



Strasbourg, 1 December 2014

CDL-JU(2014)017
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SEMINAR

**THE EFFICIENT USE OF INFORMATION
AND COMMUNICATION TECHNOLOGIES
IN ACTIVITIES OF THE COURTS**

Tashkent, Uzbekistan, 20 November 2014

REPORT

**IMPORTANCE OF THE ELECTRONIC SUPPORTED LEGAL
INFORMATION WITH A SPECIAL REFERENCE TO THE
CONSTITUTIONAL/JUDICIAL REVIEW ISSUES**

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Abstract:

The legal information (mainly the constitutional case-law) as supported by different means of communication or media, taking into consideration the principle of the public nature of the activities of any constitutional court or the equivalent body, circulate from the constitutional court (or the equivalent body) as a decision issuer, to the public, external users - the potential applicants before the constitutional court (or the equivalent body), who receive information which may motivate their new applications. This stream of information constitutes a certain procedural circle due to the nature of proceedings before the constitutional court (or the equivalent body), which are in principle proposed proceedings (*juridiccion voluntaria*). Concerning public character of activities of constitutional courts or equivalent bodies, only a permanent inflow of applications to the constitutional court (or the equivalent body) actually justifies its existence and function. The constitutional case-law system should further insure the rapid spread of constitutional and legal principles in force and should contribute to greater legal safety. Accordingly, the collected or electronically available case-law might be interesting for a legal expert who is in search of a constitutional case-law that might be similar to the case they are working on, as well as for the potential applicant before the constitutional court (or the equivalent body), or for a constitutional framer or legislature as a user creating new legal rules, as well as for a constitutional court (or a equivalent body) itself as a user of existing constitutional case-law and other relevant documents when exercising constitutional and/or judicial review.

Additionally, the author presents his personal website which contains an overview of systems of constitutional and judicial review what might be of value for the theory and practice in the respective fields of activities. Among others, the site includes a comparative constitutional analysis of systems of constitutional/judicial review in more than 150 countries. The author describes different models of constitutional/judicial review and the bodies (constitutional courts or equivalent bodies) that hold this special and exclusive decision-making power on deciding constitutional questions. It classifies the constitutional/judicial review bodies (constitutional courts and/or equivalent bodies) as special bodies responsible for protecting the constitutionality for which they hold a certain legal superiority in relation to other branches of power. Their review quite often covers legislative acts that are the highest legal instruments of a specific legal and political system. This gives any constitutional/judicial review body (a constitutional court and/or an equivalent body) a special status with power to exercise constitutional/judicial review under the system of the separation of powers, especially in relation to the legislative power in that it may even annul statutes adopted by the legislative body.

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1. Significance of (Comparative) Case-Law Information for the Activities of the Constitutional Court (or the equivalent body)

Limiting myself to issues regarding constitutional courts or equivalent bodies I would emphasize that the universal participation of constitutional courts or equivalent bodies in the modern information exchange became a very important change, in particular because until 1990 legal informatics in Europe in the domain of constitutional matters, with a few exceptions¹, generally speaking, did not keep up with general trends in other domains. In many cases the documents issued by constitutional courts or equivalent bodies (mainly case-law) used to be processed by other subjects, at that time more advanced in informatics.

On these grounds from the very beginning on the initiative by the then founded Venice Commission of the Council of Europe² was welcomed through which constitutional courts and equivalent bodies exercising constitutional/judicial review belonging to a common information (documentation) centre would enable their potential users to access the information on constitutional/judicial review matters. Nowadays, the number of legal information is still on the increase, which entails more troubles in orientation within one's own and other legal systems. In this situation the solutions providing appropriate professional comparative information exchange as well as comparative studies on constitutional/judicial review matters are very welcome.

Hitherto, we should recall the respective first attempts in this field: when a long time ago such as the very concrete project was explained on the occasion of the Seventh Conference of European constitutional courts, held in Lisbon from 27 to 29 April 1987. It was a progressive and visionary joint project of the then Italian and German constitutional courts which aimed at the concentration of comparative constitutional case-law available for constitutional courts and equivalent bodies exercising constitutional/judicial review as well as for other users, located at the University of Bologna³. Unfortunately, this project has not been well understood by the Conference participants and therefore not realized at that time⁴.

