Thus, the Constitutional Court, on the one hand, has become important element of **Kazakhstan's system of checks and balances** and, on the other hand, a crucial institution for **protecting human rights through the lens of the Constitution**.

The Constitutional Court is accessible to all citizens:

Firstly, before applying to the Constitutional Court to exhaust all other legal remedies is not required.

Secondly, there are no financial barriers, as no state fees are required for filing an application.

Thirdly, socially vulnerable citizens are provided with the assistance of lawyers, legal consultants, as well as the service of interpreters and a sign language specialist at the expense of the State.

In continuation of the approach to ensuring access to justice for all citizens on the initiative of the Constitutional Court, a translation of the Constitution in Braille was prepared (the publication has transferred to 57 State special educational organizations and the State library).

The Constitution in Braille reaffirms our efforts to ensure an information environment for persons with disabilities, their full and effective integration into society, based on international standards.

In June of this year, at a joint meeting of the Chambers of Parliament, I voiced the Message of the Constitutional Court on the state of constitutional legality in the country based on the results of generalization of the practice of constitutional proceedings.

The Address reflects the main activities of the Constitutional Court, the decisions of which have an impact on the improvement of the current legislation of the Republic of Kazakhstan, the transformation of judicial practice and legal science. The final decisions reflect the existing problems in the country’s legislation, including the definition of the main approaches to the development of normative legal acts relating to the observance and protection of constitutional rights and freedoms of citizens. It reflects recommendations to the Government, the Supreme Court and the Parliament of the country to improve the current national legislation.

Thus, the Address of the Constitutional Court makes it possible to identify the problems that have arisen in society that require improvement of the legislation of the Republic of Kazakhstan, which is confirmed by the appeals received by the Constitutional Court.

On the basis of the normative decisions of the Constitutional Court, 9 normative legal acts were adopted, including constitutional laws, laws and normative resolutions of the Supreme Court regarding criminal and family legislation.

When making final decisions, the Constitutional Court must take into account the provisions of international legal acts generally recognized and ratified by Kazakhstan. From the final decisions of the Constitutional Court, the following decisions can be distinguished:

The Constitutional Court declared unconstitutional the requirement that citizens must submit the conclusion of a molecular genetic examination when filing an application to the court for adoption in a simplified manner. Based on the results of the verification of the relevant application, the Constitutional Court recommended to provide an opportunity to file an application without conducting a molecular genetic examination in cases where a citizen is temporarily unable to pay its cost or plans to conduct it this examination in the course of the trial. The lack of molecular genetic examination should not be an obstacle to going to court. This approach contributes to the best interests of the child, as established by Article 3 of the UN Convention on the Rights of the Child. The Constitutional Court pointed out the illegality of establishing as a condition for citizens to apply to the court the requirement to conduct a molecular genetic examination before their appeal to the court. The requirement introduced for the courts was canceled by the Supreme Court as inconsistent with the state's duty to ensure the best interests of the child.

In addition, on the basis of the final decision of the Constitutional Court, the conditions of detention of those sentenced to life imprisonment in terms of the number of visits with relatives were equalized by the Parliament with similar conditions for other convicts in order to non- discriminate in social relations in accordance with the UN minimum standards for the treatment of prisoners *(Nelson Mandela Rules)*.

As a result of another constitutional proceeding, the Constitutional Court recommended that the Government take measures to improve legislation in terms of social protection of citizens affected by nuclear tests, regardless of the fact of their

subsequent departure from the region, but taking into account the real environmental damage and the constitutional right to health protection.

As you can see, the decisions taken undoubtedly contribute to the establishment of the supremacy of the Constitution over other laws and ensure a uniform understanding by practitioners and legislators of guarantees for the protection of human rights and obligations of state bodies.

Ladies and gentlemen, in today's world, constitutional courts are facing new challenges, such as technological innovations, changes in societal values and globalization. They must be flexible and open to new interpretations, while maintaining rigor and independence in their decisions.

One of the key aspects of strengthening constitutional justice is the accessibility and transparency of the work of constitutional courts. Public trust in them depends on their ability to demonstrate objectivity and fairness in decision-making. In this context, not only the legal expertise of judges is important, but also their independence from external influences and political pressures.

Finally, I want to emphasize that constitutional justice is not limited to the formal judicial process. It is also the active participation of civil society in the protection and promotion of constitutional values. Civic engagement, education and information in the field of human rights and constitutional law play a fundamental role in strengthening the rule of law and a sustainable society as a whole.

In conclusion, let me once again thank you for the invitation to take part in today's event and wish everyone a productive dialogue.

Thank you for your attention!

Выступление Председателя Конституционного Суда Республики Казахстан Э.Азимовой на 6-ом Конгрессе AACC «Роль конституционных судов и эквивалентных институтов в укреплении конституционного правосудия для устойчивого общества»

Уважаемые дамы и господа!

Позвольте поприветствовать Вас от имени Конституционного Суда Республики Казахстан и выразить благодарность Председателю Конституционного Суда Королевства Таиланд г-ну Накхарин Мектрайрату за организацию очередного Конгресса нашей Ассоциации.

Конституционные суды и эквивалентные институты являются стражами принципов Конституции, играют ключевую роль в обеспечении верховенства права и защите прав и свобод граждан. Являясь краеугольными камнями правовой системы любого государства, они не только защищают основные права и свободы граждан, но и способствуют стабильности и устойчивости общества в условиях перемен и вызовов современности.

Ведь верховенство права, будучи правовым принципом, имеет огромное значение для общего развития и благосостояния общества.

Будучи приверженным целям устойчивого развития, в 2022 году Казахстан провел четыре пакета политических и конституционных реформ, в которых защита прав и свобод человека является основным приоритетом.

Все реформы основаны на концепции «Слышащего государства», основным компонентом которой стал переход от государственного строительства по принципу «сверху вниз» к развитию демократии на принципе «снизу - вверх».

Главным результатом этих реформ, заложившим институциональную основу правозащитной системы нашей страны, стало воссоздание Конституционного Суда и укрепление национальных институтов по правам человека. Теперь субъектами обращения наряду с субъектами власти могут быть граждане, омбудсмен и Генеральный Прокурор *(на сегодня поступило 2 обращения от ГП РК)*.

Таким образом, Конституционный Суд, с одной стороны, стал важным элементом казахстанской **системы сдержек и противовесов,** а с другой стороны **– соблюдение прав человека обеспечивается исключительно через призму Конституции.**

Созданный орган является доступным для всех граждан.

Во-первых, до обращения в Конституционный Суд не требуется исчерпание всех других способов защиты своих прав.

Во-вторых, отсутствуют финансовые барьеры для граждан, а именно - не взимается государственная пошлина за обращение в Конституционный Суд.

В-третьих, социально уязвимым гражданам за счет государства оказываются помощь адвокатов, юридических консультантов, а также услуги переводчиков и специалиста по жестовому языку.

В продолжении подхода по обеспечению доступа всех граждан к правосудию по инициативе Конституционного Суда впервые подготовлен перевод Конституции на языке Брайля *(тираж издания был передан в 57 государственных специальных организаций образования и библиотечной системы)*.

Конституция на языке Брайля подтверждает наши усилия по обеспечению равных возможностей с целью полной интеграции, основываясь на международных стандартах.

В июне текущего года на совместном заседании Палат Парламента мной было озвучено Послание Конституционного Суда о состоянии конституционной законности в стране по результатам обобщения практики конституционного производства.

В послании отражена основная деятельность Конституционного Суда, решения которого оказывают влияние на совершенствование действующего законодательства Республики Казахстан, трансформацию судебной практики и правовой науки. В итоговых решениях отражаются имеющиеся проблемы в законодательстве страны, в том числе в определении основных подходов к разработке нормативных правовых актов, касающихся вопросов соблюдения и защиты конституционных прав и свобод граждан. В нем отражены рекомендации Правительству, Верховному Суду и Парламенту страны по совершенствованию действующего национального законодательства.

Таким образом, Послание Конституционного Суда позволяет выявлять назревшие в обществе проблемы, требующие совершенствования законодательства Республики Казахстан, что подтверждают поступающие в Конституционный Суд обращения.

На основе нормативных постановлений Конституционного Суда приняты 9 нормативных правовых актов, в числе которых конституционные законы, законы и нормативные постановления Верховного Суда касательно уголовного и семейного законодательства.

При принятии итоговых решений Конституционный Суд обязательно учитывает положения общепризнанных и ратифицированных Казахстаном международных правовых актов. Из итоговых решений Конституционного Суда хочу привести три решения как примеры.

Конституционный Суд признал неконституционным требование об обязательности представления гражданами заключения молекулярно- генетической экспертизы при подаче заявления в суд об усыновлении (удочерении) в упрощенном порядке. По итогам проверки соответствующего обращения Конституционным Судом рекомендовано исключить как

условие доступа гражданина требование наличия у него молекулярно-генетической экспертизы в случаях, когда гражданин временно не в состоянии оплатить ее стоимость или планирует провести данную экспертизу в ходе судебного разбирательства. Отсутствие молекулярно-генетической экспертизы не должно быть препятствием для обращения в суд. Такой подход способствует наилучшему обеспечению интересов ребенка, установленных статьей 3 Конвенции ООН о правах ребенка. Введенное для судов требование было отменено Верховным Судом как несоответствующее обязанности государства по наилучшему обеспечению интересов ребенка.

Кроме того, на основании итогового решения Конституционного Суда условия содержания осужденных к пожизненному лишению свободы в части количества свиданий с родственниками Парламент уровнял с аналогичными условиями для других осужденных с целью недискриминации в социальных связях в соответствии с минимальными стандартами ООН по обращению с заключенными *(Правила Нельсона Манделы)*.

По итогам другого конституционного производства Конституционный Суд рекомендовал Правительству принять меры по совершенствованию законодательства в части социальной защиты граждан, пострадавших вследствие ядерных испытаний, независимо от факта их последующего выезда из региона, однако с учетом реального экологического ущерба и конституционного права на охрану здоровья.

Как видите, принятые решения, бесспорно содействуют установлению верховенства Конституции над другими законами и обеспечивают единообразное понимание практиками и законодателями гарантий защиты прав человека и обязательств государственных органов.

Уважаемые дамы и господа, в современном мире конституционные суды сталкиваются с новыми вызовами, такими как технологические инновации, изменения в общественных

ценностях и глобализация. Они должны быть гибкими и открытыми для новых интерпретаций, сохраняя при этом строгость и независимость в своих решениях.

Одним из ключевых аспектов укрепления конституционного правосудия является доступность и прозрачность работы конституционных судов. Общественное доверие к ним зависит от их способности демонстрировать объективность и справедливость в принятии решений. В этом контексте важна не только правовая экспертиза судей, но и их независимость от внешних влияний и политических давлений.

Наконец, хочу подчеркнуть, что конституционное правосудие не ограничивается только формальным судебным процессом. Это также активное участие гражданского общества в защите и продвижении конституционных ценностей. Гражданская активность, образование и информирование в области прав человека и конституционного права играют фундаментальную роль в укреплении правового государства и устойчивого общества в целом.

В завершение своего выступления, разрешите еще раз поблагодарить за приглашение принять участие в сегодняшнем мероприятии и пожелать всем продуктивного диалога.

Благодарю за внимание!

"The Evolvement of Constitutional Justice for Sustainable Justice in the Changing World"

Hon. Mr. Youngjin Lee
Justice of the Constitutional Court
of the Republic of Korea

1. Greeting

Honorable President of the Constitutional Court of the Kingdom of Thailand, Distinguished Presidents and Chief Justices of AACC member institutions, Esteemed Justices,

Ladies and Gentlemen,

Allow me to extend my gratitude to the organizers for successfully coordinating the 6th AACC Congress and to express my appreciation to all participants. I am pleased to have the opportunity to share the Constitutional Court of Korea's experience on this timely topic of "Strengthening Constitutional Justice for Sustainable Society by Constitutional Court."

2. Main Parts

(1) The 'Sustainable Development Goals' were adopted as global objectives to achieve sustainable development by the United Nations in 2015. The Goal 16 of SDGs is to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive at all levels."

Recently, there have been several significant cases regarding this matter among the decisions of the Constitutional Court of Korea. They are about prohibiting discrimination against foreigners and ensuring fair treatment to them. These align with the goal of achieving sustainable justice. Let me introduce three notable cases.

(2) The first case concerns discrimination against foreign nationals in the national health insurance system (2019Hun-Ma1165, Sep. 26, 2023).

According to the National Health Insurance Act, if a Korean self-employed insured fails to pay insurance contributions six times or more, the National Health Insurance Service can decide to suspend insurance benefits. However, in the case of a foreign self-employed insured, insurance benefits are immediately suspended after just one instance of failing to pay insurance contributions.

The Constitutional Court held that the challenged provision infringed upon complainants' right to equality and violated the Constitution because it was a discrimination deviating significantly from a reasonable standard. The main rationale is as follows:

a) It is unreasonable to discontinue insurance benefits immediately after a single instance of overdue premiums without considering the individual's past payment history or economic circumstances. It is also unreasonable to deny benefits without exception, even if the missed premiums are fully paid afterward.

b) Allowing foreigners to subscribe to the health insurance serves the public objective of providing public insurance, which applies the principle of social solidarity, to foreigners. However, the challenged provision can lead to a fatal consequences of foreign nationals to give up necessary medical treatments and surgeries, or to lose the economic foundation of their livelihood.

c) The second case pertains to the eligibility for emergency disaster relief payments due to COVID-19 (2020Hun-Ma1079, March 28, 2024).

The Korean government offered emergency disaster relief payments to support people affected economically by the COVID-19 pandemic. The subject matter of review was the processing criteria for the relief payments in May 2020. Under the criteria, permanent residents and marriage immigrants[1] were eligible for the assistance while recognized refugees[2] were excluded from it.

The Constitutional Court found that "determining the eligibility of emergency disaster relief payments falls within the State's broad discretion. However, by including only permanent residents and marriage immigrants among foreign nationals while excluding recognized refugees, the criteria constitute discrimination without justifiable reason, thereby infringing upon the Complainant's right to equality and violating the Constitution." The main rationale is as follows:

a) Recognized refugees as well as permanent residents and marriage immigrants are all economically affected by the COVID-19 pandemic.

b) There is no justifiable reason for treating recognized refugees differently from permanent residents and marriage immigrants. They reside in Korea, engage in work and economic activities, and pay taxes.

c) Considering the number of recognized refugees, providing the relief payments to them would not pose a significant financial burden.

---

[1] Foreigners residing in Korea who have been married to Korean citizens or are in a marital relationship with a Korean citizen

[2] Foreigners who are recognized as refugees under the Refugee Act

(4) The third case concerns a provision of the Immigration Act regarding the detention of deportees with no upper time limit (2020Hun-Ka1, etc., March 23, 2023).

The challenged provision allowed foreign nationals under a deportation order to be placed in protective custody until they could be sent abroad while not setting an upper time limit on the custody. The Constitutional Court held that not setting an upper time limit violated both the rule against excessive restriction and the principle of due process of law, and thus infringed the personal liberty and violated the Constitution.

The main grounds for finding that the challenged provision violates the rule against excessive restriction are as follows:

a) Protective custody is a temporary and provisional measure. Allowing indefinite custody goes beyond the limits of temporary and provisional measures.

b) The relevant law should stipulate an upper limit to prevent unreasonable extension. In light of international standards and overseas legislations, it is not impossible to set an upper limit. c) Enforcing deportation orders can be achieved by other means, such as restricting the place of residence and paying an appropriate amount of deposit.

The main grounds for concluding that the challenged provision violates the principle of due process is that "the protective custody can be deemed equivalent to 'arrest or detention' in criminal proceedings. However, there is no mechanism to oversee the initiation or extension by an independent and impartial institution." But there was also a dissenting opinion by three justices. The opinion noted that "The precedent in 2018 determined that the challenged provision did not violate the Constitution. Considering

the characteristics of immigration control administration and related systems and practices of the protective custody, the precedent's position still remains valid."

3. Assessment and Conclusion

The abovementioned decisions affirmed the unconstitutionality of challenged provisions which infringed foreigners' right to equality or personal liberty. The decisions were to improve the eligibility of foreigners to access the health insurance; to grant them eligibility to receive emergency disaster relief payments; and to ensure the personal liberty of foreigners who are not even deemed eligible to stay in Korea.

Korea has vibrant exchanges with foreign countries. The number of foreigners in Korea has been growing over time. In this context, the decisions mentioned above mark an encouraging milestone towards sustainable justice, as they have prompted the establishment and implementation of non-discriminatory laws and policies for foreigners.

In summary, I have presented a selection of cases by the Constitutional Court of Korea. I hope these will contribute to the advancement of constitutional adjudication in Asia. Thank you for listening.

"The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice For Sustainable Society"

Hon. Mr. Emi Oskonbaev
Chairman of the Constitutional Court
of the Kyrgyz Republic

Уважаемые участники конгресса!

Прежде всего, от имени Конституционного суда Кыргызской Республики и от себя лично позвольте поприветствовать всех участников этого мероприятия.

Тематика сегодняшней сессии крайне актуальна и важна, особенно в условиях современных вызовов и трансформаций в правовых системах большинства стран мира. Органы конституционного контроля и эквивалентные институты играют ключевую роль, поскольку на них возлагается важная миссия по обеспечению верховенства Конституции, защите прав и свобод граждан, а также поддержанию стабильности и устойчивости государственного строя.

Современные вызовы для конституционного правосудия включают адаптацию к быстро меняющимся условиям цифровой эпохи, глобализации и новым вызовам в области защиты прав человека. И в этой связи органы конституционного контроля должны разрабатывать новые методы интерпретации и применения конституционного права, учитывая изменения в общественной жизни и технологические инновации, а также укреплять международное сотрудничество и обмен опытом с другими конституционными судами для совершенствования правоприменительной практики и обеспечения эффективной защиты прав граждан.

