International Workshop

The challenge of democratization and the role of Constitutional Courts – Judicial review in francophone West Africa

Le défi de la démocratisation et le rôle des Cours Constitutionnelles – La justice constitutionnelle en Afrique de l’Ouest francophone

24-25 May 2013, Justus Liebig University Giessen

INTRODUCTION

The workshop aims to explore the link between effective judicial review and democratization processes in francophone West Africa. It is part of a comparative constitutional law project on judicial review and democratization in this region at the University of Giessen. The project is funded by the German Research Foundation (DFG).

The institutionalization of judicial review is nowadays widely perceived as a key element in consolidating newly established democratic regimes, serving as a “democracy insurance”. The 20th century has witnessed growing support for Constitutional Courts and equivalent institutions in many parts of the world. As African states embarked on a renewed democratization process in the 1990s, they, too, implemented strengthened judicial review mechanisms. Since then the countries have undergone very different developments. Many African states have experienced a slow or deficient democratization, in some cases even backlashes in their transition to democracy since the 1990s, others proved to be relatively stable. Ever since independence, a strong executive coupled with a weak parliament remains a typical feature and challenge of African politics. Four expert roundtables will explore the different roles Courts could play in this specific environment and aim to assess their actual impact on democratization.

The workshop concludes the first phase of the research project “Judicial review and democratization in francophone West Africa”. Since the launch of the project in July 2012, eight country studies are being drafted based on a purposely designed questionnaire. The workshop will take the completed research further and investigate how the constitutional review mechanisms are being used by the Constitutional judges in the countries under study. Its central aim is to find out if and how Constitutional Courts contributed to democratization or democratic consolidation in the region and to draw comparative conclusions from the case studies.

Eventually, the workshop will serve to kick off the next phase of the research project, from June 2013 up to its finalization in July 2014. The themes of the four roundtables will structure the further research activities in the project. Accordingly, the results of the workshop will be taken up, discussed and developed in order to be integrated in the final project publication as well as in the closing conference in 2014.

The roundtables bring together international researchers from different (francophone as well as non-francophone) regions for a valuable exchange of experiences and views. The workshop language will be English and French, translation will be provided. The event is designed as a highly participatory expert workshop with up to 30 participants. Participants of the conference are experts in the field of comparative and constitutional law or political science.
Instead of writing and presenting papers, participants in the workshop will be asked to provide background information on their country of expertise by way of answering to a standardized set of questions on the judicial review mechanism in the respective country. In the workshop they will give statements (5 to 10 minutes) based on their own work and experience. The comments should take up different aspects of the session topic (as agreed on with the organizers) and give examples from the countries under study. This workshop format is designed to facilitate as much discussion as possible between participants.

Starting with an assessment of competencies and a positioning of the Courts in the system of powers, the first session aims initiate the discussion by outlining what constitutes the specific context and basis of constitutional adjudication in West Africa. Given the still young and fragile democratic structures, Roundtable 2 looks at opportunities for action of Constitutional Courts when crises occur and the constitutional and/or political stability and democratic values are in danger. The backgrounds on how the different Courts actually interpret and execute their tasks will be highlighted by the following session. Finally, current challenges for the countries of the region will be analyzed and in order to draw comparative conclusions with regard to the previously discussed issues.

Roundtable 1: Constitutional Courts in the system of powers
The first session explores the statutory/institutional capacities and actual influence Constitutional Courts have within the system of powers. It aims to assess whether and how courts have executed their role as guardian of the separation of powers and actually checked the elected branches, in particular an overreaching executive. When and how have they arbitrated constitutional disputes and averted crisis (on both substantive issues and interbranch power struggles)?

Roundtable 2: Constitutional Courts and management of crises
As crises cannot always be prevented, the second roundtable looks at the constitutional mechanisms for solution of constitutional, electoral, and political crises in West Africa. Are the constitutions well equipped for those perils to democracy? Where did Constitutional Courts play a role in conflict resolution? How did they solve the crisis and add to the stability of the constitutional and political order and contribute to safeguarding democratic values?

Roundtable 3: Activism and self-restraint of Constitutional Courts
The session analyses the role and self-conception of Constitutional Courts more thoroughly. The roundtable considers the jurisprudence (and other actions) of the courts in selected countries. How do the courts exercise their jurisdiction and discretion? How do the courts justify their decisions and what methods of constitutional interpretation do they use? The focus is on whether and how the courts play an active role in developing constitutional democracy.

Roundtable 4: Current challenges and perspectives for Constitutional Courts
The session reviews recent developments in francophone West Africa. What are the challenges for the existing courts? What conclusions can be drawn from crises as in Mali? Do the newly established Constitutional Courts incorporate lessons learned from the region and is there a comparative convergence or divergence of models?
AGENDA

Thursday, May 23

Arrival in Frankfurt

19.30h

Dinner
Restaurant Hafez, Baseler Str. 21, Frankfurt

Friday, May 24

Arrival in Frankfurt

10.00h

Transfer to venue

12.00h

Welcome

12.30h

Lunch

13.30h

Introduction
Thilo Marauhn

14.00h

Roundtable 1: Constitutional Courts in the system of powers

Chair: Thilo Marauhn
Lead Discussants
Alioune Badara Fall
Frédéric Joël Aïvo
Anne Winter

15.30h

Coffee

16.00h

Roundtable 2: Constitutional Courts and management of crises

Chair: Chadidscha Schoepffer
Lead Discussants
Mamadou Dagra
Abraham Gadji
Gilles Badet

18.00h

Dinner
Dinner speech of Prof. Heinz Klug (University of Wisconsin Law School/University of the Witwatersrand in Johannesburg)
Saturday, May 25

9.00h  Roundtable 3: Activism and self-restraint of Constitutional Courts

Chair: Brun-Otto Bryde
Lead Discussants
Tayyhuh Ngenge
Heinz Klug
Fatima Diallo
Christian Boulanger

11.00h  Coffee

11.30h  Roundtable 4: Current challenges and perspectives for Constitutional Courts

Chair: Michael Riegner
Lead Discussants
Sory Balde
Ousmane Diallo
Stéphane Bolle
Kangnikoe Bado

13.30h  Lunch

14.30h  Closing Roundtable: Synthesis and follow-up process
Brun-Otto Bryde, Thilo Marauhn, Ralf Alleweldt, Markus Böckenförde

16.00h  Transfer to Frankfurt

19.00h  Dinner in Frankfurt + optional: watching football match
The Fox and Hound (http://www.foxandhound.de)
Niedenau 2, 60325 Frankfurt

Venue
Schloss Rauischholzhausen
Ferdinand-von-Stumm-Straße
35085 Ebsdorfergrund-Rauischholzhausen

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