



RESOLUTION
of the 2nd Congress of the Association of Constitutional Justice
of the Countries of the Baltic and Black Sea Regions
(June 1-2, 2017, Kharkiv, Ukraine)

We, the participants of the 2nd Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (hereinafter – the Congress), experts, scholars, having discussed the role of constitutional courts in interpreting the provisions of national constitutions in the context of generally recognised principles and norms of international law, European Union law, and judgments of the international courts:

INTENDING to strengthen the rule of law and the supremacy of the constitution in the activities of the bodies constitutional jurisdiction;

PROMOTING respect for international law and European Union law as the systems of law based on generally recognised democratic human values,

EMPHASISING the importance of exchanging experience on the implementation of international democratic values into the case-law of bodies of constitutional jurisdiction;

TAKING INTO ACCOUNT the competence of the constitutional courts of the countries of the Baltic and Black Sea Regions, the role of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights (hereinafter – the ECHR) related to its understanding of a law-based state;

PAYING REGARD to the specific features of the formation of modern paradigm of constitutionalism in each country;

RECOGNISING the presumption of compatibility of international law and European Union law with national constitutions based on the principle of subsidiarity,

HAVE CONCLUDED:

1. Constitutional jurisdiction is the most important factor in strengthening, developing and protecting the fundamental human values embodied in the constitutions underpinning the activities of the courts of the states which participated in the Congress. Their decisions and judgments have a decisive influence on the activities of the bodies of state power, local self-government and civil society institutions.

2. Respect for human and citizen's rights and fundamental freedoms guaranteed at the constitutional level is the basis of law order and justice. The participants of the Congress noted that the bodies of the countries carrying out legislative and law enforcement functions should also adhere to the provisions of universally recognised acts of international law, international instruments for the protection of human and citizen's rights and fundamental freedoms.

The participants of the Congress stressed that given the provisions of the 1950 European Convention for the Protection of Rights and Fundamental Freedoms, bodies of state power, including government, legislator, courts and body of constitutional jurisdiction, must make every possible effort to fulfill international commitments undertaken by the states participating in the Congress, including the implementation of the ECHR judgments. In particular, bodies of constitutional jurisdiction have to gradually integrate the ECHR judgments into domestic law.

3. The participants of the Congress noted in their reports and presentations that there is a tendency to unify the principles of constitutional jurisdiction when protecting human and citizen's rights and fundamental freedoms both at the regional and pan-European levels. The main criteria in this crucially important area of activity of the bodies of constitutional jurisdiction of the states participating in the Congress are the provision of the 1948 Universal Declaration of Human Rights, UN covenants on these issues, the provisions of the 1950 European Convention for the Protection of Rights and Fundamental Freedoms, resolutions and recommendations of the European Union governing bodies, the ECHR judgments, opinions and recommendations of the European Commission for Democracy through Law (Venice Commission) and other international human rights organisations and institutions.

4. Bodies of constitutional jurisdiction have a particular responsibility for the harmonisation of national constitutions and national legal systems with the universally recognised norms of international law, European Union law and other applicable international obligations as well as in general for consolidating the European orientation of their respective states. The participants of the Congress acknowledge the role of international law and European Union law in interpreting national constitutions and underline that the international and European standards should be perceived as minimum constitutional standards for the protection of fundamental rights.

The participants of the Congress strongly condemn the use of constitutional jurisdiction for the internal legalisation of grave breaches of international law as well

as for justification of non-implementation of judgments of international and European courts.

5. When adopting decisions on cases, the bodies of constitutional jurisdiction represented by the participants of the Congress more and more often refer to the patterns of the genesis of constitutionalism and corresponding jurisprudence in other countries, thus promoting the development of their constructive relationships both at the regional and at the pan-European and the global levels.

6. The Congress considers these trends to be positive given the following: although the constitutions of the participating states differ, their basic principles, in particular on the protection of human rights and human dignity, form a common ground, and legal arguments, based on these principles which are used in one country, with account of the differences in national legislation on the principle of subsidiarity, can be a source of inspiration for another.

7. It is expedient not only to improve the exchange of information and experience between the bodies of constitutional jurisdiction of the states participating in the Congress, but also to systematically familiarise with them the members of the World Conference on Constitutional Justice (WCCJ), the Conference of European Constitutional Courts (CECC), and other regional and linguistic associations of the bodies of constitutional jurisdiction.

8. Proper exercise of the powers by the bodies of constitutional jurisdiction, including on the protection of human and citizen's rights and fundamental freedoms is possible only provided the constitutional requirements for the independence of these bodies as well as immunity of judges and their subordination exclusively to constitution and the rule of law are observed.

Interference with the activities of the bodies of constitutional jurisdiction by other bodies of state power, political and public pressure is unacceptable. These subjects of power and public legal relations must refrain from any attempts of undue influence on judges in the performance of their duties. At the same time, the Congress underlines the importance of transparency and accountability of the bodies of constitutional jurisdiction for their activities to civil society.

The participants of the Congress, agreeing with the benefit of this event,

HAVE DECIDED:

1. To recognise that the exchange of experience between the constitutional courts participating in the Congress is necessary to ensure the effective application of acts of international law in the protection of human and citizen's rights and fundamental freedoms, taking into account the specific features of national constitutions and the principle of subsidiarity as a generally recognised rule in relations between the Council of Europe member-states.

2. To emphasise that application of the jurisprudence of international courts in the activity of the bodies of constitutional jurisdiction of the states participating in the

Congress contributes to strengthening the principle of the rule of law, and is important for ensuring the protection of human and citizen's rights and fundamental freedoms guaranteed by the national constitutions and declared in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms as well as in the other acts of international law.

3. To apply the norms of international law and European Union law as important sources of interpretation of national constitutions and of progressive development of national constitutional doctrine in the activities of constitutional courts participating in the Congress.

4. To recognise that the conflict between the jurisprudence of the national constitutional court and international courts in ensuring the protection of human and citizen's rights and fundamental freedoms should be resolved through reviewing the jurisprudence of national constitutional courts with account of the specific features of the norms of national constitutions in accordance with the generally recognised principle of subsidiarity or through adoption of relevant constitutional amendments in case the review of national judicial practice is impossible.

5. To consider that ensuring of implementation of the principle of the rule of law which is the basis of the development of national constitutional doctrine of the states participating in the Congress in exercising of authorities by bodies of constitutional jurisdiction, including on the protection of human and citizen's rights and fundamental freedoms, is incompatible with the facts of interference with their activities by the bodies of state power, politicians, representatives of mass media and civil society institutions. The Congress calls upon these subjects of power and public legal relations to refrain from any attempts of undue influence on judges in the performance of their duties.

6. To continue the development and implementation of a unified technique of systematisation of constitutional courts' acts, with account of CODICES database, which will enable the formation and development of the national constitutional doctrine with regard to the jurisprudence of the constitutional courts of the states participating in the Congress.

7. To recognise the practice of exchange of the acts of the constitutional courts of the states participating in the Congress, wherein the universally recognised norms and principles of international law, European Union law and the jurisprudence of international courts, including on the protection of human and citizen's rights and fundamental freedoms to be useful.