В соответствии с современной доктриной конституционализма реальность Конституции (живая Конституция) обеспечивается соответствием правовых актов и действий государственных органов и их должностных лиц конституционным положениям, а также наличием конституционной юрисдикции.

Конституционное правосудие, осуществляемое специальными акторами, прежде всего гарантирует, что все законы и иные нормативные правовые акты соответствуют конституционным принципам и нормам. Это основа правового государства и правопорядка, обеспечивающая равенство всех перед законом и защиту основных прав и свобод граждан.

Нынешнее понимание конституционализма включает два основных аспекта: первый связан с ограничением действий государства конституцией, а второй – с политико-правовой теорией, объясняющей необходимость установления конституционного строя.

Основные принципы конституционализма включают не только формальное соблюдение конституции, но и систему разделения властей, демократический политический режим, многопартийность, идеологический плюрализм, а также неотъемлемые права личности, что в совокупности обеспечивает реальное ограничение мощи государственной власти.

Конституционализм как правовое явление означает не только сам факт наличия конституции, а прежде всего, ее активное воздействие на политическую жизнь, верховенство и прямое действие конституции как Основного Закона государства в системе действующего законодательства. При этом заключает в себе конституционную регламентацию государственного строя и политического режима, конституционное признание прав и свобод личности, правового характера взаимоотношений гражданина и государства.

Важно отметить, что в юридической науке, термины «конституция» и «конституционализм» не отождествляются, отдельные исследователи придерживаются мнения, что конституционализм является многоуровневой системой, функционально выходящей за рамки конституции и права в целом. Первоочередной же концепт конституционализма кроется в совокупности идей, принципов и правил, связанных с решением вопроса о том, как развивать правовую и политическую систему, которая, насколько это возможно, исключала бы произвол и гарантировала основные права и свободы личности, публичную и частную жизнь индивида.

Возвращаясь к роли Конституционного суда в укреплении конституционного правосудия для устойчивого общества и не углубляясь в исторические аспекты становления и развития органа конституционного контроля моей страны, хочу обратить внимание на то, что часть 1 статьи 97 действующей Конституции определяет Конституционный суд как высший орган судебной власти, осуществляющий конституционный контроль посредством конституционного судопроизводства в целях защиты основ конституционного строя, основных прав и свобод человека и гражданина, обеспечения верховенства и прямого действия Конституции.

В этом контексте основная роль в достижении реальности Конституции отводится органу конституционного контроля и его предназначению. Осуществление конституционного контроля предполагает право принимать решения о несоответствии Конституции вступившего в силу закона или его отдельных норм и тем самым лишать их юридической силы.

Здесь следует отметить, что возрождение Конституционного суда в качестве самостоятельного и независимого органа, подобно птице Феникс, восстающей из пепла, было длительным и сложным процессом.

Действующая Конституция, сыгравшая ключевую роль в восстановлении органа конституционного контроля, является продуктом компромисса, учитывающего интересы основных политических сил общества в вопросах, таких как ограничение государственного вмешательства в жизнь общества, права индивидуумов, организация и функционирование государственной власти, а также защита прав и свобод личности. Принцип разделения властей закреплен на конституционном уровне, обеспечивая систему сдержек и противовесов между тремя ветвями власти. Кроме того, Конституция гарантирует права и свободы, соответствующие международным стандартам прав человека.

Упоминание о длительности и сложности процесса возрождения не случайно, поскольку после событий 2010 года Конституционный суд в Кыргызстане был упразднен и конституционный контроль функционировал в составе Верховного суда с весьма усеченными полномочиями.

Данное обстоятельство, в контексте упразднения Конституционного суда, как института не осталось без внимания и Венецианской комиссии, заявившей в своём заключении к проекту новой редакции Конституции от 2010 года, что такое решение республики может рассматриваться как шаг назад в обеспечении верховенства права.

Вместе с тем, как показала практика, Конституционная палата продемонстрировала свою приверженность принципу верховенства Конституции в условиях самых различных критических ситуаций в общественно-политической жизни страны.

Однако факт остаётся фактом – результативность и эффективность конституционного контроля возможны только благодаря наличию специального независимого судебного органа – Конституционного суда. С учетом этого, новая Конституция не только восстановила статус Конституционного

суда как высшего органа судебной власти по конституционному контролю, который призван обеспечить защиту основных прав и свобод, верховенство и прямое действие Конституции, но также и расширила его полномочия, дополнив такими полномочиями, как дача официального толкования Конституции, разрешение споров о компетенциях между ветвями государственной власти; дача заключения о соблюдении установленного порядка выдвижения обвинения против Президента.

За это небольшое время мы смогли убедиться, насколько своевременным было решение о восстановлении статуса Конституционного суда в Кыргызской Республике как абсолютно незаменимого правового института для нашего молодого государства. Деятельность данного института способствует укреплению демократии и законности, его функционирование положило начало отечественной конституционной юстиции. С его появлением был воссоздан действенный механизм защиты Конституции. И в действительности в нашей стране появился тот государственный орган, который может и осуществляет конституционный контроль над всей нормативно-правовой базой государства.

Думаю, что конституционный контроль с одной стороны, является важнейшим средством «сдерживания» органов законодательной власти от попыток издания «неправовых» законов, нарушающих баланс властей в государстве, с другой стороны конституционный контроль за нормативными правовыми актами исполнительной власти позволяет «сдерживать» их от неправомерного нормотворчества, осуществляемого с превышением их полномочий. Действующая Конституция Кыргызской Республики наряду с новыми изменениями в вопросах совершенствования судебной системы определила новые подходы конституционного судопроизводства и правовое положение Конституционного суда.

Верховенство Конституции становится неким индикатором демократического развития современных государств, и обеспечение верховенства права и основных прав является важнейшим условием существования и развития любого демократического правового государства.

Обеспечение верховенства права тесно взаимосвязано с функционированием независимого Конституционного суда и всей судебной системы, иначе верховенство права будет лишь пустой формой, лишенной содержания. История показывает, что само по себе декларирование принципа верховенства права, а также прав и свобод человека и гражданина без реально независимой судебной ветви власти, обеспечивающей защиту прав и свобод человека и гражданина не дает возможности для их реализации.

Безусловно исходя из сущности Конституции, в ее верховенстве и защите должны быть заинтересованы все государственные органы, должностные лица и граждане. Однако именно деятельность органа конституционного контроля по обеспечению верховенства права свидетельствует о реально демократическом, правовом государстве, функционирующего в целях охраны конституции, обеспечения ее верховенства и стабильности, соблюдения принципа разделения властей, защите предусмотренных ею прав и свобод человека.

Указанные конституционные ценности, защищаются и претворяются в жизнь Конституционным судом посредством устранения противоречий в законах и иных нормативных правовых актах и приведении их в полное соответствие с Конституцией. В таких условиях, чрезвычайное значение приобретают решения конституционных судов, оказывающие влияние на всё законодательное регулирование и способствующие разрешению диссонансных ситуаций, возникших в процессе применения субъектами тех или иных правовых положений.

Так, посредством конституционной проверки законов, Конституционный суд обеспечивает гарантию верховенства Конституции, тождественной верховенству права и функционирование реального демократического государства, поскольку своими решениями способствует выработке действенного механизма обеспечения конституционных прав и свобод человека и гражданина.

Учитывая же, юридическую силу итоговых решений органа конституционного контроля, превосходящего любой закон, кроме самой Конституции, правовые позиции Конституционного суда ориентируют нормотворческие органы на последовательную и целенаправленную реализацию в законодательстве конституционных норм и ценностей.

Решения конституционного суда, устанавливающие в процессе конституционного судопроизводства недостатки правового регулирования и определяющие возможные способы их устранения, вместе с тем, влекут к тому же и юридические последствия, обусловленные прекращением действия нормы в неконституционном истолковании.

Подходы органа конституционного контроля, в ыраженные в принятых им решениях, послужили основой для преобразований в законодательстве, направленных на полноценную реализацию гарантированных Конституцией прав и свобод человека и гражданина.

И в заключение хотелось бы подчеркнуть о возрастающей роли Конституционного суда в упрочнении принципа верховенства права в Кыргызской Республики. Органом конституционного контроля сформулированы чёткие позиции, раскрывающие суть конституционных принципов равенства, презумпции невиновности, неотвратимости наказания, запрета на привлечение к ответственности дважды за одно и то же правонарушение и другие.

Эти аспекты подчеркивают не только важность работы Конституционного суда Кыргызской Республики в современной правовой системе, но и его стратегическое значение для обеспечения устойчивости и развития правового государства.

Благодарю за внимание!

"The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society - Perspectives from the Malaysian Judiciary"

Hon. Mrs. Tengku Maimun Binti Tuan Mat
Chief Justice of the Federal Court of Malaysia

[1] Upon the kind invitation of the Right Honourable the President of the Constitutional Court of the Kingdom of Thailand, I have prepared this presentation on the subject of 'The Role of Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society' centred on perspectives from the Malaysian Judiciary.

[2] I will begin with 'Constitutional Courts'. Many countries, for example Indonesia, Thailand, South Africa and Italy, possess Constitutional Courts. Such Courts typically sit as the highest Court of the land and only decide questions of law relating to their respective Constitutions. The Constitutional Court of Italy, for example, passes judgment on controversies regarding the constitutional legitimacy of laws and enactments having the force of law issued by the State of Italy and its Regions.[1] There can be no appeals against decisions of the Italian Constitutional Court.[2]

1 Constitution of Italy, Article 134.
2 Constitution of Italy, Article 137.

The Notion of a 'Constitutional Court' in Malaysia

[3] Malaysia, strictly speaking, does not have a specifically constituted and structured Constitutional Court. That said, the Federal Court which is the apex court of the country, may up to an extent be regarded as a Constitutional Court for the following three reasons.

(i) Firstly, Federal Court possesses exclusive original jurisdiction to determine any question as to whether a law made by Parliament or the State Legislatures is void on the basis that they had no power, to make that law. Additionally, the Federal Court has the exclusive jurisdiction to hear disputes between States or between the Federation and any State.[3]

(ii) Secondly, the Federal Court also possesses 'Advisory Jurisdiction' enabling the Yang Di-Pertuan Agong (the King) to refer to the Federal Court any question as to the effect of any provision of the Federal Constitution which has arisen or is likely to arise.[4]

(iii) Finally, the Federal Court also has 'Referral Jurisdiction' enabling the High Courts to transmit to the Federal Court, by way of a special case, any question of law of constitutional importance for direct determination by the Federal Court.[5]

---

3 Federal Constitution of Malaysia, Articles 4 and 128; Wong Shee Kai v Government of Malaysia [2022] 6 MLJ 102.

4 Federal Constitution of Malaysia, Articles 130.

5 Courts of Judicature Act 1964 [Act 91], sections 84 and 85.

[4] Apart from the above instances that are limited to the Federal Court, the structure of our Constitution expressly confers all Superior Courts (the High Courts, the Court of Appeal and the Federal Court) with the jurisdiction to determine constitutional questions. Hence, in light of our constitutional structure, the obligation to strengthen constitutional justice is not reposed in a single Court.

[5] As for 'sustainable society', the 1987 United Nations Brundtland Commission defines the concept as *"meeting the needs of the present without compromising the ability of future generations to meet their own needs."*[6] Since then, we have witnessed the proliferation and adoption of numerous sustainable development goals that most societies, including ours, have sought to emulate and enforce.

Constitutional Justice

[6] How do the concepts of constitutional courts (or their equivalent institutions) and sustainable society correlate? How are the provisions of a constitution enforced within the context of strong constitutional justice? These are the specific questions that this presentation seeks to broadly address.

---

[6] See: <https://www.un.org/en/academic-impact/sustainability#:~:text=In%201987%2C%20the%20United%20Nations,development%20needs%2C%20but%20with%20the>.

[7] A Judge's journey begins when he or she takes his or her oath of office to always preserve, protect and defend the Federal Constitution.[7] In the Malaysian system of constitutional adjudication, the Federal Constitution is supreme and hence, the failure to uphold its supremacy is itself a failure to uphold the very fabric of the written constitution.

[8] In fact, Article 4(1) forms the central pillar of the Federal Constitution in that it says *"[t]his Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."*

[9] For these reasons, the Malaysian Judiciary is accorded the fullest possible independence it requires in the Federal Constitution, the statutes and the Code of Ethics. What this means is that Judges must continue to hear cases without fear or favour, without bias or prejudice, and solely in accordance with the law and facts of the case before them. They cannot be governed by irrelevant considerations such as political palatability of their decisions or whether it brings them fame or popularity.

[10] A decision that is rendered must be one that is so rendered to uphold the Federal Constitution in accordance with trite constitutional principles and canons. This, in my view, would be the very embodiment of Rule of Law as opposed to Rule by Law.

[7] Federal Constitution of Malaysia, Sixth Schedule.

[11] Speaking of constitutional canons, and in addition to the Judge remembering to uphold judicial independence and integrity, a Judge (especially that of a constitutional court or its equivalent) must remember certain fundamental canons of constitutional interpretation.

[12] In broad terms, the development of Malaysian constitutional jurisprudence is as outlined in *Dato Menteri Othman Baginda,*[8] where Raja Azlan Shah CJ (Malaya) advised that a written constitution being a living document cannot be interpreted pedantically.

There are other concepts. The first concept is, constitutional provisions ought to be interpreted within their historical context. Another concept is that provisions that restrict fundamental rights must be construed as narrowly as possible with maximum latitude in favour of the person whose right is said to be restricted. Another concept would include having regard to the basic features of the written constitution that cannot be changed even by way of legislation having regard to the supremacy of the written constitution over the legislature.

[13] In Lee Kwan Woh the Federal Court further advised that fundamental rights must be interpreted 'prismatically'.[9] In other words, not only must the Courts give effect to the fundamental rights guaranteed literally by the black letter of the Federal Constitution, but the said fundamental rights must also be read to include implied rights, over and above the literal guarantee.

[8] *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29.

[9] *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301, [8].

[14] I take the strong view that there is no point in discussing the substantive aspect of fundamental rights if in the first place, Judges are not aware or worse still, shy away from their fundamental role as Judges.

[15] Thus, strengthening constitutional justice requires the Judiciary and its individual members (at all levels) to remain apprised of the intrinsic constitutional role of a truly independent Judiciary and the substantive aspects of constitutional interpretation.

[16] In this regard, I will now proceed to consider the substantive elements of the role of the constitutional courts in the context of doing constitutional justice vis-à-vis sustainable society.

Fundamental Rights as the Pillars of Sustainable Society

[17] It is my view that a sustainable society is one that complies with the Rule of Law. And in such a system, fundamental rights are guaranteed and preserved, and most importantly: enforced. This is because the cornerstone of a society is its people and thus, the most basic tenet of a sustainable society is its guarantee of fundamental rights. Without them, we cannot have a sustainable society that is adequately capable of passing itself on to future generations or even protecting the environment around it. In this regard, I find that the following views of some authors resonates strongly with me, as follows:[10]

---

[10] Sambo and Abdulkadir, 'Socio-Economic Rights for Sustainable Development in Malaysia: Lessons from Selected African Countries' Constitutions', OIDA International Journal of Sustainable Development 02:09 (2011), p. 14.

"Socio-economic rights have been seen as rights relating to the meeting of basic needs that are essential for human welfare. They are entitlements to the avoidance of severe deprivation, not rights to the satisfaction of individual preferences more generally. They incorporate a safeguard against poverty, not the provision of a life in luxury. They are urgent claims representing vital interests of the individual to avoid harm.

...

All these where properly implemented will lead to sustainable development which is the development that takes place without compromising the rights of the future generation to meet their own needs."

[18] What then is meant by 'socio-economic rights'? The answer to this question, in my view, is aptly addressed by the United Nations' Office of the High Commissioner of Human Rights ('**OHCHR**') in its Fact Sheet No. 33.[11] In the past, rights were broadly categorised into two distinct categories:

(i) civil and political rights; and
(ii) economic, social and cultural rights.

[11] UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 33, Frequently Asked Questions on Economic, Social and Cultural Rights,* December 2008, No. 33, available at: <https://www.refworld.org/docid/499176e62.html>.

In modern times, no practical distinction is made between the two broad species of rights because both require States to refrain from impinging on the fundamental rights and freedoms of their citizens.

[19] The Federal Constitution of Malaysia too makes no distinction between civil and political rights on the one side, and socio-economic rights on the other. All rights are broadly guaranteed under the umbrella of Part II of the Federal Constitution and are collectively referred to as 'Fundamental Liberties'. Section 2 of the Human Rights Commission of Malaysia Act 1999, for instance, defines "human rights" to refer to the fundamental liberties enshrined in Part II of the Federal Constitution.[12]

Constitutional Adjudication and Sustainable Society – The Role Played by the Malaysian Courts in the Protection of Fundamental Rights

[20] The term 'constitutional justice' as I understand it, connotes adjudication of cases under the Federal Constitution. In dispensing constitutional justice, the relevant provisions of the Federal Constitution that frequently fall for the Court's consideration are Article 5 on liberty of a person; Article 8 on equality; Articles 9 and 10 on freedom of movement and freedom of speech and expression, respectively; Article 11 on freedom of religion; Article 12 on rights in respect of education and Article 13 on rights to property. For the purpose of this presentation, I will focus on a few Articles only.

[12] Act 597.

[21] The first fundamental provision of the Federal Constitution is Article 5. It guarantees the right to life and personal liberty. Life is the ultimate right of a human being. Our Courts have accorded Article 5 a broad construction in the context of preserving socio-economic rights. The seminal authority in this context is the decision of the Court of Appeal in Tan Tek Seng.[13]

[22] In that case, a headmaster in a government school was dismissed on grounds that he had been convicted, though on appeal, he was later released on a bond of good behaviour. Regardless, as a result of his conviction, the Government dismissed him from their employment.

