

**The First World Conference on Constitutional Justice**

**Cape Town, South Africa**

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**By**

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The World Conference on Constitutional Justice took place in Cape Town, South Africa from 22-24 January 2009. This event was organized by the Constitutional Court of the Republic of South Africa and the Venice Commission of the Council of Europe. The theme of the World Conference is “Influential Constitutional Justice – its influence on society and on developing a global jurisprudence on human rights.” Participants from 93 Constitutional Courts, Constitutional Councils and Supreme Courts with constitutional, including human rights, jurisdiction participated in this Conference. The World Conference brought together for the first time Courts and Councils, which belong to various regional or linguistic groups. The Delegation of the Constitutional Court of Thailand attending this World Conference was led by Mr. Chat Chonlaworn, President of the Court.

The purpose of the World Conference was to examine how constitutional courts or courts engaged in constitutional review influenced their own societies as well as how they inspired the development of global human rights jurisprudence. It was hoped that the Conference would promote co-operation among courts engaged in constitutional review and further the development of global human rights principles to the benefit of the people of the world

The Opening Session of the Conference was highlighted by the keynote speech of His Excellency Mr. Kgalema Motlanthe, President of the Republic of South Africa. The Plenary Session then considered the topics of the Conference. Eight groups uniting the participating courts on a regional and linguistic basis made short presentations of their groups to provide an impetus for the discussion of the topics of the Conference from the viewpoint of their groups. For the Asian group, Mr. Kong Hyun Lee, Justice of the Constitutional Court of the Republic of Korea, was selected to make presentation to the Plenary Session. The Conference thereafter split into 6 workshops on a regional and linguistic basis. After the workshops’ meeting, the Rapporteurs of the workshops would report the outcome of discussions in the workshops to the Plenary Session. The discussion in the workshops centered on the two sub-topics: the influence of constitutional justice on society and the development of global human rights jurisprudence.

In the workshop of Asian group, delegates from 8 countries participated, namely, Indonesia, Japan, Republic of Korea, Malaysia, Mongolia, the Philippines, Singapore and Thailand. The Honorable Chief Justice Reynato Puno of the Supreme Court of the Philippines and Justice Kong Hyun Lee of the Constitutional Court of the Republic of Korea were elected Chairman and Rapporteur of the workshop respectively.

The participants took turn to present their views on the two sub-topics. For Thailand, Mr. Chat Chonlaworn, President of the Constitutional Court briefly introduced the Constitutional Court system in Thailand and indicated that rulings of the Constitutional Court have indeed significant impact on society and the political scene of the country. Most notable were the recent cases of the termination of the premiership of the Prime Minister and the case of the dissolution of three political parties which were in the coalition government at the time. The fact that there is no provision on contempt of the Constitutional Court and that some of the court rulings have impacts on politics exposes the court to criticisms by politicians, mass media, and the general public prior and subsequent to the rulings. These cases have far reaching effects on Thai politics as some are for but some are against these rulings. Evident pressure is exemplified by the blockade of the Constitutional Court by a mob which supported the three political parties that were subject to dissolution. Although the mob prevented Constitutional Court justices and officials from entering the courthouse and forced the change of venue of the hearing and decision, the ruling of the Constitutional Court is in accordance with the provisions of the Constitution, thus upholding the rule of law without yielding to the pressure from any group.

On the sub-topics of the development of global human rights jurisprudence, Mr. Chalermpon Ake-uru, Justice of the Constitutional Court, stated that, in Thailand, international law does not operate directly in the domestic sphere, needing to be transformed into domestic law by the legal acts of Parliament. However, Thailand as a member of the United Nations has incorporated international human rights principles, especially those contained in the Universal Declaration of Human Rights, into its Constitution. Thus, the Constitutional Court applies the principles of international human rights as contained in the Constitution of Thailand.

Since a great deal of interest was expressed in the workshop regarding the case of the termination of the premiership of the Prime Minister and the case of dissolution of the three political parties, Mr. Chalermpon Ake-uru took the opportunity to clarify and explain on the decisions of the Constitutional Court in these two cases. The first case is about conflict of interests. The provision of the Constitution prohibits the Prime Minister and Ministers from being employees of any person to prevent conflict of interests. Mr. Samak Sundaravej regularly acted as a host for TV cooking shows and received payment from doing so. He continued to do it even after being Prime Minister. He therefore committed an act prohibited by the Constitution, resulting in the termination of his premiership. The second case is about the dissolution of the three political parties- People Power Party, Machima Thipatai Party and Chart Thai Party- because of the commission of election fraud by members of the executive committee of the political parties. According to the Constitution, if a member of the executive committee of a political party commits an election fraud, the political party will be dissolved and the right to political election of the leader and all members of the executive committee will be suspended for five years.

When the rapporteur of the workshop for Asian group reported to the Plenary Session the next day, very much interest was also expressed in the Plenary Session. Mr. Chalermpon Ake-uru had to offer this explanation to the Plenary Session once again.

The World Conference wrapped up with the conclusion that constitutional justice is a key element in fostering and deepening the basic values enshrined in the Constitutions that form the basis of the work of the Courts and Councils which participated in the World Conference. Their decisions have a decisive impact on society. The presentations and discussions at the World Conference showed a common concern for the defence of human rights and the rule of law, both on a regional and a global level. Consequently, the exchange of information and experience between Courts and Councils should be reinforced on a regional and global basis. The participants agreed on the value of the present World Conference. They planned to organize a second World Conference within three years. They also contemplated the creation of the World Association open to the Courts belonging to the regional or linguistic groups.

The Final Declaration to that effect was issued at the end of the Conference.

The World Conference on Constitutional Justice should be considered a successful event. On the one hand, it promoted and encouraged more exchange of experience and information among the participating countries. On the other hand, it made the organization of the World Conference on Constitutional Justice a regular activity with the possibility of the establishment of the World Association.

As for the delegations from Asian countries, this World Conference provided a good chance to restart the discussions on the formation of regional grouping of constitutional review bodies since Asia is the only region that has no such a grouping. They expressed their willingness to attend the preparatory meeting which the Constitutional Court of the Republic of Korea is planning to hold this year.

From the point of view of the Delegation of the Constitutional Court of Thailand, this World Conference afforded a good opportunity to exchange views, experience and information with participants from other countries, especially on impact of the Court's decision on society and the development of human rights jurisprudence. An occasion also arose for the Delegation to explain and clarify about the two well-known decisions of the Constitutional Court of Thailand to the world at large.