¹ E.g., the Italian legal database designed by the Italian Supreme Court (Corte Suprema di Cassazione); the German legal information system JURIS; the Austrian legal information system ALEXIS.

² The real opportunity has opened the first ad hoc Commission of the Conference from 31 March 1 April 1989 in Venice, convened by the Italian government with the participation of the then Member States of the Council of Europe Conference by Dr. La Pergola. On the following ad hoc conference on establishment of the Commission from 19 to 20 January 1990 in Venice, held at the invitation of the Italian government, the resolution establishing the Commission for a transitional period of two years, was adopted the European Ministers for Foreign Affairs of the then Council of Europe Member States. At the same conference were present as observers the following countries: Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, Yugoslavia and the Soviet Union. The Commission obtained an autonomous and sui generis status within the Council of Europe and the Secretariat as a technical support. In accordance with arrangements by the then Italian Government and the Venetian Region (Regione Veneto), in terms of organizational and technical reasons, a solution was found to locate the Commission's headquarters in Venice. Due to the place of its establishment and according to the ordinary place of its plenary sessions, the Commission received its second, in practice more familiar name - the Venice Commission.

³ The initiators of the idea were then President of the Federal Constitutional Court of Germany dr. Wolfgang Zeidler (1924-1987) and then President of the Constitutional Court of Italy, dr. Antonio La Pergola (1931-2007). Information on the project was presented to participants at the meeting of presidents of constitutional courts, the conference participants, 28 April 1987. It has been suggested that in (the oldest European University) University of Bologna organized by the International Documentation Center on the Constitutional Court related to the system for the computerized data processing. Bologna should mean the best location in terms of traditions and geographical links.

⁴ At this meeting, presented the idea drew out attention. Since it has been defined as a formal proposal, it did not decide. They have provided support for the establishment of the center, but with a clear margin on specific funding opportunities. Perhaps it was then time for the idea too ambitious and too early, so that the debate on the slide in the dead end because of alleged problems with the future funding of such institutionalized useful information and links regarding its seat.

From the point of view of constitutional case-law usage, the documents shall be collected as full texts, possibly without selection. The selection shall always be subject to the fact by which it is to be performed: in principle, the producer of documents is the only one authorized to it. The selection shall always be sufficiently representative. The user's interest shall always be taken into account. In my opinion, the information process is optimum when the user does not have the data served by the producer but is free to select them.

Concerning the Slovenian Constitutional Court's practice, there are the following types of information necessary for any form of comparative constitutional-law issues:

- Constitutional case-law;
- General opinions or reports taken by constitutional courts or by equivalent bodies;
- Theory on constitutional/judicial review;
- Regulations on constitutional/judicial review matters (provisions of the Constitution, laws on constitutional courts or equivalent bodies with similar competence, rules of procedure and other internal regulations of constitutional courts and equivalent bodies exercising constitutional review etc.).

The exchange of such circle of information should further provide quicker spreading of legal principles in force and should contribute to greater legal safety. In compliance with such concept, each individual document might be interesting for a wide range of external users, i.e. regarding the contents of a definite decision of the constitutional court (or the equivalent body) or the contents of any other text from the practice and theory of constitutional courts and/or equivalent bodies. It could be duly anticipated from the Slovenian experience that the final user of legal information would be less interested in more bibliographic data than in more substantial information.

The study of collected constitutional case-law may be of the following importance:

- Aid to the constitutional court and/or the equivalent body activities;
- Scientific contribution to the theory on constitutional/judicial review;
- Historical survey of constitutional/judicial review;
- Practical aid in the domain of implementation of constitution and law.

Information on the constitutional case-law is classified under scientific information of the vast domain of law. This encompasses the use of specific knowledge from the domain of constitutional justice. As a matter of fact, this area includes information on anomalies in law⁵. The information on the practice of constitutional courts and/or equivalent bodies is relevant for the investigation of systems of constitutional/judicial review from the comparative point of view. On the other hand, the information in question is designed for monitoring social phenomena that are relevant for safeguarding the rule of the Constitution and the law and that are reflected in the practice of constitutional court and/or equivalent bodies. A complex solution of any social

⁵ Which have been removing through a special procedure by decisions taken by constitutional courts or other equivalent bodies.