[23] The Court of Appeal concluded that his dismissal from the public service was a disproportionate punishment. Central to its judgment was the notion that the right to life should be read broadly so as to include the 'quality of life'. This is what the Court of Appeal held:[14]

> "... '[L]ife' appearing in art 5(1) does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life. Of these are the right to seek and be engaged in lawful and gainful employment and to receive those benefits that our society has to offer to its members. It includes the right to live in a reasonably healthy and pollution free environment."

[13] *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261.
[14] *Ibid.,* p. 288.

[24] The above passage is a clear example of how constitutional justice is strengthened by the expansion of the definition of the word 'life' employed in Article 5 of the Federal Constitution.

[25] Most notably, not only did the Court of Appeal protect the rights of the litigant in this case, it also accorded the substance of the right the widest possible construction available including the right to a clean environment. This after all, and in addition to the development of human kind and societies alike, epitomises the protection of the environment.

[26] In this regard, the recent decision of the Federal Court in Trellises comes into sharp focus on the practical effort to indirectly preserve the environment.[15] In that case, numerous litigants had sued the local authority for their plans to redevelop an area called Taman Rimba Kiara – a public park. The Federal Court propounded numerous principles in this case including an extensive analysis on local planning laws and how they ought to be enforced. In addition, the Federal Court liberalised the definition of locus standi in the law by allowing anyone affected or claiming to be affected by the destruction caused to the park to bring an action. By doing so, the Federal Court re-emphasised the importance of planning law and adhering to development plans.

[15] *Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals* [2023] 3 MLJ 829

[27] To me, this decision speaks volumes in terms of not just town and country planning, but also the overall positive effect it has on sustainable development. It allows the Courts to enforce development plans which has the corollary effect of protecting the right to environment, and the sustainable development of our towns and cities in cases where there are inexplicable deviations from a legally recognised development plan. Further, by not just developing a broad *locus standi* rule but also applying the broader test, the Federal Court has reaffirmed the important notion of access to justice.

[28] Another example of Courts protecting individual socio-economic rights and strengthening constitutional justice is that of the Court of Appeal in *Muhamad Juzaili bin Mohd Khamis.*[16] A group of men suffering from 'gender identity disorder' filed an application for judicial review challenging the constitutionality of an Enactment passed by the Negeri Sembilan State Legislature prohibiting them from cross-dressing. Their claim was premised on the argument that the enforcement of that law rendered them subject to harassment in violation of (among others) their right to privacy implied in Article 5 of the Federal Constitution and their right to express themselves under Article 10. The Court of Appeal agreed with them on allcounts and struck down the law so prohibiting them as being unconstitutional.[17]

[16] *Muhamad Juzaili bin Mohd Khamis & Ors v State Government of Negeri Sembilan & Ors* [2015] 3 MLJ 513.

[17] The decision of the Court of Appeal was reversed by the Federal Court on procedural grounds in *State Government of Negeri Sembilan & Ors v Muhammad Juzaili bin Mohd Khamis & Ors* [2015] 6 MLJ 736. But the Court of Appeal's decision on the merits received no adverse comment from the apex Court. Subsequently however, the Federal Court overruled its own decision in the *Juzaili case in Gin Poh Holdings Sdn Bhd v The Government of the State of Penang & Ors* [2018] 3 MLJ 417, at [33].

[29] Another fundamental facet of the Rule of Law and upon which a sustainable free society is built is the notion that there must be equality before the law.

[30] In Malaysia, the basic concept of equality before the law and equal protection of the law is contained in Article 8(1) of the Federal Constitution. Article 8(1) declares that all persons are equal before the law and are entitled to the equal protection of the law. The Federal Court in Badan Peguam Malaysia v Kerajaan Malaysia [2008] 2 MLJ 285 reiterated that Article 8(1) does not declare that all persons must be treated alike, rather that persons in like circumstances must be treated alike.

[31] Clause 5(a) – (f) of Article 8 of the Federal Constitution sets out the exceptions to the equality clause. Some of these exceptions are:

(i) personal law, i.e. some personal laws do not apply to Muslims in Malaysia, for example, the Probate and Administration Act 1959 and the Wills Act 1959. In relation to these matters, Muslims are subject to 'hukum syarak' or Islamic law under the purview of the Syariah Courts.

(ii) laws for aboriginal people where under the Federal Constitution, the aboriginal people of Malaysia enjoy a special position (see *Adong Kuwau & Ors v Kerajaan Negeri Johor & Anor* [1997] 1 MLJ 418; *Sagong bin Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors* [2002] 2 MLJ 591).

[32] There are many examples on the interpretation of the right to equality in a Malaysian context. Underpinning all these is the idea that unfair discrimination is the antithesis to equality. Discrimination can be justified in certain cases but if it cannot be constitutionally justified, then it is deemed unlawful.

[33] Article 8(2) of the Federal Constitution expressly forbids discrimination on the grounds of race, descent, place of birth or any gender unless expressly authorised by the Federal Constitution. The word 'gender' was added to the Federal Constitution via the Constitution (Amendment) (No 2) Act 2001 [Act A1130] which came into force on 28.9.2001.

[34] Recently, the Federal Court gave effect to Article 8(2) when it pronounced section 498 of the Penal Code, unconstitutional. Section 498 of the Penal Code provides that it is an offence to entice a married woman. It allows a husband to complaint against the enticement of his wife. A wife however is not allowed to complaint against the enticement of her husband. The Federal Court found that section 498 of the Penal Code unlawfully discriminates only on the ground of gender which is violative of Article 8(2). (see case of *PP v Lai Heng Beng* [2024] 2 MLRA 21.)

[35] There is another component of equality in the Malaysian context which I wish to highlight, namely: the doctrine of proportionality

[36] All laws must be proportionate to the legitimate legislative aim they are enacted to serve. In many parts of the world, narcotics

offences are proved with the aid of presumptions. In Malaysia, we have (among others) the presumption of possession and the presumption of trafficking. Prior to the decision of the Federal Court in *Alma Nudo*,[18] the legal position was stated in *Muhammad Hassan* in that the prosecution's interpretation of the then existing law to use double presumptions of trafficking on top of possession, was unduly harsh and oppressive absent any express language to allow the invocation of the double presumption.[19] Effectively, if the charge was one for trafficking, then to invoke the presumption of trafficking, possession would have to be proved and not presumed before invoking the presumption of trafficking.

[37] Subsequent to *Muhammad Hassan*, Parliament amended the law to include section 37A, a provision that then expressly allowed the prosecution to rely on the double presumption. It was this provision that became the subject of challenge in *Alma Nudo*.

[38] On the facts of the case, the Federal Court took the opportunity to expound on the concept of proportionality as a fundamental facet of the right to equality before the law. The Federal Court held that upon a wholesome consideration of section 37A, the net effect of allowing such a double presumption effectively shifted the burden on the accused to prove his innocence. In this regard, the Federal Court found that section 37A was grossly disproportionate to Parliament's legitimate aim of curbing narcotics offences.

---

[18] *Alma Nudo Atenza v Public Prosecutor and another appeal* [2019] 4 MLJ 1.

[19] *Muhammed bin Hassan v Public Prosecutor* [1998] 2 MLJ 273, at p. 289.

[39] The decision of the Federal Court, in my view, is very significant in terms of strengthening constitutional justice for sustainable soceity because the Court reemphasised the limits of legislative power within the borders of the Federal Constitution. The Rule of Law prevailed in the assurance that even Parliament must act in accordance with the Federal Constitution. The net effect of the doctrine of proportionality in Malaysia is to preserve a legal order that is predictable and fair and capable of forming the bedrock for a stable and sustainable society.

[40] The Malaysian Federal Constitution also guarantees every citizen the right to (i) freedom of speech and expression; (ii) right to assemble peaceably and without arms and (iii) right to form association. These rights are however not without restrictions. Freedom of speech can be restricted on the grounds of interest of security of the Federation or any part thereof; friendly relations with other countries; public order, public morality and restriction designed to protect the privileges of Parliament, the Legislative Assembly or to provide contempt of court, defamation or incitement of any offence. The following legislations have the effect of restricting the rights under Article 10(1) of the Federal Constitution:

(i) Printing Presses and Publication Act 1984;
(ii) Official Secrets Act 1972; and
(iii) Sedition Act 1948.

[41] As for freedom of association, the right is being regulated and governed by:

(i) Societies Act 1966;
(ii) Trade Union Act 1966; and
(iii) Universities and University Colleges Act 1971.

[42] Notwithstanding the restrictions, the Malaysian Courts have nevertheless strengthened constitutional justice by according protection to freedom of speech and expression.

[43] In *Mohd Faizal bin Musa v Kementerian Keselamatan Dalam Negeri* [2018] 3 MLJ 14, four (4) books authored by the appellant were banned by the respondent/Minister under section 7(1) of the Printing Presses and Publication Act 1984 on the ground that the publication of the appellant's books were prejudicial to public security and order. The issue in this case was whether the impugned order made by the Minister suffers from illegality, irrationality, procedural impropriety and unreasonableness.

[44] The High Court decided in favour of the Minister. On appeal to the Court of Appeal, the decision of the High Court was reversed. While acknowledging that the right to freedom of expression is not absolute, the Court of Appeal held that the order by the Minister to ban the books was illegal and that the order amounted to a restriction on the appellant's constitutional and fundamental right to freedom of expression. In so deciding, the Court of Appeal has indeed strengthened constitutional justice in relation to freedom of speech and expression.

[45] In terms of economic rights, not only do the Malaysian Courts engage in protecting, for example, the right of employment, but the courts had also given effect to Article 13 of the Federal Constitution which guarantees the right to property. The law through the Land Acquisition Act 1960 allows for compulsory acquisition of land by the State Authority if the land is needed inter alia for public purpose. In the event of compulsory acquisition of land, the law requires the owner to be compensated for the deprivation of his property. In Jais bin Chee & Ors v Superintendent of Land & Surveys Kuching Division [2014] 6 MLJ 439, it was held by the Court of Appeal that in order not to infringe Article 13 of the Federal Constitution, compensation should be construed to mean fair and adequate compensation.

[46] The Malaysian courts have indeed been vigilant in upholding the citizen's right to property. In the case of *Tenaga Nasional Bhd v Bukit Lenang Development Sdn Bhd* [2019] 1 MLJ 1, the Federal Court recognised that a statute should not be interpreted as to allow for the violation of an owner's right to quiet possession of the property and that any duty or obligation imposed by statute on any authority must be performed lawfully. The Federal Court stated that:

> "It is trite that a canon of interpretation that statutes which encroach upon rights, whether as regards persons or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is

in favour of the protection of individual rights should be adopted.”.

[47] On matters affecting the citizen’s right to property, in *Raqeem Rizqin Enterprise & Yg Lain lwn Ketua Polis Negara & Satu lagi* [2019] 8 CLJ 41, a case which concerns the freezing and seizure of assets/properties under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds Unlawful Activities Act 2001, the Court of Appeal acknowledged the need to balance the wide powers of the enforcement agency and the need to protect the rights of possession and peaceful enjoyment of the property guaranteed under Article 13 of the Federal Constitution. It was there held that where there are certain follow up actions to be taken within a prescribed period, and those actions have not been taken, the assets or properties seized must be released. In striking the balance, the Court has strengthened constitutional justice as regards rights to property.

[48] Article 13 of the Federal Constitution has also received a broad construction with the courts defining ‘property’ to include title to property acquired through native custom. In the case of *Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor* [1997] 1 MLJ 418, the indigenous people of Johor had successfully established their native customary rights over lands and that by such native custom, they had acquired a right to property over those lands. The lands were acquired by the State Government. The plaintiffs alleged that the acquisition was done without compensation. The State Government argued that the relevant written law did not expressly mandate the payment of compensation. Reading Article 13 into the relevant law, the High Court held that the State Government was

required by law to compensate the plaintiffs for the deprivation of their property. This case provides a good example of constitutional justice in terms of judicial protection of cultural rights inherent in socio-economic rights, which are basic needs essential for a sustainable society.

Conclusion

[49] Equal protection of the law, freedom of speech and movement, the right to life and personal liberty including privacy are the basic building blocks of all other rights that allow for the overall growth of humankind. Without their direct guarantee and preservation, I do not think that we can expect a society plagued by such misfortune to become a sustainable society.

[50] Malaysia, as with many other jurisdictions, may not have the perfect formula to address and resolve issues of constitutional justice in every case. Regardless, it is my humble view that it is important for the public to have access to justice and it is likewise important to remind ourselves of how as Judges, we play a vital role in dispensing constitutional justice pursuant to our respective Constitutions. Having said that, the Courts' role is limited to the extent that it can take on its role only when the jurisdiction of the Court is engaged.

[51] In other words, it is only when a litigant feels that he or she has been wronged and turns to the Courts for redress that we, as the last bastion of justice, exercise our duty to dispense constitutional justice. In discharging that duty, the independence of the judiciary

and the integrity of judges are paramount. It is only when Judges decide cases without fear or favour and without any pressure from within or outside can constitutional justice be strengthened and meted out. And this in turn, will allow us to become individual stable societies that can help in the collective effort of achieving our sustainable development goals.

Thank you.

"Changing Conceptions of Constitutional Justice: the Evolution of Constitutional Adjudication in Mongolia"

Hon. Mr. Dashbalbar Gangabaatar
Justice of the Constitutional Tsets of Mongolia

This paper examines Mongolia's legal traditions and sources of law before the introduction of its first written constitution, and also analyzes the written constitutions and their wider impact.

Before Mongolia adopted a formal constitution, the foundations of constitutional justice were already evident in its legal traditions from the Mongol Empire, especially during the reign of Chinggis Khaan. Chinggis Khaan's Ikh Zasag law comprised his decrees, orders, doctrines, and military regulations. In 1206, the Mongolian people assembled at the Ikh Khuraldai, or Great Assembly, where Chinggis Khaan enacted the Ikh Zasag laws, imposing them as binding on all subjects. While the complete code has not survived as a single document, fragments of these laws have been preserved and reconstructed from various sources over time.

The word Yassa first appeared in Petis de la Croix's book published in 1710.[1] Twenty-two provisions of the Ikh zasag law was listed in the book. These were later formulated by V.A. Riasanovsky's "Fundamental Principles of Mongol Law". Therefore, Ikh zasag means "Great Codes" and it was "not merely a code of criminal and civil law but a system of rules governing the entire political, social, military, and economic life of the community which adopted it."[2]

[1] Paris, 1710, Histoire du grand Genghizcan, The History of Genghiscan the Great, London, 1722.

[2] Poliak, A. N. "The Influence of Cẖingiz-Ḵẖān's Yāsa upon the General Organization of the Mamlūk State." *Bulletin of the School of Oriental and African Studies, University of London* 10, no. 4 (1942): 862–7

One of the most authoritative source of Mongolian history is the Secret History of Mongols written by a Mongolian or Mongolians. According to the Secret History of Mongols, at the khuraldai of 1206, Chingis khaan entrusted Shikhikhutag the power of judiciary and made him the "дээд заргач" or the Supreme Adjudicator or the Chief Justice. He said to Shikhikhutag, "Of the entire people Chastising the robber, Checking the liar, execute those who deserve death, punish those who deserve punishment. Furthermore, writing in a blue register all decision about the distribution and about the judicial matters of the entire population, make it into a book (i.e. permanent- record)". Until the offspring of my offspring, let no one change any of the blue writing that Shikhikhutag, after deciding in accordance with me, shall make into a book with white paper. Anyone who changes it shall be guilty"

It is particularly noteworthy that when Chingis Khan appointed the first Chief Justice, Shikhikhutag, he mandated that the Chief Justice consult with him before issuing a final judgment that would be binding on all citizens. This practice of dialogue remains embedded in Mongolian constitutional adjudication to the present day. Currently, while the Constitutional Court makes the final decision, it first submits its preliminary decision for Parliamentary deliberation. Such a consultative mechanism is relatively uncommon in constitutional adjudication systems worldwide.

Rashid-Ed-Din wrote that Chingis khan laid the foundation of the Yassak which composed of innovations and ancient rules. He clearly spoke of a Code of Law compiled by Chingis Khan. It is also worth to mention that Juwayni also wrote a chapter on Ikh Zasag code. He talks about the respect for religious toleration,

official communication system or the horse post system, taxation, the great affairs of the state, and military matters. There are arguments among scholars on when Ikh Zasag Code was compiled, what are the content, but even the most arduous critics agree that Ikh Zasag Code existed. Apart from Ikh Zasag Code, other sources of laws regulated Mongolian society such as the Mongol Oirad Great Code of 1640, Khalkh Juram Law until start of the 200 years of Manchu rule.

The Constitutions of the People's Republic of Mongolia

The Constitution of 1924 holds historical significance as it formally consolidated Mongolia's independence, abolished the monarchy, and established the People's Republic of Mongolia, paving the way for its eventual accession to the United Nations in 1961. Subsequent constitutions, namely those of 1940 and 1960, were influenced by the Soviet Constitution of 1936. These three constitutions share numerous similarities, including provisions for the central role of the People's Revolutionary Party, the creation of the Council of Ministers, the institution of periodic elections, and the guarantee of fundamental rights and freedoms. However, with regard to the protection of human rights and freedoms, the Mongolian socialist constitutions placed a greater emphasis on economic and social rights—such as the rights to housing, employment, medical care, and education—over political rights.

During the era covered by the first three Constitutions, the Mongolian state system lacked a Constitutional Court or any equivalent institution responsible for overseeing the implementation of the Constitution. This absence of a dedicated constitutional review mechanism persisted until the enactment of

the 1992 Constitution. This omission can be attributed to the fact that, until the early 20th century, Mongolia operated under medieval governmental and legal systems. Despite the adoption of written constitutions, Mongolia remained a socialist regime until the early 1990s.

Prosecutorial supervision

Under the socialist constitutions, the State Prosecutor and affiliated prosecutors exercise oversight over legal acts issued by ministries, specialized agencies, their subordinate enterprises, as well as by local People's Deputies' Councils, and cooperatives. This oversight involved ensuring that these legal acts—such as decrees, regulations, and decisions are complied with the Constitution of the Mongolian People's Republic and other laws, and were duly implemented by officials and citizens. The prosecutors also had the responsibility to address and rectify any violations identified.

