



## **Report by the rapporteur**

### **5<sup>th</sup> Congress of the World Conference on Constitutional Justice**

#### **Session A**

#### **“Source and Jurisdiction”**

**Ms Joana Fernandes COSTA**

**Justice**

**Constitutional Court of Portugal**

Chairperson,

Honourable President of the Constitutional Court of Indonesia,

Distinguished guests,

Ladies and Gentlemen,

I would like to begin by expressing my gratitude to His Excellency, Mr. Omar Balhadij, Chief Justice of the Constitutional Court of Algeria, our chairman, for his remarkable moderation.

I would also like to express my appreciation to Mr. Anwar Usman, our excellent keynote speaker, for his outstanding remarks and important points that were made yesterday.

Chief Justice Anwar Usman first expressed his wish that this congress should be a step towards peace and justice for all nations of the world. I am sure we all share the same aspiration.

The Preamble of the Constitution of the Republic of Indonesia embodies the principles of peace and justice. In its first paragraph, it upholds independence as the inalienable right of all nations, with the resulting condemnation of colonialism, which is incompatible with those principles. The Preamble goes on to state that the Government of Indonesia has a duty to work towards world freedom and peace. That responsibility falls on the President, as well as the legislature thus such principles will have an impact on legislation.

Concerning treaties and conventions, Chief Justice Usman mentions the specific example of Law No. 24, of 2000, which establishes that the decision to be bound by International Agreements must be guided by the established in the Preamble of the Constitution of the Republic of Indonesia regarding the principles of peace and justice. If any International Agreement fails to comply with those principles, the Constitutional Court will have the power to annul any such arrangements, similarly to any other law which may be in breach of the Indonesians Fundamental Law.

This is an example of the role of the Indonesian Constitutional Court in verifying compliance with the Constitution through judicial review.

Another example, as pointed out by Chief Justice Anwar Usman concerns the existence of ethnic groups. Since they exist as a community, indigenous people have the right to address the Court, and their law must be respect as long as it is compatible with Indonesians Constitution.

However, Chief Justice Usman noted that the Court's role is a passive one, in the sense that it may only intervene upon an application by another party. It cannot take the initiative of verifying constitutional compliance.

Chief Justice Usman then concluded his presentation by reaffirming the crucial importance of protecting the constitutional rights of individuals, both for the sake of individuals themselves, and for achieving and maintaining peace at home and around the world.

Thank you again Chief Justice Usman for your address.

Honourable ladies and gentlemen,

I would also like to extend to Her Excellency, Justice Simina Tanasescu, our discussant, for her brilliant presentation on “Constitutional Justice and Peace, Sources and Jurisdiction”.

Justice Simina Tanasescu first stated that peace within the state is the traditional realm of constitutional courts activity.

Justice Tanasescu then pointed out a trend that has been growing .... which is an increasing social cleavage and polarization, where people within a given society interpret otherness as a menace.

In this all-too-familiar scenario, where pluralism and democracy are at risk, constitutional courts have a crucial role to play.

As Justice Tanasescu pointed out, different Constitutions make references to peace in different ways and based upon different concepts.

Some Constitutions protect the concept of peace by simply *rejecting war as an instrument of aggression* against the freedom of other peoples. Others, take into account peace as the *main vocation of their State*. And most often, Constitutions consider peace as a *major goal of the community of people* reunited within the state.

As Justice Tanasescu also noted, the role of constitutional courts as mediators is always a critical one. One of their main tasks is conflict resolution.

This task is particularly difficult, as we all heard, when courts have to deal with different law sources — such as customary law and EC law —, face narrow powers or deal with conditioned access to the court by individuals or groups.

One way or another, this essential task entails interpreting constitutional provisions in a manner that allows a legal system devoid of contradictions and ensures a balance among constitutional values. It also entails the appeasement of state authorities and political actors, and the constant mediation between state power and civil society.

Enjoying or not *an explicit mandate to guard and promote peace within the state*, having or not *explicitly references to peace in their Fundamental Laws*, constitutional courts do in fact provide solutions to issues that otherwise could developed into conflicts.

As Justice Simina Tanasescu emphasized, constitutional jurisdictions are instruments of conflict resolution, bringing like any other type of court social peace through reasoned arguments and, if I may say so, trough clear communication.

Justice Tanasescu's speech concluded by reminding us all that justice and peace are intrinsically dependent on the respect for fundamental rights

and that the ultimate goal of constitutional jurisdictions is the protection of human rights.

And this is also why constitutional jurisdiction plays an essential role in accomplishing what Justice Tanasescu referred to as the universal dimension of the concept of peace — that is, peace as *harmony*, as mentioned in the Preamble of the Ukrainian Constitution. Because, as we all know, without an effective protection of human rights, real *harmony* within and also between the states can never be achieved.

Thank you again Justice Simina Tanasescu for your address.

And thank you all for your kind attention.