In the period after adoption of the Slovenian *Constitution of 1991* (Official Gazette RS, No. 33/91), the Constitutional Court has played a more important role based on its new extended powers. In the sense of contemporary trends, the Slovenian Constitutional Court has assumed the role of a negative Legislature. In this period of transition the Legislature is not always able to follow developments nor to impose standards for all shades of the legal system and its institutions. This results in the so-called interpretative decisions taken by the Court or the appellative decisions or certain declaratory decisions that include certain instructions by the Constitutional Court to the Legislature on how to settle a certain question, or a specific issue (Art. 48, *Constitutional Court Act*, Official Gazette RS, No. 15/94). However, in compliance with the Principle of Judicial Self-Restraint, a clear limit has been imposed on the Slovenian Constitutional Court due to the fact that the Court has actively been creating the legal rule both negatively (e.g. by abrogation) and positively (e.g. by appellative, interpretative and the declarative decisions), a function theoretically reserved for the Legislature.

case, however, requires a high level of technical, scientific and research work whereby information on the standpoints of constitutional justice might be useful as well.

2. Experiences of the Constitutional Court of the Republic of Slovenia

Starting with 1963, the legal Information system of the then Constitutional Court of the Republic of Slovenia⁶ included the constitutional case-law of the Slovenian Constitutional Court in the uniform legal database (based on classical records) including also the constitutional case-law of all other constitutional courts from the territory of the former Yugoslavia. The compiled data on the decisions of nine constitutional courts at that time were, however, an indispensable basis for their work.

Therefore, since the introduction of constitutional review in the former Yugoslavia in 1963⁷, the then Legal Information Centre of the Slovenian Constitutional Court was engaged in a systematic acquisition and comparative processing of case-law of all former Yugoslav constitutional courts⁸. These efforts developed into comprehensive records on the case-law of Yugoslav constitutional courts (translated into one language – into Slovenian), organized in files. This was an excellent basis for transition to the computer processing of the constitutional case-law. The mentioned database was computerized by 1 January 1987. The database was based and maintained on the then full-text program packages of different generations and was open to the public at many locations. The then free search database included full-text documents (covering constitutional case-law and theory) and was subject to monthly updating.

Almost in the same period, the computerization of the Slovenian ordinary and specialized (administrative, labor, social) courts started under guidance of the Slovenian Supreme Court⁹.

Concerning the Constitutional Court, very early, an exchange of constitutional case-law has been practiced with some neighboring constitutional courts¹⁰; besides, in 1989 the first on-line computer communications with the then existing foreign information systems were introduced¹¹.

⁶ The *Constitution of the Socialist Republic of Slovenia of 1963* (Official Gazette SRS, No. 10/63) envisaged the first (Federal Constituent Republic) Constitutional Court. This Constitution was adopted at that time when the "social needs for the deepening of the self-managing socialist democracy and additionally for more efficient protection of constitutionality and legality" appeared. In the first place, previously the judicial review (control) of legality of administrative acts was already introduced. However, the practice showed that the legislative and executive bodies (first of all for the objective reasons) were not able to review the constitutionality and legality of regulations enough efficiently and critically by themselves, because they were authors of such regulations at the same time. Similarly became evident in other countries as well. Therefore the then government decided that it would be better to introduce special, from the legislature and executive independent state bodies which would be empowered for the protection of the constitutionality and legality of regulations – likely from the establishment of the Austrian Constitutional Court onwards, more and more countries introduced such special constitutional courts.

⁷ The establishment of constitutional review was largely accredited to the support of the then political leaders, who held the review that disputes and controversies in the Yugoslav society should not be resolved politically but, rather, by means of "an objective and legal arbitration".

⁸ Under the *Federal Constitution of 1963 and 1974* as well as under *Member State Constitutions of 1963 and 1974* the power of constitutional courts was based on the separation jurisdiction between the Federation and the Member States (6: Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Macedonia) constitutional courts acted with due institutional independence in compliance with the powers specified in the constitution of the appropriate level, whereby constitutional courts were in no hierarchical relation to one another and the Federal Constitutional Court was not an instance above other constitutional courts, nor was the member state constitutional court an instance above provincial constitutional courts. However, the then Federal Constitutional Court was empowered to decide on the jurisdictional disputes between constitutional courts of member states and/or autonomous provinces.

⁹ <http://www.sodisce.si/vsrs/>

¹⁰ Constitutional Courts of Italy, Austria and Germany.