However, the scope of the Prosecutor's oversight did not extend to the highest state authorities and officials of that era. Consequently, these authorities and officials often acted with impunity, issuing laws, decrees, resolutions, and decisions that contravened the Constitution, thereby undermining the rule of law.

In constitutional democracies, general and specialized courts play a crucial role, while in socialist countries, the prosecutor holds a significant responsibility for exercising general oversight.[3] In this

[3] Ж.Амарсанаа "Үндсэн хуулийн шүүх эрх мэдэл: олон улсын жишиг, Монголын загвар" "Монгол Улсын Үндсэн хуулийн хяналт: төлөв байдал, цаашдын хандлага" сэдэвт олон улсын эрдэм шинжилгээний бага хурал (илтгэлийн эмхтгэл), Уб.,2008 он, тал 107..

context, it is appropriate to note that, as previously mentioned, in the socialist legal system, both the courts and the prosecutor's office were responsible for general oversight of the implementation of the Constitution of the Mongolian People's Republic and other laws. For instance, Article 57 of the 1940 Constitution stipulated that "The State Prosecutor (law enforcer) shall have the ultimate responsibility for overseeing the strict adherence to laws and regulations by all ministries, central and local government agencies, their subordinate entities, as well as officials and the general public." Subsequently, the oversight responsibilities of the prosecutor were expanded by Article 68 of the 1949 constitutional amendments, which stated that "The State Prosecutor shall exercise supreme oversight over how all ministries, state institutions, their subordinate agencies, officials, and citizens of the Mongolian People's Republic adhere to the law." This introduced the concept of "supreme oversight."[4]

Furthermore, Article 72 of the 1960 Constitution states, "The State Prosecutor shall exercise supreme oversight over the strict adherence to laws by all ministries, central agencies, their subordinate offices, local governments, public organizations, cooperatives, as well as officials and citizens of the Mongolian People's Republic." The concept of "Supreme Oversight by the Prosecutor," as reflected in the 1940 and 1960 Constitutions, is understood to encompass the Constitution and other laws. However, this oversight had certain limitations: first, it applied only to officials below the level of ministries and specialized agencies, and did not extend to higher-ranking officials. For instance, the

[4] Б.Баярсайхан, Монгол Улсын Үндсэн хуульт ёсны уламжлал, Уб.,2017 он, тал 62-63.

prosecutor did not have the authority to bring criminal charges against members of the Mongolian People's Revolutionary Party without the approval of the party's local or central committee. Second, even when the prosecutor identified legal violations during oversight, there was no authority to make decisions on these violations directly, reflecting certain shortcomings in the system.[5]

Article 49. of the Constitution of 1940 specified: "Judicial matters in the Mongolian People's Republic shall be adjudicated by the Supreme Court of the People's Republic, regional and Ulaanbaatar city courts, provincial courts, and local people's courts." The Constitution also enshrined democratic principles governing the judiciary and judicial proceedings, including: exclusive jurisdiction of courts to adjudicate cases; the requirement for the involvement of people's representatives; the right of defendants to legal representation; and the principle of judicial independence.

The 1960 Constitution established several fundamental principles for the judiciary. It mandated that judicial authority be exercised exclusively through the adjudication of civil and criminal matters. The Constitution ensured that all individuals are equal before the law and the courts. Judges are required to exercise their duties with full impartiality, devoid of external influences, and adhere strictly to the law.

While the 1940 and 1960 Constitutions established the structure and authority of the judiciary and prosecutor's office, they remained under the control of the government until 1992. Their responsibilities included supervising legal compliance, enforcing laws, and imposing penalties, thereby maintaining and

[5] Г.Совд "Монгол Улсын Үндсэн хуулийн цэц байгуулагдсан нь" Монгол Улсын Үндсэн хуулийн цэц (өгүүлэл, илтгэлийн эмхтгэл), Уб.,2007 он, тал 203-205.

executing socialist legal principles. The term "judicial activity" in the socialist legal framework prior to 1992 and "judicial authority" in the democratic system post-1992 are superficially similar but differ markedly in their fundamental nature, function, and significance.

Specifically, while the previous Constitutions referred to "judicial activity" (1940, Article 59) and "adjudication work" (1960, Article 63) as processes for adjudicating criminal and civil cases according to procedural laws, the 1992 Constitution introduced the term "judicial power".[6] This new term encompasses the oversight of legislative and executive actions within legally defined limits, thus reflecting the development of an independent branch of state power. In other words, since the adoption of the new Constitution in 1992 and introduction of the Constitution Court, the judiciary has been empowered to review any laws and decrees that violates the Constitution, annul unlawful legislation and decrees, and restore infringed individual rights.

1992 Constitution and the Constitutional Court

The 1992 Constitution established the judicial system of Mongolia with two principal components: the "main judicial system" and the "Constitutional Court." The main judicial system can be further subdivided into specialized courts, including administrative and juvenile courts, among others. For the first time, the 1992 Constitution established a Constitutional Court, referred to as the Constitutional "Tsets".[7]

[6] Б.Чимид "Шүүх эрх мэдлийн талаархи Үндсэн хуулийн үзэл баримтлалын тухайд" Монгол Улсын Үндсэн хуулийн цэц (өгүүлэл, илтгэлийн эмхтгэл), Уб.,2007 он, тал 22-26.

[7] Мөн тэнд.

In developing the draft of the new Constitution, extensive research was conducted on the constitutional institutions of various democracies with rich experience. It was determined that establishing an independent and impartial institution for constitutional oversight was crucial.[8] Accordingly, Mongolia evaluated three primary models: the U.S. model, where a decentralized constitutional review is conducted by ordinary courts; the Austrian model, featuring an independent constitutional court; and the French model, which employs a constitutional council. Considering the unique characteristics of Mongolia's legal system and its traditional legal perspectives, Mongolia chose the Austrian model as a reference to create its own version of constitutional oversight.

The question of implementing constitutional oversight through a specialized body was initially addressed at the 5th Plenary Session of the Central Committee of the Mongolian People's Revolutionary Party (MPRP) in 1988.[9] It was concluded that creating such an oversight body within the state control system would be appropriate. Consequently, the Law on Amendments to the Constitution enacted in 1990 conferred upon the State Great

---

8 Г.Совд "Монгол Улсын Үндсэн хуулийн цэц байгуулагдсан нь" Монгол Улсын Үндсэн хуулийн цэц (өгүүлэл, илтгэлийн эмхтгэл), Уб.,2007 он, тал 203-205.

9 Ч.Энхбаатар, Үндсэн хуулийн эрх зүй, Уб.,2007 он, тал 284-285. Мөн энэ тухайд Үндсэн хуулийн цэцийн гишүүн асан Ж.Амарсанаа "Хүний эрхийг хамгаалахад Үндсэн хуулийн шүүхийн голлох үүргийн тухай үзэл санаа нь 1990 онд Үндсэн хуулийн нэмэлтийн тухай хуульд Үндсэн хуулийн хяналтын зөвлөл байгуулах талаар заасан үеэс уламжлалтай. Гэхдээ түүхэн нөхцөл байдлаас шалтгаалан дээрх зөвлөлийг байгуулж амжилгүй, шинэ Үндсэн хуулийг 1992 онд баталсан" хэмээн бичжээ. Ж.Амарсанаа "Үндсэн хуулийн шүүх хүний эрхийг хамгаалах баталгаа мөн" Монгол Улсын Үндсэн хуулийн цэц (өгүүлэл, илтгэлийн эмхтгэл), Уб.,2007 он, тал 179-180.

Khural the authority to establish a Constitutional Oversight Council. However, this body was never constituted. Upon the adoption of the 1992 Constitution, the responsibility for supreme constitutional oversight was vested in the Constitutional Tsets. Thus, the 1992 Constitution established a novel framework for judicial authority, including the Constitutional Court, within the country's state structure.

The Constitutional Court reviews each case within its jurisdiction and decides whether it infringes upon the Constitution. The conclusion of Tsets is then submitted to the State Great Hural. During its plenary session, the State Great Hural issues a resolution either affirming or rejecting the Court's conclusion. If the State Great Hural decides to reject the Court's conclusion, the Court will examine the case in a full bench and issue a final resolution. Once the Constitutional Court has issued a final resolution on a particular issue, any provision of the legislation that is inconsistent with the Constitution is immediately nullified.

Strengthening of the Constitutional Democracy through Tsets

The rights, freedoms, and democratic values enshrined in the Constitution can only be effectively safeguarded through robust enforcement by the government and the judiciary, including the Constitutional Court. Constitutional review is essential for maintaining a healthy and functional democracy. Although the Constitutional Court of Mongolia does not review judicial decisions or receive full constitutional complaints, its role in fortifying constitutional democracy in Mongolia has been significant and cannot be overstated.

The 32-year history of the Constitutional Court (Tsets) attests to its impact, despite facing its share of criticism. Following the collapse of the Soviet system, Mongolia emerged as a beacon of democracy in Central Asia, transitioning from oppression and autocracy to a period of 32 years marked by peaceful transfers of power. Let me mention several instances Tsets successfully limited the governmental power.

Constitutional Courts serve as the guardian of the Constitution. Without their oversight, the rights crucial for the functioning of democracy would remain illusory. The Tsets has played a crucial role in curbing governmental powers, notably invalidating seven constitutional amendments in 2000 based on procedural grounds.

While constitutional amendments are a legitimate means to address past institutional failures and realign the distribution of powers, they can also be manipulated by those in power to serve their interests. Thus, the process of amending the Constitution and ensuring public participation is of utmost importance. The 1999 amendments, enacted without public input and within a single day, were nullified by the Constitutional Court due to inadequate consultation and participation. This conflict between the parliament and the Tsets highlighted a crucial lesson: constitutional amendments require broad consensus and adherence to procedural rules, gaining legitimacy only through substantial public support.

The decision of the Tsets was impactful and the lessons were learned. Procedural requirements were a focal point in the 2019 constitutional amendments. The government and parliament sought to enhance public participation through deliberative polling, public debates, conferences, consultations, and meetings. The process

of amending or reforming the Constitution is as significant as the content itself.

In 2021, the Tsets denied a sitting president's attempt to seek re-election based on the 2019 amendments, which stipulated a single presidential term. In 2022, the Tsets reversed a previous decision, affirming the constitutionality of the proportional electoral system and leading to the adoption of a mixed electoral system and an increase in parliamentary seats. Additionally, the Tsets reviewed both procedural aspects and the substantive content of constitutional amendments and invalidate any unconstitutional constitutional amendments. These kinds of decisions underscore the Tsets's role in enhancing democracy.

Parliament has initiated reforms through the proposed new Law on Constitutional Procedure and the Law on Constitutional Tsets, including the introduction of an individual complaints system. Since the establishment of the Tsets in 1992 until the end of 2023, 58% of Tsets's decisions found a violation of the Constitution and subsequently invalidated the relevant laws and decisions, while the court found in 42% of the cases no constitutional violation.

Conclusions

In this speech, I have outlined the evolution of constitutionalism in Mongolia and the development of the institution for constitutional review, divided into two distinct periods: before and after the adoption of the written Constitution.

It is reasonable to believe that, before the adoption of a written Constitution in Mongolia, laws such as Chinggis Khaan's Ikh Zasag served as the moral foundation for upholding the rule of law. Furthermore, although the Constitutions of 1924, 1940,

and 1960 were influenced by the socialist model and did not include an independent Constitutional Court, they nonetheless provided for the enforcement of the Constitution and other laws under the general supervision of the Prosecutor's Office. The 1992 Constitution marked a historic milestone by establishing a Constitutional Court in Mongolia for the first time, tasked with overseeing the implementation of the Constitution. Prior to this, the Constitutions of 1924, 1940, and 1960 lacked an institution with the same functions as the Constitutional Court.

The 1992 Constitution is historically significant for incorporating global ideals of sustainable social, environmental, and economic development, strengthening democratic guarantees, and empowering the Constitutional Court to ensure strict adherence to the Constitution. The evolution of the Constitutional Court since its inception and its decisions have continued to contribute to Mongolia's sustainable development.

"The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice For Sustainable Society"

Hon. Mr. Aung Zaw Thien
Chairperson of the Constitutional Tribunal
of the Republic of the Union of Myanmar

Good afternoon,
Mr. Chairman, Ladies and Gentlemen
Thank you for giving me the floor.

Mr. Chairman, Ladies and Gentlemen,

At the outset, we would like to gratitude to President Mr. Nakharin Mektrairat, for to be here.

Today, I would like to present under the theme of Session III.

Mr. Chairman, Ladies and Gentlemen,

The constitutions of States all over the world were drafted based on each of the traditional and historical experiences to stabilize and sustain politics and to develop the economic and social of their societies. In this regard, the constitutional courts play the key role in safeguarding and upholding these Constitutions.

Myanmar has had experiences with the constitutional justice system since 1948, after Myanmar gained independence. Under the 1947 Constitution Sections 137 and 151, judicial review and constitutional review power were vested to the Supreme Court as a Diffuse Review.

According to the 1974 Constitution, the interpretation of the provisions of the Constitution was not carried out by the

judiciary, exercised only by the State Council and the Pyithu Hluttaw (People's Assembly) as a Political Review.

In the current Constitution of the Union of Myanmar, remedies relating to the constitutional rights of citizens are entrusted to the Supreme Court of the Union by means of writs, and establishes and power relating to constitutional the adjudication is entrusted to a specific institution called the Constitutional Tribunal as a Concentrated Review.

Mr. Chairman, Ladies and Gentlemen,

The framework concerning the Constitutional Tribunal is expressed in Sections 320 to 336 of the 2008 Constitution. The Tribunal comprises nine members, including the Chairperson. The term is five years.

According to Section 322 of the Constitution, the functions and duties of the Constitutional Tribunal of the Union are to interpret the provisions of the Constitution, to scrutinize whether or not laws enacted by the legislature and functions of executive authorities conform with the Constitution, to decide on disputes relating to the Constitution and to perform other duties prescribed in this Constitution.

Mr. Chairman, Ladies and Gentlemen,

No matter which system a country adopts, constitutional disputes may inevitably arise within the constitutional matter. or the purpose of resolving these disputes and strengthening constitutional justice, today's countries create constitutional courts under Constitutionalism and the Rule of Law.

To strengthen political constitutional justice, it's a crucial role for Constitutional Courts and equivalent institutions as judicial review bodies. It is necessary for judicial independence while exercising their powers and duties. Attaining judicial independence essentially requires ensuring judges' autonomy, fair, and impartiality, and the judiciary's independence.

Mr. Chairman, Ladies and Gentlemen,

Meanwhile, the Constitutional Courts resolve a very politically sensitive case, the Constitutional Court carefully decides the cases to settle the issues within the legal and political issues to find the results of the settlement to get peacefully and satisfy both of disputants. Therefore, the decisions of the Constitutional Court have to be fair and just and need to understand and satisfy both of the disputants, all interested persons and people.

The only result of the mentioned above, the Constitutional Court be able to obtain public endorsement and trust upon these decisions or judgments, and they believe that the institution can be done as an effective safeguard and ensure the preservation of the Constitution. In addition, all these generate a sustainable rule of law and good governance, leading to sustainable justice, liberty, and equality with the flourishing of a genuine, disciplined multi-party democratic system.

Mr. Chairman, Ladies and Gentlemen,

In my conclusion, each and every country has learned from past bitter experiences. Upon these experiences, they endeavored to emerge the best constitutional institution for sustainable peace

and developed sovereign state and to safeguard the constitution by the people with the people's aspirations in mind.

In this important role of the judiciary to exercise their power, they must be independent. It exercises its power independently; good governance emerges from the rule of law that is still perpetuation as well as the State will be developed.

We, the Tribunal practice that the body is independent, fair, and just with impartiality in line with the eternal principles of the Union.

Thank you.

"The Evolvement of Constitutional Justice for Sustainable Justice in the Changing World"

Hon. Mr. Ali Jamil Muhanna
President of the Supreme Constitutional Court
of the State of Palestine

H.E. Mr. Atthanit Distha-Amnarj, Privy Councillor as His Majesty the King's Representative,

H.E. Prof. Dr. Nakharin Mektrairat, President of the Constitutional Court of the Kingdom of Thailand/ President of the AACC,

The Hon. Presidents/ Chairpersons/ Justices of the Constitutional Courts/ Councils and equivalent institutions members of the AACC,

The Hon. Presidents/ Chairpersons/ Representatives of other Associations of the Constitutional Courts,

Ladies and Gentlemen,

First of all, please allow me to begin my speech by extending our deepest greetings and appreciation for the King, government, and the people of the Kingdom of Thailand, as well as the Constitutional Court of the Kingdom of Thailand for their immense efforts in hosting, organizing and preparing for the 6th Congress of the AACC.

There is no doubt that the constitutional courts and councils play a crucial role in promoting sustainable development and justice as they ensure the complete harmony between constitutional documents on one hand and other legislation on the other. However, before delving into this role of constitutional courts and equivalent institutions, we must first define the framework and concept of sustainable development and justice.

According to the goals mentioned in the report of the Economic and Social Council emerging from the United Nations General Assembly’s 2024 session, we find that they are limited to 17 goals, including: reducing poverty and hunger, ensuring healthy lifestyles, achieving gender equality and equal opportunities, providing water and sanitation, in addition to ensuring access to justice, and activating global partnerships to achieve sustainable development. Thus, it is normal for the Constitutional Court of Palestine to be tasked with ensuring legal and judicial development and stability as it is the fundamental basis of all forms of sustainability of societies and communities.

