

**IVth GENERAL ASSEMBLY OF THE CONFERENCE OF CONSTITUTIONAL JURISDICTIONS OF
PORTUGUESE-SPEAKING COUNTRIES (CJCLP)**

"The effectiveness of constitutional guarantees in Portuguese-Speaking Countries"

Brasília, Brazil
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Opening speech

Gianni Buquicchio
President of the Venice Commission

*President of the Federal Supreme Tribunal,
Honourable Presidents and Judges,
Ladies and Gentlemen,*

I am delighted to attend today the IVth Meeting of the Conference of Constitutional Jurisdictions of Portuguese-Speaking Countries (CJCLP), graciously hosted by the Federal Supreme Tribunal of Brazil.

At the First Congress of the World Conference on Constitutional Justice in Cape Town in 2009, the Venice Commission, sharing the wish of Rui Moura Ramos then President of the Constitutional Tribunal of Portugal, provided the Portuguese-speaking constitutional courts with the opportunity of meeting and discussing the establishment of your Conference.

I have always been in favour of regional networks and have been supporting these structures over the past 25 years. I am therefore very pleased to see that the CJCLP has prospered and continues to do so!

The co-operation between the CJCLP and the Venice Commission was officially recognised with the signature of our Co-operation Agreement in Maputo, in May 2012 - nearly four years ago already...

This agreement gives the CJCLP access to our database on constitutional case-law, called CODICES, which contains some 9000 constitutional judgments from all over the world.

I call upon all of you to actively contribute to this joint endeavour through your liaison officers or focal points. CODICES is not only a showcase of your judgments that can be seen by other courts and the public at large, but more importantly, it offers an unmatched spectrum of constitutional arguments, which provide you with a valuable comparative law basis that could assist you in complicated cases before your respective courts.

President of the Federal Supreme Tribunal,

As you well know, the World Conference on Constitutional Justice – also known as the “WCCJ” – promotes constitutional justice, understood as constitutional review that includes human rights case-law as a key element for democracy, the protection of human rights and the rule of law.

When the WCCJ adopted its Statute in 2011, your nascent Conference immediately became one of its founding regional groups. I am very pleased that your Conference is not only a member of the WCCJ, but that it is also the chair of its Bureau this year. President Lewandowski presided the last Bureau meeting in Venice in March.

Five of the Constitutional Courts, Councils and Supreme Courts that are members of your Conference have already individually joined the WCCJ, notably:

- the Constitutional Court of Angola,
- the Federal Supreme Tribunal of Brazil,
- the Constitutional Council of Mozambique,
- the Constitutional Court of Portugal,
- and the Supreme Court of São Tomé and Príncipe.

I would like to warmly encourage the remaining three, Cape Verde, Guinea-Bissau and Timor-Leste, to join the WCCJ.

The Second Congress of the WCCJ was a very successful event, organised in Rio de Janeiro in 2011 by today’s host, the Federal Supreme Tribunal of Brazil.

I hope that I will have the pleasure of greeting all of you at the Fourth Congress of the WCCJ, which will be hosted by the Constitutional Court of Lithuania from the 10th to the 13th of September 2017 in Vilnius.

*President,
Ladies and Gentlemen,*

You have chosen a timely topic for this event: *"The effectiveness of constitutional guarantees in Portuguese-Speaking Countries"*.

What are these constitutional guarantees? I believe that – *ratione materiae* – we can roughly group them into two categories: the first are institutional guarantees that ensure relations between State bodies operate well within the constitutional framework. The second are legal measures that protect basic fundamental rights - that belong to everyone - against any intrusion.

The Constitution provides a framework that reflects a consensus reached within society.

The constitutional court, as the guardian of the supremacy of the constitution, has a key role to play as the organ competent to decide whether or not institutional guarantees and

fundamental rights are respected.

Unfortunately today, we are increasingly witnessing situations in which undue pressure is placed on constitutional courts by other branches of government – either by questioning their jurisdiction or by drafting new laws that limit their powers or aim to control their composition. This tests the limits of the constitution and sometimes breaches them.

The Venice Commission strongly condemns this type of practice. It runs counter to the model of a democratic state based on the rule of law and governed by the principle of the separation of powers. The Venice Commission has recently adopted an opinion for Poland in which it came to the conclusion that amendments to the Law on the Constitutional Tribunal would paralyse this Tribunal and reduce its effectiveness to such an extent that it would endanger democracy and the rule of law.

The Venice Commission has adopted a declaration in March of this year, following several other cases of undue interference in the work of Constitutional Courts in its member States, expressing serious concern over this state of affairs.

The declaration addresses the situation of the Constitutional Tribunal of Poland and that of the Constitutional Court of Turkey – which had been threatened with dissolution by the President of the country because it adopted “unpatriotic” judgments.

The Venice Commission’s declaration also addresses the problems and delays in appointing judges to the Constitutional Courts of Slovakia and Croatia and the public calls from the executive to terminate the mandate of the President of the Constitutional Court of Georgia, which could undermine this Court’s authority.

And we are not done... I am also deeply concerned about the Chairman of the Constitutional Court of Mongolia, who has been dismissed by Parliament on 18 March.

*President,
Ladies and Gentlemen,*

It is important to remember that a public authority – in its official capacity – does not enjoy the same freedom of speech as that enjoyed by an individual not entrusted with such a public function.

This does not mean – however – that state bodies are prohibited from publicly disagreeing with a judgment of the constitutional court. But, it does mean that when they do so, they must make it clear that the judgment will still be implemented, regardless of whether or not they agree with it.

We have to remember that when other state bodies publicly attack a constitutional court, this organ’s independence and neutrality is put at risk. The court’s position as the guardian of the supremacy of the constitution is undermined and this will affect the implementation of its judgments which, in turn, will be detrimental to the rule of law and to the Common Constitutional Heritage that both require the respect and the effective implementation of

the decisions of these courts.

The Venice Commission and the World Conference on Constitutional Justice remain vigilant and we are ready to support Constitutional Courts when they are unduly attacked by other State powers.

*President of the Federal Supreme Tribunal,
Ladies and Gentlemen,*

I would like to end by thanking President Lewandowski and the Federal Supreme Tribunal of Brazil for organising this event and for his warm and generous hospitality!

Thank you for your attention.