

Judges, Academics, and Politicians at the 5th Congress of the World Conference on Constitutional Justice

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‘You are not alone’

For those who read last week’s news in constitutional justice, it would have been easy to miss the Fifth Congress of the World Conference on Constitutional Justice (WCCJ) on the theme ‘Constitutional Justice and Peace’ that was organized in Indonesia five years after the previous edition held in Lithuania. While featured on the Venice Commission’s website, the Congress was no prominent news in constitutionalist platforms, despite bringing together judges from 94 countries, many of whom are prominent academics in their respective jurisdictions, or even internationally. As this congress shows, constitutional courts can engage with academics, and are well positioned to do so, given they often contain judges with academic careers and experience. Such engagement might empower both institutions to respond to global autocratization more effectively.

Judges as Academics

The central question, in line with the congress’ theme of ‘Constitutional justice and peace’, was how constitutional courts can maintain ‘social peace’. From a scholarly point of view, this is a good, though very broad, question that invites empirical research. Indeed, the concept paper, developed in 2021, contains a questionnaire sent to the participating courts of the Conference, the results of which were then presented in several sessions.

The plenary sessions would be difficult to distinguish from academic conference plenaries, other than through the designated tables with flags signaling the representation of particular jurisdictions. The academic dimension of such a judges’ conference is less surprising when considering that it is not unusual for constitutional court judges to hail from academia, and even continue academic activities during their career as judges.

Of course, one may object that the ‘real deal’ of the congress were the informal and closed-door meetings, and indeed, political struggles did loom in the background. Notably, the exclusion of Russia from the Council of Europe raised the question how to engage with Russian judges. In June 2022, the Bureau of the WCCJ adopted a resolution in which it recognized ‘with deep sadness for the destructions and loss of lives that are

taking place at the heart of Europe'. The final 'Bali Communiqué' also combines the call for more understanding of how constitutional courts operate with the need for action, securing both inter- and intra-state peace at an equivalent level.

In other words, judges hailing from academia come across from this event as 'scholars with a mission', those who intend to affect social change while simultaneously pursuing new knowledge and fostering curiosity about the world around them.

Judges and Academics

Beyond judges' academic involvement, the congress also enabled academics to gain insight into some of its components. This is in large part because of the actual organizer of the mainly in-person event during a still-not-completely-gone COVID-19 pandemic: the Indonesian Constitutional Court. This is a court with important competences, a particularly active 'research arm', including publishing and funding two academic journals, and even an anthem that intends to establish emotional connections between the Court and the public. It is, at the same time, a court that faces several criticisms, including limited capacity to respond to regressing tendencies of Indonesian democracy.

This post cannot provide a substantive evaluation of the claims made by country experts. However, it is clear that the Indonesian 'court insiders' are interested and welcoming towards academic work on the subject, also by organizing an annual academic symposium, which enabled academics without direct mandates from any court to attend parts of the congress of the WCCJ this year as well.

The symposium encompassed a response from employees of the court to each paper, thus allowing 'court insiders' to share their reflections on the utility (or lack thereof) of particular research projects for the court's decision-making. These responses demonstrated particular interest towards developments in de-democratizing European Union Member States, Hungary prominent among them. How can other constitutional courts help evading the unenviable position of the current Hungarian Court? For better or worse, this format also prompted most participants to try to formulate some recommendations for (Indonesian, foreign or global) judicial practice.

Judges, Academics, and Politicians

Judges and academics were not the only participants of the congress. Notably, two politicians also delivered speeches during the opening day – the Indonesian President Joko Widodo and the Indonesian Minister of Foreign Affairs Retno Marsudi.

Their involvement demonstrated the challenge faced by constitutional courts in democracies under stress: the struggle for the meaning of concepts. Both Widodo and Marsudi referred to the ideals of democracy and constitutional justice as well as the constitutional courts' role in safeguarding these. Yet, while the latter spoke of the relevance of the 'democratic peace theory', according to which (in the simplest terms) democracies do not go to war with each other, the President's speech separated the *fight*

for constitutional justice from managing the looming crises. This ‘divide and conquer’ strategy – separating fundamental constitutional values of democracy, human rights and the rule of law, as if in some ways they opposed each other – is a typical feature of authoritarian populism. The fact that it was uttered at an event of this format underscores the need for joint academic and judicial responses that emphasize the interconnectedness between fundamental values and avoid the reduction of democracy to (at best) electoral contestation.

The main purpose of the congress was not to bring academics in contact with judges; instead, paraphrasing the remarks of WCCJ Secretary General Schnutz Rudolf Dür, it was a forum for judges to show that they are not alone in their struggles for independently upholding constitutional values in their jurisdictions. In the words of the President of the Italian Constitutional Court Silvana Sciarra, ‘[t]he WCCJ can speak with an independent voice, acting as a democratic association’, and, in that way, boost the resilience of member judiciaries whose independence is threatened.

However, the connections by the Indonesian Court to the academic community also indicate ways to counter sentiments of loneliness by more interaction between judges and academics. Similarly to judges reaching out to academia (including via calls to share expertise in particular domains of law and practices of legal pluralism), academics should actively approach judges, particularly if they hope the results of their research to reach beyond the ‘ivory towers’. The recognition of the value but also challenges of both professions might help generate mutual trust and the development of more nuanced ideas for enhancing constitutional court resilience vis-à-vis autocratization.

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