However, we, as the Supreme Constitutional Court of Palestine, have the right to ask the following: How can we achieve this list of goals under the current circumstances, where the occupying state is committing genocide against our Palestinian people in all areas of their presence, especially in the camps and cities of Gaza Strip and the West Bank? How can we talk about sustainable development for those who lack drinking water or basic sanitation? How can we achieve equality for those who sleep on the ground and are covered by the sky? How can we ensure protection for our people when there are more than forty thousand martyrs and one hundred thousand Palestinians who have been injured or disabled?

How can the Palestinians have access to their natural resources when the occupation annexes and occupies their land, sea, and sky? How can we talk about equality for those whom we cannot even guarantee the right to life, the right to a drink of water, or a piece of bread?

Ladies and Gentlemen,

Our people continue to suffer under the domination of the Israeli occupation, which disregards and violates all the resolutions

of international legitimacy; the most recent of which is the advisory opinion issued by the International Court of Justice. The occupation also ignores the stance of more than 150 countries that recognize Palestine as a state and demand the end of the occupation. This occupation remains the most significant obstacle on our path to freedom, the right of refugees to return, and independence. The uniqueness and complexity of our experience have led us to fight two main battles simultaneously: the battle for liberation and the battle for state-building, along with all the difficulties and high costs that this entails. Despite all of this, and despite repeated attempts to undermine our national project, the Palestinian people have so far succeeded in laying the foundations for their national construction in accordance with international standards and criteria. This has been achieved with utmost respect for the rule of law, the independence of the judiciary, the separation of powers, and the protection of the principles of public freedoms and individual and collective human rights. We are confident that, through the resilience and struggle of the Palestinians, and with the support of peace-loving nations around the world, the Palestinians will soon achieve their legitimate rights, as guaranteed by the charters and resolutions of international legitimacy.

Despite the recent establishment of the Supreme Constitutional Court of Palestine, we are striving to be a central pillar in elevating the foundations of sustainable national development. We aim to contribute to national development and stability by ensuring harmony between the provisions of the Palestinian Basic Law and other constitutional documents on one hand, and ordinary and secondary legislation on the other, in accordance with international goals and standards.

"Refining the Role of Judicial Review for Environmental Cases"

Hon. Mr. Marvic Mario Victor Leonen
Senior Associate Justice of the Supreme Court of the Republic of the Philippines

The Philippines 1987 Constitution clearly provides for the promotion of social justice, human rights and the protection of equality.[1] Our jurisprudence richly interprets these provisions.

Our approach has always been to consider not just the text of the law or its procedures but also the context within which it exists. Judicial review is not automatically regarded by any general allegation of unconstitutionality. It must be exercised within mutual responsibility founded on our recognition of our role within the legal order. The social context where we are in and the goal set by our constitution, we set always upon ourselves that requirement for judicial ability.[2]

[1] CONST.., art. II, secs. 10, 11 and 16, provide:

Section 10. The State shall promote social justice in all phases of national development.

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

. . .

Section 16. The State shall protect and advance the right of the peopke to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

[2] *Province of Sulu v. Medialdea, et al.,* G.R. Nos. 242255, 243246 and 243693, September 9, 2024 [Per J. Leonnen, *En Banc*].

We clarify two aspects of judicial review when we approach environmental cases. The first is the question of legal standing and the second is the concept of precautionary principle.

In the Philippines, our rules of procedure for environmental cases allow for any Filipino citizen in representation of others, including minors or generations yet unborn to bring a citizen suit to enforce the rights or obligations under environmental laws. This need to be reviewed.

The category of minors and generations yet unborn as real party in interest ruled in intergeneration of responsibility which was first established in the case of *Oposa v. Factoran, Jr.,* present possible dangers.[3] These generations are in danger by the effect of what we called res judicata. The generations yet unborn will be bound by judgment of issue litigated on their behalf even before they are born. When the time comes, they may be prevented from protecting their own rights and pursuing their own decisions.

In *Resident Marine Mammals of the Protected Seascape Tanon Strait v. Secretary Reyes,*[4] the human practitioner sought judicial notice of identity of interest between them and Resident Marine Mammals. Although the human practitioner has the noble costs, the space for legal creativity require to advocate for issue of public interest is limited recognizing Marine Mammals as a real party in interest meet potentially resort in allowing petition based on concern rather than enforcement of the right. Danger in over liberalizing the rules on standing in environmental cases, a rule that is solubilized on standing may be prompted to abuse.

---

[3] *See Oposav. Factoran, Jr.,* 296 Phil. 694 (1993) [Per J. Davide, Jr., *En Banc*].

[4] 758 Phill 724 (2015) [Per J. Leonardo-De Castro, *En Banc*].

The second aspect is the invocation of the precautionary principle. This is the bridge by our court when there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect in resulting a case before it. However, more should be done to elaborate on the standard for invoking this.

The choice of taking precaution when mediated should not glide the entire regulatory system to a halt depriving the public of the benefit of the regulated activity. If the "right to a balance and healthful ecology" is to be meaningfully upheld, a more precise, reason, and deliberate approach is needed to maximize the social and economic benefits of regulated activities while minimizing the environmental causes require both expertise and perspective.

In environmental cases, the high aspiration of environmental advocacy required that is advocate process not only passion but also the necessary skill and expertise to effectively achieve the marginalize of interest they seek to represent. In *Abogado v. Department of Environment and Natural Resources*,[5] for instance, we emphasize the need for responsible legal representation.

The case involved fishing groups effected by a range of division island around Panatag Shoal and how the council feel to explain to them the premise of the petition. The preparation in *Abogado* led the court to discuss that irresponsible advocacy would ultimately harm the overall cost being pursuit. The urgent of an ecological disaster cannot excuse council from the way of responsibility in representing the high interest of environmental protection advocacy which is founded compassion for communities and the environment.

5 861 Phil. 703 (2019) [Per J. Leonen, *En Banc*].

For those engaged in public interest lawyering or what we call developmental and social change lawyering, the lawyer is required to exercise more diligence when working with marginalized groups. This kind of lawyering ruled in the very protection of the human rights bridges gap in access to justice through legal empowerment that the neighbor meaningful participation of marginalized with unable, disadvantage, and underserved people communities and identities to reform the society and achieve social justice.

Our court is still currently in the process of revising of our own Rules of Procedure for Environmental Cases. We are consulting with vary groups and stakeholders. We are only as good as the services to watch the good for our people as we share our experiences from all our court and jurisdictions. We will be able to achieve our collective vision of a fair and just society.

We cannot fail our people.

Thank you.

"The Principle of Legal Certainty in the Practice of the Constitutional Court of the Russian Federation"

Hon. Mr. Sergey Kazantsev
Judge of the Constitutional Court
of the Russian Federation

1. Among the seventeen goals of sustainable development the United Nations expressly notes justice and effective institutions. Therefore, the judiciary and of course constitutional courts are directly involved in achieving the goals of sustainable development. Any discussion on effective institutions and effective justice would hardly overlook the principle of legal certainty. Indeed, the legal certainty can be justly seen as condition of legal stability. In legal sphere, legal certainty allows participants of legal relations to predict consequences of their actions, and to have legitimate expectations as regards actions of their counterparts. The principle of legal certainty can be discussed in a variety of contexts in doctrine and practice; it encompasses different aspects including interrelationship with other legal principles, such as the principle of the rule of law, the principle of equality, the principle of stability of the legal regulation, the principle of *res judicata, the principle nullum crimen, nulla poena sine lege*, as well as the issues of limits to law enforcement discretion, etc.

The Constitutional Court of the Russian Federation generally turns to legal certainty principle in its original, literal meaning which encompasses necessity for the legal provision to be adequately concrete, clear, non-contradictory, and impossible to be arbitrarily interpreted and applied. Some statistical information illustrates

the attention to legal certainty in the constitutional judicial practice during the past decades.

From 1995 to 2005, the Constitutional Court of the Russian Federation has adopted 208 judgements, of which 29 (i.e. 14 %) in one way or another consider the issue of conformity of the challenged legal provisions with the principle of legal certainty. In 18 out of these 29 cases (i.e. 62 %) the Court concluded that legislator had violated the principle of legal certainty, and accordingly the challenged provisions were recognized as inconsistent with the Constitution of the Russian Federation. From 2006 to 2015, the Constitutional Court adopted 238 judgements, of which already 22 % (53 judgements) referred to observance of legal certainty. In 83% of these cases, the challenged provisions were found to be inconsistent with the Constitution.

Finally, from the beginning of 2016 to the end of summer 2024, the Constitutional Court delivered 420 judgements. Among them, 130 (or i.e. 31%) mentioned the requirement or principle of legal certainty in some context. A little more than a half of these cases resulted in finding the challenges provisions inconsistent with the Constitution.

To conclude, a significant part of judgements (rulings on the merits) of the Constitutional Court of the Russian Federation is based upon complaints of applicants who believe that the alleged incompatibility of challenged provisions with the Constitution depends on their ambiguity, contradiction, lack of logic, possibility of different or even directly opposite interpretations. Thus, they essentially allege violations of legal certainty. My impression is that roughly every fourth applicant who complains to the Constitutional Court bases the unconstitutionality claim with regard to challenged

provisions on its uncertainty, although, of course, such a reference is not always reasonable.

2. The principle of legal certainty is not explicitly reflected in the Constitution or laws of the Russian Federation, therefore many theoretical works are devoted to the study of its nature. My colleague Nikolay Bondar, a judge of the Constitutional Court in retirement, pointed that «the requirement of legal certainty derives from the very nature of a legal provision as equal scale, equal measure of freedom for all subjects of law, which in turn makes it possible to define the requirement of legal certainty as an important principle of the regime of equal rights of citizens». Another judge of the Constitutional Court, Anatoly, Kononov, argued that this is a rule of natural law, a legal axiom needing no proof. I believe that the Russian positive law has derived this principle from the legal positions of the Constitutional Court of the Russian Federation, which in turn accepted it from the legal positions of the courts of Europe.

For the first time, the Constitutional Court of the Russian Federation referred to uncertainty of legal content of a provision as one of the grounds for «arbitra understanding of its essence» in its *Judgement of 25 April 1995 No.3-П* upon complaint of Mrs. Sitalova. Court noted: «The provision of Article 54 (part 1) of the Housing Code of the RSFSR on the right of a tenant to allow other citizens to move into the residential premises occupied by him "in accordance with the established procedure" is a blanket one. The uncertainty of its legal content makes it impossible to answer the question of which body and by what act this procedure should be established, and gives rise to arbitrary understanding of what it essentially means».

Note that this position was subsequently clarified; the constitutionality and adequacy of blanket norms as such had been repeatedly confirmed in a number of rulings of the Constitutional Court with regard to various branches of law.

In the *Judgement of 8 October 1997 No.13-П*, Constitutional Court formulated its legal position on the issue of legal certainty of tax legislation: «In order to implement the constitutional obligation of citizens to pay legally established taxes and fees, the legislative bodies must ensure that tax laws are concrete and understandable. Uncertainty of norms in tax legislation may lead to arbitrariness of state bodies and officials in their relations with taxpayers, which is inconsistent with the principle of rule of law and violates the equality of citizens' rights before the law».

The above formulae, which are rather brief, show that in the first cases in which the Constitutional Court examined the issue of uncertainty, the argument of violation of the principle of certainty still looked like a kind of unexpected find (although, of course, it was no accident). We can see that already on the second Judgement quoted this argument is slightly clarified and sounds more convincing. The 1997 Judgement was the beginning of a whole trend in the development of the uncertainty principle in the tax legislation.

For example, in *Judgement of 15 July 1999 No.11-П*, for the first time in the practice of the Constitutional Court, the principle of legal certainty was not only formulated, but also became the main proof of the unconstitutionality of a provision. The Constitutional Court found that «in the dispositions of offences in question, which are expressed in vague, sometimes indistinguishable terms («concealed income», «understated income», «concealed

object of taxation», «unaccounted object of taxation», «lack of accounting of objects of taxation», «violation of the procedure for accounting of the object of taxation») the legislator has not defined essential characteristics of each specific offence, which makes it impossible in practice to distinguish and clearly interpret these offences». It should be noted that the sanctions provided for such offences in the relevant provisions were also uncertain.

In the Court's words, «the ... uncertainty of the content of legal provision in question is contrary to the general principles of law relating to legal liability». The Court then developed its position further: «The general legal criterion of certainty, clarity and unambiguousness of a legal provision derives from the constitutional principle of equality of everyone before law and court ... since such equality can be guaranteed only if a provision is understood and interpreted in the same way by all those who apply the law. Uncertainty of content of a legal provision allows unlimited discretion in law enforcement and inevitably leads to arbitrariness, and thus to violation of principles of equality and rule of law».

As we can see, the formation of the principle of legal certainty was overall complete at this stage. However, a number of questions remained. In particular, what is the criterion of certainty for a provision? A. Kononov pointed out: «The degree of certainty of a norm is an evaluative concept. Its criterion is, first of all, law enforcement practice, uniform understanding, interpretation and application by all participants of legal relations, state bodies, courts and officials. The law should not leave unlimited discretion for executive and judiciary, and should exclude any arbitrariness».

In this context, it should be noted that the Constitutional Court has not always agreed with the applicants' arguments

concerning uncertainty of a legal provision. For example, the Court did not agree with the arguments of applicants in the case on review of constitutionality of Article 199 of the Criminal Code of the Russian Federation (*Judgement of 27 May 2003 No. 9-П*). The applicants argued that the part of the challenged provision that criminalised tax evasion «by other means», was unconstitutional because it was uncertain.

In response, the Court reaffirmed its adherence to the legal position expressed in the Sitalova case and the tax sanctions case, but provided an important clarification on the uncertainty criteria. The Court noted: «The assessment of certainty of the terms contained in a law should be made not only on the basis of the text of the law itself and the wording used (in this case the term 'by other means'), but also on the basis of their place in the system of normative framework». The Constitutional Court explained that «the fact that Article 199 of the Criminal Code of the Russian Federation does not contain a list of specific ways of evading payment of legally established taxes does not give law enforcement authorities grounds for arbitrary imposition of criminal liability for non-payment of taxes, including in cases where the taxpayer uses mechanisms not contrary to the law to reduce taxes or commits non-payment of taxes through negligence». In this regard, the Court held that the contested provisions were not contrary to the principle of legal certainty «since the said provisions according to their constitutional and legal meaning within the existing legal framework provide for criminal liability only for acts committed intentionally and directly aimed at avoiding payment of taxes in breach of the rules established by tax legislation»

3. The above-mentioned positions of the Constitutional Court can be attributed to the period of formation of the concept of legal certainty in Russian constitutional judicial practice. Of course, they have evolved over the years, but they have not changed fundamentally.

The *Judgement of 19 November 2015 No. 29-П* can be seen as an example of such evolution. The Court declared unconstitutional the provisions of Federal Law «On Labour Pensions in the Russian Federation», according to which the insurance record (i.e. the record used to calculate the amount of the pension) of a citizen who was illegally prosecuted and subsequently rehabilitated did not include periods during which citizen did not work due to suspension. The Court pointed out that provisions of pension legislation must be consistent with the provisions of the Criminal Procedure Code of the Russian Federation on necessity of restoring pension rights. To do otherwise would be contrary to requirements of certainty, clarity and unambiguity of legal provisions and their consistency with the system of current legal regulation which derive from the constitutional principles of the rule of law.

This requirement extends to uniform interpretation of law by the courts. As a recent example of application of this position, the *Judgement of 11 June 2024 No. 29-П* can be mentioned. This Judgement concerned uncertainty of regulation of possibility to grant ownership or lease to individuals over land on which a partially or totally underground garage was built. In this Judgement, the Constitutional Court pointed out inter alia that ambiguity of normative regulation inevitably prevents adequate clarification of its content and purpose, allows unlimited discretion of the authorities in the process of law enforcement, creates conditions

for administrative arbitrariness and selective justice, and thus weakens the guarantees of protection of constitutional rights and freedoms. Therefore, the violation of requirements of certainty of a legal provision may in itself be sufficient to recognise it as inconsistent with the Constitution of the Russian Federation. If mutually exclusive interpretations of the same provision (that may be existing for example due to differences in its understanding in the system with other provisions) are reasonably justified within the constitutional framework of legislative discretion and no uniform judicial practice in the interpretation of the provision has been established, it is not always possible to clarify its true content, even referring to constitutional goals and principles. In such situation the most correct, if not the only way to reveal the real content and meaning of a normative regulation is legislative clarification of normative provisions, the ambiguity of which cannot be overcome by means of legal interpretation and creates serious obstacles to the full guarantee of equality before law and court in the process of their application.

In a number of cases the Constitutional Court has linked legal certainty to the requirement to maintain trust in the law. A similar requirement was explicitly enshrined in the 2020 Constitution, which states in Article 75.1 that conditions for mutual trust between the state and citizens should be created in the Russian Federation.

For example in *Judgement of 14 January 2016, No. 1-П*, the norms of the law on the pension provision of persons who have performed military or similar service were declared unconstitutional because they constituted grounds for the unconditional termination of the payment to a citizen of an

long-service pension that had been wrongly granted to him as a result of an incorrect calculation of the required period of service, even though the citizen had acted in good faith. However, the Constitutional Court stated that in the field of pension provision the establishment of such a regulation is presupposed, which should be in accordance with the principles of legal certainty and the maintenance of citizens' trust in the law and in the actions of the State. This must guarantee citizens that decisions on granting of pensions are taken by bodies authorised by the State on the basis of strict application of legal provisions, as well as after careful and responsible assessment of factual circumstances which the law considers as grounds for the emergence of pension rights. The relevant guarantees must also encompass accuracy in preparation of relevant documents confirming existence of conditions necessary for the granting of a pension and determining its amount. Thereby it must be ensured that the citizen being part to relevant legal relationships could be confident of stability of his officially recognised status and that the rights acquired by virtue of that status will be respected and enforced by the State.

In this case, legal certainty was also closely related to the stability (or sustainability) of a citizen's legal status.