¹¹ Such as ECHO Luxembourg, JURIS (including all CELEX bases), Germany, and ALEXIS (including RDB Austria), Germany-Austria.

The additional goal of the then national (comparative) database(s) was to build the Court's own databases (containing case-law and other relevant documents), which was particularly important with reference to the fact that national databases should, wherever possible, be included into international systems of similar character. This was important for several reasons: it led to an exchange and comparison of experiences and thereby to improved efficiency and quality of work. Further, more and more attention was paid to the cooperation related to the building of foreign national and international case-law databases as well as to the improvement of the quality and standardization of primary documents (case-law and other relevant documents).

The Slovenian Constitutional Court's information exchange with other similar information systems, databases and other similar sources of legal information influenced the creation of common standards especially concerning the structure of constitutional/judicial review, powers, organization and procedure before constitutional courts and/or equivalent bodies, and even the unification of some systemic legislative solutions, especially during the transitional period of the Slovenian constitutional and legal system.

The question as to whether Slovenian constitutional case-law from the period after the adoption of the *1991 Constitution* (Official Gazette RS, No. 33/91), especially in its relations to the fundamental rights and freedoms, has adapted to or is more comparable with foreign constitutional case-law, can be answered in the sense that the Slovenian constitutional case-law came close to the foreign case-law in its approach to fundamental rights also due to newly established links to the national and international legal information systems abroad. The number of human rights cases had considerably increased. In this respect it is necessary to bear in mind that the "frequency" of individual rights before Constitution Court mainly depends on what kind of problem appellants (who may be inspired by national and international case-law as well) place before Constitutional Court. The Constitutional Court now appeared as a guardian of the constitutionality and legality (see Para. 1 of Article 1 of the *Constitutional Court Act*, Official Gazette RS, No. 64/07) in such a way that it decides not only on the accordance of general legal acts with the constitutional provisions on fundamental constitutional rights (in the sense of abstract and concrete review of general legal acts) but also on constitutional complaints¹² against the violation of human rights and fundamental freedoms by individual acts (Item 6 of Para. 1 of Article 160 of the *Constitution*; Articles 50-60 of the *Constitutional Court Act*).

3. Public Control/The Public Nature of the Court's Activities

The public nature of the activities of the Constitutional Court is explicitly declared by the *Constitutional Court Act* (Para. 1 of Article 3) and by the *Rules of Procedure* (Articles 23 to 33, Official Gazette RS, No. 86/07). This principle may be realized in some different forms:

¹² Beside the constitutional provision that the Supreme Court is the highest Court in the State (Art. 127(1), *Constitution*) within the scope of the ordinary judiciary (of course) the *Constitution of 1991* extended the function of constitutional review of regulations, deciding of jurisdictional disputes and other powers which have been exercised by the former Constitutional Court(s) from 1963 onwards by some new powers, especially by the constitutional complaint and by the impeachment as well. By the constitutional complaint, the position of the Constitutional Court was upgraded to the highest judicial instance for the protection of human rights and fundamental freedoms. By Art. 1(1) of the *Constitutional Court Act* such position was only confirmed. That means that the Constitutional Court's decisions "control" also the decision-making of ordinary courts regarding the protection of human rights and fundamental freedoms. From the point of view of such general orientation and taking into account the constitutional concept of the separation of powers (Art. 3, *Constitution*) to the legislative, executive and judicial power and respectively the special independent position of the Constitutional Court, such principles were explicitly settled by the introductory provisions of the *Constitutional Court Act*.

3.1. Public Hearings

Save where expressly provided by statute (Article 35 etc. of the *Constitutional Court Act*), all Court proceedings are conducted in public and all decisions are delivered in open Court (the public nature of court hearings; the public nature of delivering decisions). These public activities function as a control or supervision of the impartiality and legality of the decision making process.

The principle of the public nature of the activities, declared by the above mentioned provision, is of general importance concerning all kinds of proceedings; the purpose of the mentioned principle is to ensure a control on the activities of the Court to the parties of the proceedings and also other citizens (the unlimited circle of individuals). The respective function is ensured e.g. also by the legal provision on public hearings before the Constitutional Court (Article 35 and 36 of the *Constitutional Court Act*). The constitutional Court may exclude the public from a hearing or part thereof on the grounds of protecting public morals, public order, national security, the right to privacy and personal rights (Articles 37 and 38 of the *Constitutional Court Act*). The public nature of the activities of the Constitutional Court results also from some former internal regulations or systems adopted by the Constitutional Court¹³ - the then *Legal Information System of the Constitutional Court* introduced in 1987, the computerized database of Slovenian Constitutional Case-Law as a public database, in principle accessible to all users of legal information.

