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Speech at Farewell Dinner
By
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H.E. the President of the Constitutional Court of Korea, the Rt. Hon. the Chief Justices, Hon. Judges, distinguished participants, ladies and gentlemen,

I thank the organizers for inviting me to this symposium, for their hospitality and, above all, for giving me the opportunity to say a few words at this farewell dinner. This will be my last speech at an international symposium as Chief Justice as I'll be retiring in about a month's time. So, it is a double farewell.

During the last two days we have heard speeches about constitutional courts in various countries. Malaysia, like most common law countries, does not have a constitutional court. But that does not mean that constitutional cases are not heard by the courts in Malaysia. All the types of cases that in other countries are heard by the constitutional courts are heard by the High Courts. Appeals go to the Court of Appeal and, with leave, to the Federal Court (Supreme Court). Constitutional issues may be raised in any case, civil or criminal. They are usually disposed of by the High Court in due course. Habeas corpus and judicial review e.g. for an order of certiorari, mandamus, are a daily affair. We don't even think of them as constitutional cases. Election petitions are heard by "Election Judges" who are High Court Judges but appointed on an ad hoc basis to hear election petitions, usually after a general election. Appeals go straight to the Federal Court. All actions against the Government, the Prime Minister, the Ministers, the Executives, the Judges or political parties are heard by the High Court with the usual rights of appeal. The High Court also has power to refer constitutional issues direct to the Federal Court for its decision. Applications may also be made direct to the Federal Court in specific constitutional cases for its decisions. Where the constitutionality of a law or a provision thereof is challenged, the court hearing the case may declare the law or the provision unconstitutional. Of course, the Federal Court has the last say. In such a case, it is up to the Legislature whether or not to introduce a new law or to make the necessary amendments.

Disciplinary actions against Judges, including dismissal, are heard by a Tribunal consisting of serving and/or retired Judges appointed ad hoc.

Another unique feature about Malaysia is that there is a Special Court of five Judges established by the Constitution to hear all cases, civil and criminal, by or against the Rulers, meaning the King himself and the hereditary Rulers of the States and their consorts. No one is above the law in Malaysia, not even the King. In fact we have just completed hearing a case in which a local branch of a foreign bank sues the former King of Malaysia over a letter of credit. He files a counter suit. In case you are perplexed by the term "former King", in Malaysia, the King is elected by the Rulers of the States to serve as King for a term of five years only. I hope that is not even more confusing.

Judicial review has made its appearance and established itself in Malaysia in the last four decades. It started with a very limited ground i.e. error of jurisdiction and has now expanded the grounds. It is almost like an appeal now, which, in my view, it should not be. While judicial review is a necessary part of a civilized judicial system, carried too far, it can also have negative effects. It can cause delays in the settlement of industrial disputes and stalled executive and administrative actions, sometimes unjustifiably. To overcome the problem, the courts will have to be more efficient and dispose of the cases more speedily.

I personally believe that judges should not go too far in the exercise of their judicial review power. If we believe in separation of powers, then we too should respect the powers of the other two branches of the government. Independence of the judiciary does not mean that while the other branches should not encroach into our jurisdiction, we may encroach into the jurisdiction of the other branches at will. Just as the Executive should not interfere in the decision making process of the court, the court should not usurp the powers of the Legislature by rewriting the Constitution and the law, under the pretext of interpreting them. That is separation of powers.

A country should not be judged by the model it adopts. One model may be suitable for one country and not in the other. No two countries are the same. They should and should be allowed to choose what suits them best. I believe that whatever system or model a country chooses, whatever provision the constitution or the law makes, it is the implementation that counts. The bottom-line is honesty: whether all the players, be they executives, legislators or judges are discharging their duties honestly. Perhaps as judges, we should begin by asking ourselves that question. If our own answer is in the affirmative, we cannot go wrong.

We are unanimous in our judgment that you have organized a superb symposium. Thank you very much