This connection was clearly demonstrated in a case concerning the quality of services provided by an organisation with public functions, namely the Russian Post. In its *Judgement of 28 December 2022 No. 59-П*, the Constitutional Court held that under ordinary circumstances a consultation received by a citizen in a post office would not exempt him from the need to exercise his own diligence by independently studying the rules governing the provision of postal services. But in view of the special status of

the Russian Post, the importance of its function (essentially public) and its close connection with the state (manifested, inter alia, in the use of the word 'Russia' in its name), the Court effectively extended to this organisation heightened requirements similar to those applied to state bodies. The Court inter alia stated: «principles of legal certainty and the maintenance of citizens' trust in the law and in the actions of the State are guaranteeing citizens that decisions are taken by bodies authorised by the State on the basis of strict application of legal provisions, as well as careful and responsible assessment of factual circumstances which the law considers as a ground for emergence, change, termination of rights ... At the same time ... in a democratic state governed by the rule of law, such as the Russian Federation, failure to comply with the requirements of reasonableness and diligence on the part of a public legal entity represented by competent authorities should not affect pecuniary and non-pecuniary rights of citizens».

The same approach was later recalled by the Constitutional Court in relation to the impact of the enforcement of its judgements on third parties. In *Judgement of 22 September 2023 No. 45-П* the municipal deputies did not receive a response from the federal authority when they tried to obtain approval for inclusion of forest land within the settlement' boundaries. In absence of a response, they considered such inclusion possible, but decision to change the boundaries was subsequently overturned in court.

The Constitutional Court has clarified the provisions of the Town Planning Code through a constitutional legal interpretation that presupposes good faith cooperation between local and state authorities. The Court stated that the issue of legal consequences of the annulment of decision approving a master plan for forest land,

where the land in question, which is part of a settlement, had been granted to citizens and legal entities for use in accordance with the rules adopted by the municipality, was not within the scope of its consideration. However, the Court recalled that from its previous legal positions it follows that the burden of adverse consequences of erroneous decisions and actions of competent bodies and officials cannot be placed solely on citizens and that the legal mechanism for correcting such mistakes (based on the constitutional principles of the rule of law, law-governed state and the principles of justice and equality before the law) must ensure balance between constitutionally protected values and public and private interests, on the basis of criteria of reasonableness and proportionality derived from those principles. To do otherwise would be contrary to requirements of legal certainty and maintenance of citizens' trust in law.

4. All of the above shows that the meaning of legal certainty principle is rather wide. This principle is closely related to other constitutional principles. The following conclusions can be drawn from the review of practice of the Constitutional Court of the Russian Federation.

The essence of the legal positions of the Constitutional Court is sufficiently clear: the legal norms must be certain enough to correspond to principles of law- governed state, rule of law and equality of citizens.

The uncertainty of norm can be regarded as its flaw leading to unlawfulness and unconstitutionality only where common means of establishing its meaning do not lead to desired outcome of clarification as perceived by the relevant law-enforcing entity. Generally, the uncertainty of norm will be eliminated by its

interpretation by legal subjects, especially the judiciary including the Constitutional Court. Only such uncertainty that cannot be eliminated by interpretation will be regarded as unacceptable, and consequently as violating the principle of legal certainty. Insufficient uncertainty of legal norms forces law-enforcement entities to act arbitrarily leading to breach of the principle of equality before law and courts even where there is no intentional abuse.

Relative (or dormant) uncertainty is present almost in any legal provision, and it can become enormous if legal, social or political environment of application of law changes. A norm that yesterday was sufficiently certain can tomorrow be recognised by the Constitutional Court to be in breach of the principle of legal certainty in view of the changes introduced to other provisions of law of by law.

In addition, let us emphasise one more conclusion from the researched material: the principle of legal certainty implies that more certain legal provision will be regulating a narrower scope of legal relations.

To conclude, I would like to emphasise once more that legal certainty understood as possibility to unequivocally establish the contents of a certain legal provision, supported by unified application practice and ensuring the ability of legal relations' participants to reasonably foresee the consequences of their actions is the crucial condition for sustainable development in the sphere of law. The case-law of the Constitutional Court also demonstrates its close relation to social stability, to the trust of citizens into law and actions of state.

"The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"

Hon. Mr. Enrique Arnaldo Alcubilla
Judge of the Constitutional Court
of the Kingdom of Spain

Honourable president of the Constitutional Court of the Kingdom of Thailand, Honorable members of the bodies belonging to the Association Asian Constitutional Courts and Equivalent Institutions,

I am delighted to take the floor to share some humble reflections on the suggestive topic we are dealing with (alternativamente, puede ser: "on the topic The Role of the Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society").

I shall divide my presentation into three parts. Firstly, I would like to summarize some ideas on the notion of Sustainable Society. Later, I shall expose some reflections on the functions accomplished by the constitutional justice system. Finally, I shall mention some important statements of the Ibero American Conference of Constitutional Justice that emphasize the importance of cooperation among national courts and the dialogue not only between Courts, but also among judges.

I. The notion of Sustainable Society

It would be convenient to remind that the notion of Sustainable Development appears for the first time in a book published in 1987: Our Common Future, also known as the

Brundtland Report, in recognition of Gro Harlem Brundtland, former Norwegian Prime Minister and Chair of a special commission established in 1983 by the General Assembly of the United Nations: The World Commission on Environment and Development. This report placed environmental issues firmly on the political agenda; it aimed to discuss the environment and development as one single —better, intermixed— matter.

We can assume that when we talk about Sustainable development, we are referring to a development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Therefore, we are proposing a development that takes into account intergenerational solidarity, which is one of the cornerstones of modern Environmental Law.

The notion of Sustainable Development includes nowadays, apart from the Environmental backbone, two other foundations: The Social and the Economic pillars, which are precisely describe in The 2030 Agenda for Sustainable Development:

> "Sustainable development recognizes that eradicating poverty in all its forms and dimensions, combating inequality within and among countries, preserving the planet, creating sustained inclusive and sustainable economic growth and fostering social inclusion are linked to each other and are interdependent."

Finally, I would like to stress the importance given to the rule of law in the concept of Sustainable Development proposed by the United Nations. According to the first of the shared principles and commitments stated in the 2030 Agenda,

> "The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties … It is informed by other instruments such as the Declaration on the Right to Development."

II. The role of the Constitutional Justice

It is important to stress that the main function of the Constitutional Justice is to assure the primacy of the Constitution: it aims to ensure that people are uniformly protected by the same fundamental rules and that they are governed by (the reason expressed in) laws, not by (the nude will of) men.

To accomplish this main function, Constitutional Courts and Equivalent Institutions must comply strictly with the rules of procedure, adjudicate cases according to the rules of law established by the legitimate constituent power and bear mind that their final rulings enjoy the force of res iudicata.

We cannot conceive an institution dedicated to assuring the primacy of Law that gets rid of the rules of law when performing its jurisdiction. The strict compliance of the rules of procedure is an essential guarantee in the functioning of any court of justice. The perimeter of their competence and the framework of their powers are drawn by the Constituent Power (the people themselves) and complemented by the Legislative (the legitimate representative of the people) the only instances having the power to define the range and limits of the Constitutional Justice.

It belongs to Constitutional Courts and Equivalent Institutions to assure that these procedural regulations are passed through a public deliberation where different opinions can be expressed and submitted to public and general consideration. It is the duty of the Constitutional Justice to assure the prevalence of the rules and regulations of a healthy democracy.

It also pertains to the Constitutional Justice to adjudicate cases according to the law, because judging is a human activity that consist of a contrast between a rule, action or omission and the preexisting Law. Somehow, it looks to the past, whilst the activity accomplished by the Legislative looks to the future. The Judiciary, among them the Constitutional Justice, provides individual rules and the Legislative passes general rules. Maintaining this difference and the organic separation of functions is a guarantee for the democracy and a prevention of the so called "government by judges". Judges are guarantors of liberties, of human rights. And, as such, they should not get mixed with other considerations different from the strict application of law.

The rulings passed by constitutional courts and equivalent institutions have the force of *res iudicata* and are milestones for the development of a healthy democracy. They are submitted to public scrutiny and serve for the open deliberation on the range of new human and fundamental rights. The appropriate connection between constitutional justice and constitutional reform is essential for the development of law and makes sure that citizens give their consent to the most important innovations, that should not be surreptitiously passed.

This can be considered a modest approach to the role of the constitutional justice, but it is a systemic one. It is important to assure the good functioning of the whole legal system in an open society where citizens can exercise their rights with the confidence of a foreseeable application of law by public authorities. The rule of law rest essentially on reasonable expectations by individuals and less on grand statements by higher officials.

III. The Ibero American Conference on Constitutional Justice

The Conference was created in Lisbon in October 1995. Since then, 15 conferences have been held in Chile, Colombia, Dominican Republic, Equator, Guatemala, Mexico, Nicaragua, Panama, Portugal and Spain.

According to Article 1.2 of their Statutes, the Conference "is based on the dialogue, the collaboration and the cooperation to strengthen our constitutional systems, consolidating the shared postulates and the improvement of our systems, with the final aim of giving answer to the growing demands of our citizenries in the field of constitutional justice".

In the final declaration adopted after the 11th Conference, held in Lima in July 2016, the participants expressly stated that:

> "It belongs to the constitutional justice system to safeguard the Economic, Social and Cultural Rights of present and future generations, that rest on the harmonization of economic and human development, the rational use of natural resources and the protection of the Environment, making possible the sustainable development of our society".

Moreover, the participants stressed that:

> "The inequality in the access to and enjoyment of fundamental rights is an obstacle to the establishment of the democratic constitutional State and to the social and economic development. In particular, to achieve the necessary equality of women rights, it is necessary the adoption or public policies promoting gender equality that remove the obstacles which hinder the equality in the presence of women in all the spheres of social and institutional life".

Finally, in the 13th Conference, held in Bogotá in September 2020, the participants considered that "The [COVID 19] pandemic has made more visible the democratic weakness, the restrictions of civil liberties, the concentration of power and the need to make effective the social guarantees".

In short, the members of the Ibero American Conference share a common view on the importance of having a strong Constitutional Justice to assure the social basis of a sustainable development. Citizens of a modern and healthy democracy must effectively enjoy their fundamental rights. It is an essential function of the legal system to assure that these rights are not just legal proclamations but also living realities that help to the implication in the realization of the economic and environmental postulates of a sustainable society.

"Sustainable Society through Constitutional Justice"

Hon. Mr. Noppadon Theppitak
Justice of the Constitutional Court
of the Kingdom of Thailand

Human history in all communities around the world from ancient times to the present, civilizations cannot flourish and prosper without justice and fairness. When justice and fairness prevail, the sustainability of societies and individuals is ensured, leading to advancement and peace. Constitutional justice is one of the crucial components of sustainability in democratic societies that values the rule of law and the supremacy of the constitution. It guarantees adherence to the principles of constitutionality, equality, and human rights for all. In this connection, the Constitutional Court, as the guardian of the Constitution, ensures that legislation and government actions align with these values. It plays a vital role in achieving a sustainable society and ensuring inclusiveness through constitutional justice.

This article explores the significant role of the Constitutional Court of the Kingdom of Thailand in fostering sustainability and inclusivity in Thai society. It is categorized into three parts: the first part focuses on Thailand's engagement with the Sustainable Development Goals (SDGs), the second part examines the enshrinement of these goals into the Thai legal framework, in particular the Constitution, and the last part discusses the landmark rulings of the Thai Constitutional Court concerning the enhancement of people's rights and liberties through the constitutionality of laws and the recognition of people's right to

follow up and urge the State to perform its constitutional duties within the constitutional scheme.

1. The Sustainable Development Goals (SDGs) and the engagement of Thailand

In 2015, the United Nations established a set of 17 interconnected goals known as the Sustainable Development Goals (SDGs) to address a wide range of global challenges encompassing a broad spectrum of social, economic, and environmental aspects, with a focus on building peaceful and inclusive societies and providing equal access to justice. At the core of the SDGs, the principle of inclusiveness is paramount to ensure that everyone benefits from development, which will be equitable, and that all individuals, regardless of their background, have the opportunity to participate in and gain from progress. Ultimately, it commits to the aim of leaving no one behind.

Since the Sustainable Development Goals (SDGs) focus on inclusiveness to reduce inequalities and promote social inclusion to create more cohesive and resilient societies, as addressed by SDG 10, they encounter numerous challenges, particularly in areas related to discrimination, inequality, and the implementation of governmental duties. Achieving this objective relies on robust legal frameworks for peace, justice, and strong institutions, as mentioned in SDG 16. In this connection, the constitution, as the supreme law of the state, plays a pivotal role in recognizing the equitable rights and liberties of all citizens without discrimination. Furthermore, the constitutional court and equivalent institution, vested with the authority to review the constitutionality of legal provisions and government actions, can effectively ensure these equal rights

and liberties, thereby empowering and strengthening the entire populace.

As for Thailand, after the Millennium Development Goals (MDGs) concluded in 2015, the Kingdom directs its efforts towards the Sustainable Development Goals (SDGs) alongside other international legal obligations. Prioritizing people at the center is one of the key goals according to the SDGs emphasized by Thailand. The endeavors underscore the nation's dedication to fostering a sustainable, inclusive, and resilient society that benefits all. The approaches encompass all segments of the population, inter alia, women's empowerment, nondiscrimination towards people with disabilities, and active participation in formulating and implementing governmental duties for a sustainable society. These concepts are incorporated into the constitutional provisions. Furthermore, a robust institution responsible for reviewing the constitutionality of laws and overseeing the implementation of governmental duties, the Constitutional Court of the Kingdom of Thailand, has been vested with the authority to conduct such reviews in order to safeguard the rights and liberties of all citizens equally, without any discriminatory grounds.

In the next part of this presentation, the Thai constitutional provisions and a concise overview of the Constitutional Court's duties and powers on the matter will be provided.

2. The Thai Constitution and the Sustainable Development Goals (SDGs)

The Constitution of the Kingdom of Thailand includes several provisions aimed at guaranteeing, strengthening, and empowering all members of society. The ultimate purpose is to foster peace

and create a cohesive community where no one is left behind, notably, Chapter III of the Constitution focuses on the recognition and protection of the rights and liberties of the Thai people.

Commencing with Section 25 of the Constitution, Thai citizens are guaranteed the enjoyment of all rights and liberties. They may exercise these rights and liberties in all matters that are not prohibited or restricted by the Constitution or other laws, provided that they do not jeopardize national security, public order, good morals, or infringe upon the rights of others. Additionally, any right or liberty specified in the Constitution can be exercised by individuals or communities, even in the absence of specific legislation enacted according to the Constitution. In particular, in cases of violations of these rights or liberties protected by the Constitution, individuals can invoke constitutional provisions to file a lawsuit or defend themselves in court.

Following Section 27 of the Constitution, which recognizes the equality of all individuals, every person is equal before the law and shall have the rights, liberties, and equal protection under the law. Unjust discrimination based on any grounds—whether it be gender, disability, physical or health condition, economic and social status, or religious belief—is not permitted. As a result, everyone stands on equal footing; both men and women shall enjoy equal rights, as well as individuals with physical impairments.

In addition, Section 51 of the Constitution provides the right for both individuals and communities who directly benefit from constitutionally mandated governmental duties to monitor and prompt the State to fulfill such duties. In this context, the directly benefited individuals and communities can initiate legal

proceedings against the relevant State agencies to ensure the performance of their constitutional duties for the provision of such benefits.

To achieve this, a robust institution is required to safeguard and implement the constitutionally recognized rights and liberties. In this connection, the Constitutional Court, as the guardian of the Constitution, plays a pivotal role in promoting constitutional justice by protecting the rights and liberties of all through adjudicating relevant cases. In the following section, landmark cases adjudicated by the Constitutional Court of the Kingdom of Thailand will be presented.

3. The Landmark Rulings of the Thai Constitutional Court

The Thai Constitutional Court has adjudicated several rulings that promote the strengthening and empowerment of the people, with the goal of fostering inclusivity as the foundation of a sustainable society. The Court's decisions impact gender equality, the rights of disabled people, and the rights of individuals and communities who directly benefit from constitutionally mandated governmental duties. At this stage, rulings regarding gender equality, the protection of the rights of disabled people, and the direct benefit of individuals and communities will be delivered.

3.1 The Ruling No. 21/2546 (2003) dated 5th June B.E. 2546 (2003)

This ruling addressed the constitutionality of Section 30 of the 1997 Constitution in relation to Section 12 of the Names of Persons Act, B.E. 2505 (1962). Section 30 of the 1997 Constitution, which shares the same objective as Section 27 of the current

Constitution, guarantees gender equality. However, Section 12 of the Names of Persons Act, B.E. 2505 (1962) states that married women exclusively use their husbands' surnames, thereby restricting their right to retain their maiden names. This provision resulted in unequal treatment under the law, based on marital status rather than inherent physical attributes or gender-related obligations. Consequently, the Constitutional Court deemed Section 12 of the Names of Persons Act, B.E. 2505 (1962) unconstitutional and unenforceable due to its inconsistency with the constitutional guarantee of gender equality.

3.2 Ruling No. 15/2555 (2012) dated 13th June B.E. 2555 (2012)

This case involved Section 26, paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act, B.E. 2543 (2000), which stipulated one of the disqualifications for an applicant to become a judicial official as "having a physical or mental attribute unfit for a judicial official." Accordingly, when a person with a disability applied for qualifying examinations for the position of assistant judge, the Judicial Committee denied his application due to physical and mental unfitness for the duties relevant to a judicial official. The individual in question believed that this reason amounted to unjust discrimination based on differences in physical condition. Consequently, the case was submitted to the Constitutional Court by the Ombudsman, arguing that such a legal provision was contrary to or inconsistent with Section 30 of the 2007 Constitution, which corresponds to Section 27 of the current Constitution.

After consideration, the Constitutional Court found that the prescription of such disqualification constituted unjust discrimination against persons with disabilities. It deprived them of

the opportunity to sit for the qualifying examinations on an equal footing with others, as well as the chance to demonstrate their knowledge and competence for the position. Therefore, the terms of Section 26, paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act, B.E. 2543 (2000), were inconsistent with the constitutional provision protecting the rights of persons with disabilities, particularly in engaging in work on an equal basis with others. This provision also amounted to unjust discrimination based on disability, contravening the constitutional guarantee.

3.3 Ruling No. 1/2566 (2023) dated 9th January B.E. 2566 (2023)

In this case, the complaint requested the Constitutional Court to consider a ruling under Section 51 of the Constitution, which provides the right for directly benefited individuals and communities to follow up and urge the State to perform its constitutional duties, as well as the right to take legal proceedings against the relevant State agency to ensure the provision of such benefits. The complaint argued that the operation of the Ministry of Energy, its strategy, and the Power Development Plan (PDP) were contrary to or inconsistent with Section 56 of the current Constitution, which mandates the State's duty to undertake or ensure that basic utility services essential for the subsistence of the people are provided comprehensively in accordance with sustainable development. In his view, the involvement of private entities in electricity production has led the Electricity Generating Authority of Thailand (EGAT) to reduce its electricity production capacity. As a result, the state's share of electricity production, which forms a fundamental structure or network of basic public utilities essential for the livelihood of the people and state security, has

fallen below 51%. This shift has influenced the costs of electricity rates charged to the public.

In this context, the Constitutional Court determined that the primary drivers of escalating electricity tariffs were rising natural gas prices, rather than the state's engagement with the private sector in electricity production. Consequently, this operation did not compromise the state's stability nor impose undue electricity tariff burdens on the public. It also represented a complete and lawful execution of duties, adhering to the rule of law as outlined in Section 56 of the Constitution.

Nonetheless, even though the Constitutional Court adjudicated that the state agencies in this case performed their constitutional duty, the Court also decided to recommend the State, and the Ministry of Energy in particular, to determine a proper ratio of electricity production among the state and the private enterprises and to set the right upper limit of electricity production reserve so as to ensure that the electricity fee shall not impose an unreasonable burden on the Thai people. To this context, the Court underscored the people's and communities' right to follow up and urge the State to perform such duties, as guaranteed by Section 51 of the Constitution. Accordingly, this right is not merely theoretical but is actively implemented by the Court, ensuring that the people have a tangible and effective process to ensure compliance with their rights.

Conclusion

Thailand has actively implemented the Sustainable Development Goals (SDGs) through constitutional justice to foster a peaceful, cohesive, inclusive, and resilient society, with a strong

emphasis on placing people at the center. The Thai Constitution contains provisions aimed at strengthening, and empowering all members of society. These provisions include women's empowerment, nondiscrimination against disabled people, and active public participation in prompting and monitoring governmental agencies to perform their duties. The Constitutional Court of Thailand plays a pivotal role in protecting and implementing these rights and liberties through its rulings. It has emphasized the importance of the Sustainable Development Goals (SDGs) concept of leaving no one behind, strengthening the power of the people by adhering to the rule of law, upholding democracy, and protecting rights and liberties. This approach underscores the enduring importance of constitutional justice for a just and sustainable society for the Thai people.

"The Role of Constitutional Justice within the Context of Sustainable Society"*

Hon. Mr. Kadir Özkaya
President of the Constitutional Court
of the Republic of Türkiye

Honourable President of the Constitutional Court of the Kingdom of Thailand, Distinguished Presidents/Chief Justices and Members of the Asian Constitutional Courts and Equivalent Institutions,

Esteemed Guests,
Ladies and Gentlemen,

It is my distinct honour and privilege to extend my warmest greetings to you all. It is a great pleasure to be here and address such eminent participants.

I am fully confident that this academic program organised on the occasion of the 6th Congress of the Asian Association of Constitutional Courts and Equivalent Institutions (AACC) will prove very beneficial and fruitful for each and every one of us. Taking this opportunity, I would like to extend my sincere gratitude to Mr. Nakharin Mektrairat, President of the Constitutional Court of the Kingdom of Thailand, as well as the justices of the Court and all those who contributed to this organisation. I also would like to congratulate Mr. President on his successful tenure as the Term-President of the AACC.

* The speech delivered by Mr. Kadir Özkaya, President of the Turkish Constitutional Court, at the 6th Congress & Board of Members' Meeting (BoMM) of the AACC.

In my remarks today, I will dwell on the role of the judiciary in fostering a sustainable society through examples from the jurisprudence of the Constitutional Court of the Republic of Türkiye ("the Court").

While the concept of sustainable society is broad and multifaceted, I will focus on three key aspects: the right to live in a healthy environment, the principle of social state, the freedoms of association and peaceful assembly.

Distinguished Participants,

One of the critical aspects of a sustainable society is the right to live in a healthy environment. The notion of sustainability was first introduced at the 1972 Conference on "the Human Environment" in Stockholm. In 2002, the United Nations Environment Programme (UNEP), in collaboration with the Constitutional Court of South Africa, organised a Global Judges Symposium on Sustainable Development and the Role of Law (*Global Judges Symposium*). Following the Global Judges Symposium, attended by 70 judges from around the world, the *"Johannesburg Principles on the Role of Law and Sustainable Development"* were adopted. The Symposium emphasised the essential role of an independent judiciary and judicial process in the implementation, development, and enforcement of environmental law.

Today, the pressing challenges posed by global warming and climate change serve as reminders of the crucial importance of the environment. Environmental degradation has emerged as a widespread issue affecting not only just one or several countries, but also the entire world.

Undoubtedly, addressing large-scale problems such as climate change requires international cooperation to exert political will. However, the matter also entails constitutional and legal aspect. Today, the right to environment is recognised and protected under many constitutions around the world. In addition, numerous national laws and regulations envisage provisions as to the protection of the environment. Therefore, the protection of environment is closely linked to the judiciary, particularly the constitutional jurisdiction.

Article 56 of the Turkish Constitution enshrines the right to live in a healthy environment and indicates that the protection of environment is within the joint responsibility of both the State and its citizens. Under this article, the State has a positive obligation to take necessary measures for environmental protection, as well as to ensure and monitor the effective implementation of these measures. In a constitutionality review decision, the Court has pointed to the obligations incumbent on the State by stating that *"it is among the fundamental duties of the State to take all necessary measures to improve the environment, protect environmental health, prevent environmental pollution, and preserve historical, cultural and natural assets and values"*[1].

Distinguished Participants,

The Turkish Constitutional Court does not provide a precise definition of the environment in its judgments, but rather specifies the nature or elements of a healthy and sustainable environment. In this sense, the Court has indicated that mining activities, natural beauties, urban transformation, hunting and wild animals and their

---

[1] See the Court's decision, no. E.2011/106, K.2012/192, 29 November 2012.

natural habitats, zoning plans, water, coasts and coastlines, and noise pollution fall within the scope of the concept of environment.

The Court has examined the alleged unconstitutionality of a legal provision, which legitimized various unauthorised buildings in the Bosphorus region of İstanbul. The Court has stated that the legislature is vested with discretionary power to make the regulations it deems necessary; however, in doing so, the legislature must take into account the conflicting public interests and strike a fair balance between them. Considering that there are many outstanding cultural and natural assets in the Bosphorus region, which form a part of the common heritage of humanity, the Court has concluded that there is a significant public interest in the preservation and development of the natural beauty of, as well as cultural and historical assets in, the Bosphorus coastline and coastal area. Therefore, the Court has annulled the impugned provisions on the grounds that they upset the fair balance to be struck between the conflicting interests[2]

Besides the cases of constitutionality review, the Court has also rendered decisions on the right to environment through individual application mechanism. As is known, the right to environment is not set forth in the European Convention on Human Rights (“the Convention”). However, the European Court of Human Rights considers the protection of environment within the scope of the right to respect for private life. The Court has adopted the same approach (as required by the common protection clause) and dealt with the environmental issues within the scope of the right to respect for private life.

---

2 See the Court’s decision, no. E.2019/21, K.2020/51, 24 September 2020

In this regard, the Court examines, within the scope of individual applications, whether the public authorities have taken the necessary measures to ensure the effective protection of the environment. At this point, let me mention a judgment of the Court regarding a mining project in our country where a tragic mining accident occurred. Before the mining accident in question, the Court had found a violation in an individual application regarding the project. The Court identified discrepancies between the environmental report issued by the public authorities for the project and the relevant expert report, and noted that the inferior courts failed to address and resolve these discrepancies. Hence, the Court found a violation of the right to respect for private life on account of the superficial assessments by public agencies[3]

The Court also considers the right to environment in terms of the citizens' right to participate in decision-making processes on environmental issues.[4] In accordance with the applicable legal procedures, it is strictly monitored whether citizens are informed of the environmental impact assessment processes and whether they are provided with the opportunity to effectively participate in these processes. In cases where the authorities have failed to fulfil these requirements, the Court finds a violation.

Distinguished Participants,

Another aspect of a sustainable society is the principle of social state. Article 2 of the Turkish Constitution clearly indicates that the Republic of Türkiye is a social state governed by the rule of law. Article 5 thereof also points to the fundamental aims and

[3] See *Eşref Demir,* no. 2020/12802, 1 November 2023.

[4] See *Fevzi Kayacan (2),* no. 2013/2513, 21 April 2016, §§ 56-58.

duties of the State, which are, *inter alia, "to ensure the welfare, peace and happiness of individuals and the society; to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the individual's corporeal and spiritual existence".* The right to social security, a concrete manifestation of the principle of social state, is enshrined in Article 60 of the Constitution. The subsequent provision lays down that the State shall take the necessary measures to protect the relatives of martyrs, veterans, the disabled, the elderly, and the children in need. The right to labour is also among the rights safeguarded by the Turkish Constitution. However, it does not indeed fall the joint protection of the Constitution and the Convention. However, the Court has examined, to the extent possible, the cases relating to the professional life of individuals under the right to respect for private life.

In its several judgments, the Court has found a violation of the right to respect for private life within the context of professional life. These judgments particularly point out that public authorities cannot act arbitrarily in matters such as appointments, promotions or dismissals from public office, that such procedures must be subject to review by administrative courts, and that the applicant's allegations must be addressed by a concrete, sufficient and relevant justification.

The Court also strictly monitors the impact of professional life on family life. There are many violation judgments rendered by the Court in this regard. Among such cases, the Court has examined the

relocation of public officers to other regions without considering the impact of such process on their family life. In its assessment, the Court has stressed that a reasonable balance must be struck between the public interest in the appointment or relocation of public officers and the individual's interest in the enjoyment of the right to respect for family life. It should not be overlooked that the absence of such balance would undermine the right at stake. In exercising the discretionary power to order the relocation of public officers, the authorities must also observe the positive obligations imposed on the State under the right to respect for family life, which is safeguarded by Article 20 of the Constitution. In such cases, the Court found a violation in the case of relocations ordered without taking into consideration that the person has family members in need of care.[5]

Distinguished participants,

For a sustainable society, the significance of the right to freedom of association and freedom of peaceful assembly is also beyond dispute. According to the Court, *"the right to freedom of association enables individuals to realise their political, cultural, social and economic goals in community with others."*[6] It also indicates that *"in democracies, the existence of associations where citizens can freely interact and organise among themselves to pursue common goals is integral to a healthy and well-functioning society, and such an 'association' enjoys fundamental rights which must be respected and protected by the State."*[7] In one of its

5 See Nurbani Fikri, no. 2014/2502, 11 October 2018.
6 See Tayfun Cengiz, no. 2013/8463, 18 September 2014, § 30.
7 See Eğitim ve Bilim Emekçileri Sendikası and Others, no. 2014/920, 25 May 2017, § 75.

judgments on the right to form associations, the Court has stated that *"the freedom of association and its sub-element, the right to form associations, are regarded as an essential component of democratic life under the Constitution"*, and that *"the limitations to this right are subject to strict scrutiny as to whether they are necessary in a democratic society".*[8] Additionally, the Court has considered that the freedom of association also encompasses the right to form trade unions, stating that this right *"assures that employees shall be subject to no sanction for their trade-union membership".*[9]

The Court has also ruled on the right to hold meetings and demonstration marches in a number of judgments. According to the Court, this right is *"one of the most fundamental principles of a democratic society and is intended to ensure that individuals are able to associate with one another in order to defend collectively their common ideas and to disseminate them to others"*[10]. In its judgments, the Court has emphasised that the Constitution safeguards the right to hold peaceful demonstration marches without prior permission. In this regard, the Court strictly examines interventions to non-violent peaceful demonstrations and finds a violation if the public authorities fail to provide a concrete basis substantiating the intervention to public demonstrations. In a similar vein, the imposition of administrative or criminal penalties on individuals participating in peaceful demonstration marches constitutes a violation of the relevant principles.

---

8 See Hint Aseel Hayvanları Koruma ve Geliştirme Derneği and Hikmet Neğuç, no. 2014/4711, 22 February 2017, § 41.

9 See Anıl Pınar and Ömer Bilge, no. 2014/15627, 5 October 2017, § 35.

10 See Yasin Agin and Others [Plenary], no. 2017/32534, 21 January 2021.

Finally, I would like to refer to a norm review decision on the freedom of peaceful assembly. In this decision, the Court found unconstitutional and thus annulled the contested provision in the Law on Meetings and Demonstration Marches, which stipulates that *"demonstration marches cannot be organised on intercity highways".*[11]

The relevant provision restricts the right to hold meetings and demonstration marches on highways in order to prevent the obstruction of traffic and safeguard the freedom of movement of others. In its examination, the Court has concluded that the provision imposes a categorical ban for highways and grants absolute advantage to the prevention of disruption of traffic, and that the balance to be struck between the right to hold meetings and demonstration marches and the public order, along with the rights and freedoms of others, is disproportionately upset to the detriment of the former right. As stated in other judgments of the Court, it is inevitable that meetings and demonstration marches may cause some inconvenience to the daily lives of others and this must be tolerated in a democratic society.

If the disruption of traffic due to the organisation of a demonstration march in a particular place makes daily life extremely and unbearably difficult, it is possible to restrict the relevant right, provided that constitutional principles and rules are complied with. The provision, however, categorically bans the organisation of demonstration marches on intercity highways, without specifying the extent of the restriction. In this regard, the Court has found that the restriction imposed on the right to hold meetings and

[11] See the Court's decision, no. E.2020/12, K.2020/46, 10 September 2020.

demonstration marches does not meet a pressing social need, and nor does it comply with the requirements of the democratic society. For these reasons, the Court found unconstitutional and annulled the relevant provision.

Distinguished participants,

I have sought to present the concept of a sustainable society in the context of fundamental rights and freedoms in three main aspects through the case-law of the Turkish Constitutional Court. I sincerely hope that you have found useful the information and jurisprudence I have provided in a very brief manner due to the limited time available.

Thank you for your attention.

"Constitutional Reform - a New Development Stage of the Constitutional Justice in the Republic of Uzbekistan"

Hon. Mr. Mirza-Uluugbek Abdusalomov
Chairman of the Constitutional Court of the Republic of Uzbekistan

Dear participants of the international congress!
Dear colleagues! Ladies and gentlemen!

Please let me welcome you and also thank the organizers of today's event - the Constitutional Court of the Kingdom of Thailand for the invitation and the opportunity to speak to you.

We believe that the holding of the VI Congress of the Association of Asian Constitutional Courts and Equivalent Institutions on the topic **"The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"** in Thailand demonstrates that the Constitutional Court of Thailand makes a great contribution to strengthening cooperation between constitutional courts of Asian countries.

As you known, the institute of constitutional control is one of the reliable mechanisms for ensuring the supremacy of the Constitution, democratization of the state power, as well as the protection of fundamental human rights and freedoms. Constitutional reforms are taking place at the stage of today's intensive development, and linking constitutional control with these processes relevant to ensure the supremacy of the Constitution in the country.

Dear colleagues!

Taking this opportunity, I would like to briefly inform you about constitutional reform and the development of constitutional control in the Republic of Uzbekistan.

From the first days of independence, the Republic of Uzbekistan set itself the task of creating a democratic legal state, which was also proclaimed in the Constitution.

Over the past years, Uzbekistan has entered a completely new stage of development and has achieved significant success along this path. Today's course of Uzbekistan is aimed at ensuring full protection of human rights and laying the foundation of a New Uzbekistan.

For the first time, the Constitution of the Republic of Uzbekistan was adopted on **December 8, 1992.** Since the adoption of the Constitution, colossal changes have occurred in the country. This concerns modern technologies, the standard of living of citizens and the sustainability of the national economy. The country needs to move forward using its enormous potential. The Constitution must correspond to changing global and domestic realities. These and other factors pushed major amendments to the Constitution. In this regard, the President of Uzbekistan took the initiative to carry out constitutional reforms.

Constitutional reform has become an important tool for promoting "better governance" by changing constitutional provisions to strengthen the system of checks and balances between the branches of government. This is achieved primarily through a clear distribution of powers between the President, parliament and government, creating an appropriate balance in the system of separation of powers, strengthening checks and balances, and

developing civil society.

On April 30, 2023, a referendum was held in our country on the new Constitution of Uzbekistan. Citizens of our country, with more than 90% of the votes, made their choice in determining the future of the country, focused on deepening the democratization of all spheres of public and state life, by adopting a new edition of the Constitution of the Republic of Uzbekistan.

The updated Constitution enshrines the principle of its direct action as a means for citizens to exercise their rights and freedoms, relying solely on the Constitution.

It is noted that the Constitution triples the norms containing the state's social obligations, which is evidence that strong social protection remains an important area of state policy.

A separate chapter of the Basic Law is devoted to the institutions of civil society and guarantees for their activities, which will serve as a solid basis for strengthening the dialogue between the state and society and the formation of a strong civil society.

Constitutional guarantees of human rights and freedoms have been strengthened. Ensuring human rights and freedoms is determined by the highest duty of the state, it is stipulated that human dignity and honor are inviolable and nothing can be a basis for their violation. In this regard, the Constitution stipulates that contradictions and ambiguities in legislation arising between a person and government bodies are interpreted in favor of the person, and legal measures must be sufficient and proportionate to achieve the legal goal.

The Constitution includes provisions on strengthening the immunity of judges and ensuring their safety, non-accountability of judges in specific cases, financing the activities of courts from

the state budget, contributing to the formation of a truly fair and independent judicial system and ensuring the impartiality of the courts.

The updated Constitution provides for norms aimed at strengthening constitutional judicial control in the country. Thus, the new Constitution provides for further democratization of the procedure for electing judges of the Constitutional Court. In accordance with **Article 132** of the Constitution, judges of the Constitutional Court are now elected for a ten-year term without the right to re- election.

As you known, ensuring the right of every person **to access constitutional justice** is an important factor in the protection of constitutional rights and freedoms. The institution of appeal to the Constitutional Court is an effective and efficient means of implementing the Constitution, an important form of civic activity in strengthening the constitutional legitimacy of legislation.

A new mechanism for protecting the rights and freedoms and legitimate interests of citizens was the establishment at the constitutional level of the institution of a constitutional complaint to verify the constitutionality of a law if the law, in their opinion, violates their constitutional rights and freedoms, does not comply with the Constitution and is applied in a specific case.

The renewed Constitution also contains very important guarantees of the independence of the Constitutional Court.

According to the new Constitution, judges of the Constitutional Court are elected for a ten-year term without the right to re-election. The Constitutional Court elects from among its members the Chairman of the Constitutional Court of the Republic of Uzbekistan and his deputy for a five-year term. The Constitution

entrusts him with fundamentally new powers, ensuring the further development of constitutional control and strengthening the system for protecting the constitutional rights of citizens.

As you known, a referendum is a form of direct democracy and is of great importance in the system of making democratic decisions and organizing a democratic state. The new Constitution gives the Constitutional Court the authority to determine the conformity of the Constitution of the Republic of Uzbekistan with issues submitted to a referendum.

Verification of issues submitted to a referendum, as one of the forms of preliminary constitutional control, is aimed at preventing a referendum, the result of which will be the adoption of an unconstitutional decision.

The new Constitution provides for a procedure for checking the conformity of the Constitution of the Republic of Uzbekistan with the constitutional laws of the Republic of Uzbekistan - before they are signed by the President of the Republic of Uzbekistan, international treaties of the Republic of Uzbekistan - before the President of the Republic of Uzbekistan signs the laws of the Republic of Uzbekistan on their ratification.

In general, the new Constitution helps to increase the efficiency of constitutional control and creates conditions for bringing to a new level the work of the Constitutional Court to ensure the supremacy of the Constitution of the Republic of Uzbekistan.

At the same time, there are a number of issues that need to be addressed to improve constitutional control. We believe that it is necessary to make the institution of appealing citizens and legal entities to the Constitutional Court more convenient for citizens, to increase their legal literacy, to work out the issues of providing

qualified legal assistance to citizens in the field of constitutional proceedings, and also taking into account that this institution will contribute to the further strengthening of constitutional legality in the country will strengthen cooperation with subjects of the right of initiation, i.e. government agencies in this direction. In this regard, we are working on issues of further improvement of the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan" by providing for an increase in the subjects of constitutional control. We are also working to improve the structure of the Secretariate of the Constitutional Court of the Republic of Uzbekistan.

I believe that the renewed Constitution has created a solid basis for the social and legal protection of citizens, improving their well-being, further strengthening their rights and interests, and a reliable guarantee of long-term development strategies for the country.

Dear conference participants!

Concluding my speech, I would like to wish the organizers and all participants of the VI Congress of the Association of Asian Constitutional Courts and Equivalent Institutions productive work, constructive dialogue and effective interaction!

Thank you for your attention

"The Role of Constitutional Courts in Strengthening Constitutional Justice for a Sustainable Society"

Hon. Mr. Qazi Faez Isa
Former Chief Justice of the Islamic Republic of Pakistan

Introduction

The very notion of sustainability and constitutional justice are closely interlinked in many respects. Sustainable development generally refers to development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. Its goals, inter alia, encompass ending poverty and inequality, protecting the planet, and ensuring health, justice, and prosperity for all people across the globe. On the other hand, Constitutional Courts perform a crucial role in upholding the rule of law and protecting fundamental rights. Being empowered with the interpretation and enforcement of constitutional provisions, constitutional courts ensure the upholding of the principles of justice, equality, and democracy. This custodial role is not only vital for the protection of the fundamental rights of citizens but also for the organization of a sustainable society where the rights of the present as well as future generations are protected. In recent years, the Supreme Court of Pakistan has made significant strides in strengthening constitutional justice, contributing to a more sustainable and just society. By ensuring that laws are implemented fairly and that the rights of all citizens are upheld, the Court has reinforced public trust in the judicial system. This, in turn, has fostered a more stable and equitable society, essential for sustainable development.

Constitutional Justice: A Pakistani Perspective

Over time, the Supreme Court of Pakistan has developed a body of jurisprudence that embodies our nation's commitment to the protection of human rights for both present and future generations. This evolving jurisprudence underscores the necessity of collective action to meet global challenges and seize opportunities, thus highlighting the invaluable nature of this discourse. Pakistan, established on the foundational principles of justice, equality, and respect for human dignity, boasts a commendable history of upholding rights enshrined in our Constitution. As the apex judicial body, the Supreme Court of Pakistan bears the solemn responsibility of interpreting and enforcing these constitutional guarantees. The Constitution of the Islamic Republic of Pakistan, 1973, provides a strong framework for the protection of human rights, with Articles 8 to 28 specifically guaranteeing rights essential for human dignity and prosperity across generations.

Globally, the relevance of this topic cannot be overstated. In an era where democratic values and human rights are increasingly under threat, the role of constitutional courts becomes even more significant. These courts act as guardians of the constitution, providing a check on the powers of the executive and legislative branches of government, and ensuring that laws and policies are in line with constitutional principles. Their decisions have far-reaching implications, not only for the legal framework but also for the social and political landscape of a nation. From a Pakistani perspective, this topic takes on unique importance. Pakistan's constitutional history has been marked by the phases of political instability and challenges to the rule of law. The Supreme Court of Pakistan has played a critical role in navigating these

challenges, asserting judicial independence, and reinforcing the supremacy of the constitution. Landmark judgments have addressed issues such as the protection of fundamental rights, the separation of powers, and the accountability of public officials.

The Supreme Court of Pakistan plays a crucial role in upholding constitutional justice through its powers of judicial review, protection of fundamental rights, advisory jurisdiction, constitutional interpretation, and dispute resolution between federal and provincial governments. Similarly, constitutional courts in other nations, such as the United States, India, Germany, and South Africa, perform analogous functions. These courts ensure that laws and governmental actions align with constitutional principles, safeguard civil liberties, and resolve conflicts within their federal structures. Despite variations in scope and specific powers, the core mission of these courts remains the protection of the rule of law and the promotion of a sustainable and just society.

Constitutional courts play a fundamental role in upholding constitutional laws, focusing on civil liberties, and serving as a check on the other branches of government. By exercising judicial review, these courts ensure that all legislative and executive actions conform to constitutional principles, thereby nullifying any laws or policies that infringe upon the Constitution. This power of review is instrumental in protecting civil liberties, as it allows the courts to safeguard individual rights against potential abuses by the state. For instance, courts frequently adjudicate on matters involving free speech, due process, and equal protection, thus upholding the fundamental rights of citizens. Furthermore, constitutional courts act as a critical check on the powers of the legislative and executive branches, maintaining a balance of power within the government.

By interpreting the Constitution, these courts provide clarity and resolve ambiguities, ensuring consistent application of the law. In this way, constitutional courts reinforce the rule of law, prevent the arbitrary use of power, and contribute to the stability and sustainability of democratic governance.

Constitutional Courts and Sustainable Society

In Pakistan, the constitutional courts have a significant role in promoting sustainable development through the enforcement of environmental rights and the application of constitutional principles. The Supreme Court of Pakistan has recognized the importance of environmental protection as an integral part of the right to life under Article 9 of the Constitution. The Court has developed a robust environmental jurisprudence that aligns with international principles such as sustainable development, the precautionary principle, environmental impact assessment, and inter and intra-generational equity. The Constitution of Pakistan does not explicitly enshrine environmental rights as a separate, standalone right. However, the right to a healthy and clean environment has been interpreted by the judiciary to fall within the ambit of the fundamental rights guaranteed by the Constitution, particularly the right to life. The right to life is enshrined in Article 9 of the Constitution of Pakistan, which states, "No person shall be deprived of life or liberty save in accordance with law". The term "life" has been interpreted by the Pakistani judiciary to include the right to a healthy environment as an essential part of life and dignity. This interpretation aligns with international environmental principles such as sustainable development, the precautionary principle, environmental impact assessment, inter and intra-generational

equity, and the public trust doctrine. The Supreme Court of Pakistan, in the landmark case of *Mst. Shehla Zia v. WAPDA*, reported in PLD 1994 SC 693, extended the meaning of the right to life under Article 9 to include the right to a healthier and cleaner environment. This case set a precedent for environmental justice based on the right to life, and subsequent cases have built upon this jurisprudence.

Subsequent cases have built upon this jurisprudence, weaving constitutional values and fundamental rights with international environmental principles. The courts have recognized that environmental issues such as air pollution, urban planning, water scarcity, deforestation, and noise pollution are local geographical issues that affect the fundamental rights of citizens. For instance, the Lahore High Court in case titled *Asghar Leghari v. Federation of Pakistan* (2018 CLD 424 Lahore) and the High Court of Baluchistan in case titled *Haji Mulla Noorullah v. Secretary Mines and Minerals* (2015 YLR 2349) have recognized the environmental rights as part of fundamental rights. The case law has also evolved to include the concept of Climate Justice, which links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change equitably and fairly. The courts have acknowledged the need for adaptation as a response to global warming and climate change, particularly in developing countries like Pakistan, which are predicted to bear the brunt of the effects of global warming.

In terms of sustainability, the Constitution of Pakistan does not confine human rights to a specific temporal context; instead, it acknowledges these rights for all individuals, both present and future. As a dynamic document, the Constitution possesses the legal

capacity to evolve in response to societal changes, empowering the Supreme Court of Pakistan to interpret its provisions and laws with a forward- looking perspective. For example, in *D.G. Khan Cement Company v Government of Punjab* (2021 SCMR 834), the Court contemplated the legacy we leave for future generations, thereby recognizing the judiciary's role in mitigating climate change effects for current and future generations. This decision reaffirmed the rights of future generations and acknowledged the principles of intergenerational justice, climate democracy, and sustainable development.

Conclusion

In summary, the constitutional courts in Pakistan have recognized environmental rights through constitutional interpretation, particularly by reading environmental dimensions into the right to life and human dignity as provided under Articles 9 and 14 of the Constitution. This has led to the development of a rich jurisprudence on environmental justice in the country.

IV. Bangkok Declaration of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions

Bangkok Declaration

The 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions on the theme of "The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society"

September 19th, 2024

We, the Members of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) gathered in Bangkok, Thailand, from 18th to 21st September 2024, unite with a shared commitment to the principles of constitutional justice. This Conference themed: "The Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for Sustainable Society" provides a platform for dialogue and collaboration among diverse nations, all dedicated to upholding the rule of law, democracy, and human rights.

Recognizing the essential principles of constitutional justice, we reaffirm our belief in the international law, the supremacy of the constitution, separation of powers, protection of fundamental rights, and the need for an independent judiciary. These principles are the foundation of justice, peace, and stability in our societies. In a rapidly changing world – marked by technological advancements, environmental challenges, and social transformation – we acknowledge the crucial role of constitutional justice in fostering sustainable societies. We recognize that each nation will approach the integration of sustainability within its constitutional framework in a way that reflects its unique legal traditions, social contexts, and developmental priorities. Upholding the rule of law and protecting the fundamental rights are indispensable in addressing global issues such as climate change, resource management, and social equity, ensuring that development is sustainable, inclusive, and just. We emphasize the importance of mutual respect and cooperation as we adapt our constitutional frameworks to these new challenges.

We firmly commit to advocating for justice, peace, and human rights, and standing united against any actions that threaten the lives, security, freedom, and dignity of individuals and nations, including those affecting Palestinian people.

We recognize the importance of ensuring access to justice as part of the struggle to maintain sustainable peace and stability in states societies, to combat climate change and promote "climate justice." In this spirit, we extend our best wishes for the success of the 29th Conference of the Parties (COP 29) to the UNFCCC to be hosted by Azerbaijan. We recognize the crucial role such international gatherings play in addressing climate change and promoting sustainable development, including the promotion of public awareness in this field.

We shall continue to strengthen cooperation with other constitutional courts and equivalent institutions in a global format with the assistance of the Venice Commission and UN institutions, in an interregional and regional format, as well as other associations and associated communities that promote the rule of law and the protection of human rights, access to justice.

As the Members of the Association of the Constitutional Courts and Equivalent Institutions (AACC), we stand united in our dedication to constitutional justice and the pursuit of sustainable societies. We leave the Conference with a shared vision for a just and equitable world, committed to our common goals while respecting our differences.

We invite other constitutional courts and equivalent institutions to join our association with a view to fostering a broader community dedicated to the principles of constitutional justice in the context of sustainable development.

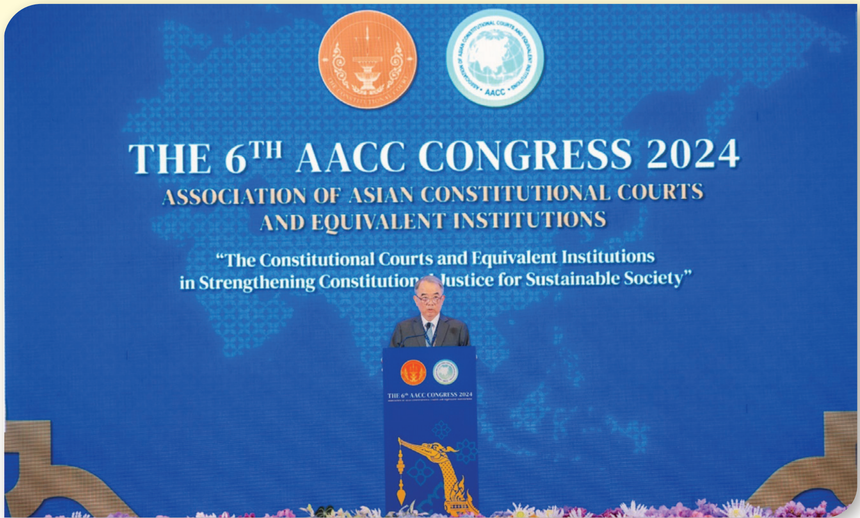
This Declaration was adopted by consensus at the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), held in Bangkok, Thailand, from 18th to 19th September, 2024.

Adopted in Bangkok, Thailand, on 19th September 2024.

V. Photos of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions

Board of Members Meeting of the Association of
Asian Constitutional Courts and Equivalent Institutions (AACC)

THE 6th AACC CONGRESS 2024
BOARD OF MEMBERS MEETING
ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS
AND EQUIVALENT INSTITUTIONS
"THE CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS
IN STRENGTHENING CONSTITUTIONAL JUSTICE FOR SUSTAINABLE SOCIETY"



Hon. Professor Dr. Nakharin Mektrairat
President of the Constitutional Court of the Kingdom of Thailand and President of the Association of Asian Constitutional Courts and Equivalent Institutions delivered an opening remarks of the 6th AACC Congress.

Opening ceremony of the 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions

MOU Signing Ceremony
between the Association of Asian Constitutional Courts and
Equivalent Institutions (AACC) and the Conferencia Iberoamericana de
Justicia Constitucional (CIJC)

Hon. Professor Dr. Nakharin Mektrairat, President of the Constitutional Court
of the Kingdom of Thailand and President of the AACC and
Hon. Mr. Enrique Arnaldo Alcubilla, Judge of the Constitutional Court
of the Kingdom of Spain and President of the CIJC

Heads of delegations of the 6th Congress of the Association of Asian Constitutional Courts and Equivalents Institutions.

Speakers delivered speeches to the 6th Congress of the AACC

REPUBLIC OF KOREA

REPUBLIC OF INDONESIA

MONGOLIA

REPUBLIC OF THE UNION
OF MYANMAR

THE 6th AACC CONGRESS 2024

THE 6th AACC CONGRESS 2024

Cultural program dedicated for the delegations
of the 6th Congress of the AACC

Gala dinner dedicated for the delegations
of the 6th Congress of the AACC

Editorial Team

No.	Name	Position
1.	Mr. Suttirak Songsivilai	Secretary-General, Office of the Constitutional Court
2.	Mrs. Chatkeaw Lertpaithoon	Senior Expert on Administration Acting Deputy Secretary-General Office of the Constitutional Court
3.	Ms. Sumaporn Srimoung	Director of International Relations and Foreign Affairs Bureau
4.	Mr. Nitikon Jirathitikankit	Director of Foreign Constitution Division
5.	Mr. Kongkiat Suraka	Director of International Cooperation Division
6.	Mr. Pitaksin Sivaroot	Director of Interpreter and Translation Division
7.	Ms. Kotechakorn Noipeng	Constitutional Academic Officer
8.	Ms. Wilawan Prasertsak	Constitutional Academic Officer
9.	Ms. Premika Saenthong	Constitutional Academic Officer
10.	Ms. Tanwarat Koomkiat	Constitutional Academic Officer
11.	Ms. Niyaphat Kaewkun	General Administration Officer

Office of the Constitutional Court

The Government Complex Commemorating
His Majesty the King's 80th Birthday Anniversary,
5th December, B.E.2550(2007) Rajaburi Direkriddhi Building,
120 Moo 3 Chaengwattana Road,
Laksi District, Bangkok 10210