3.2. The Publication of Court Decisions in Official Gazettes, Official digests, as well as in Legal Journals

Providing information to the national and foreign public concerning decisions of the Constitutional Court is, moreover, one of the functions, following the principle of the public nature of the activities of the Constitutional Court, set forth in laws and in other regulations¹⁴. The Constitutional Court applies this principle by publishing its decisions in official publications (e.g. Official Gazette, see Article 69 of the *Constitutional Court Act* and Article 46 of the *Rules of Procedure of the Constitutional Court*) and by allowing access to information on its decisions in its database basically in the Slovenian and English language. The English translation of the Slovenian constitutional case-law has been provided from 1992 onwards.

Slovenian constitutional case-law has been published and offered to interested public:

- in *Odločbe in sklepi Ustavnega sodišča* (the Official Digest of the Constitutional Court; the Slovenian full text version, including dissenting/concurring opinions, and English abstracts) since 1992;
- in the *Pravna Praksa* (Legal Practice Journal; Slovenian abstracts, with the full-text version of the dissenting/concurring opinions);
- since 1 January 1987 to 18 July 2003 via the on-line *STAIRS database* (the Slovenian full text version; since 1963; the English full-text version since 1992); for this purpose a special English-Slovenian glossary was created containing terms on constitutional law;
- the only original CD-ROM containing the Slovenian Constitutional Case-Law (in Slovenian) was issued in May 1998;

¹³ - Articles 4 and 39 of the *Rules of Procedure of the Constitutional Court* (Official Gazette SR, No. 10/74);
- Articles 39-41 of the *Regulation on Internal Office Administration* of 26 May and 7 July 1977 and of 16 January 1992;

- *Conclusions on the Assurance of the Public Nature of the Activities of the Constitutional Court Through the Public Media* of 13 January 1983 and 24 December 1987;

¹⁴ Article 3 of the *Constitutional Court Act*; Article 5, Para 2 of Article 37, Articles 6, 66 and 67 of the *Rules of Procedure of the Constitutional Court*; Official Gazette RS, No. 49/98, Articles 4 through 39 of the *Regulation on Internal Office Administration*; *Conclusions on the Assurance of the Public Nature of the Activities of the Constitutional Court through the Public Media*, adopted on 13 January 1983 and 24 December 1987.

- since 1993 in the *Bulletin on Constitutional Case Law* of the Venice Commission of the Council of Europe (including English and French summaries of the most important current decisions), as well as in the *CODICES database* issued on CD-ROM (Slovenian and English full-text versions and summaries in English and French), <http://www.codices.coe.int>; <http://www.coe.fr/codices>;
- since August 1995 on the Internet (Slovenian constitutional case law since 1990 (full text in Slovenian as well as in English - <http://www.us-rs.si>);
- since 1998 on the homepage of the A.C.C.P.U.F. (the French Speaking Group of constitutional courts) (<http://www.accpuf.org>);
- since 2000 on the website of the Ius-Info database of constitutional case-law (abstracts and full texts of decisions) and literature (abstracts) in Slovenian from 1963 onwards (<http://www.ius-software.si>);

The circulation of constitutional case-law information through several computerized information systems is of the highest importance. Legal information on constitutional/judicial review matters as supported by such different means of communication or media, taking into consideration the principle of the public nature of the activities of any constitutional court or equivalent body, circulate from the constitutional court or equivalent body as a decision issuer, to the public, the potential petitioners before the constitutional court or equivalent body, who receive information which may motivate their new petitions. This stream of information constitutes a certain procedural circle due to the nature of proceedings before any constitutional court or equivalent body, which are in principle proposed proceedings (*jurisdictio voluntaria*): only a permanent inflow of petitions to the constitutional court or equivalent body actually justifies the very existence, function and activities of the constitutional court or equivalent body¹⁵.

The initial purpose of the legal databases of the Slovenian Constitutional Court was to provide more flexible processing of legal information, primarily constitutional case-law, as a support to the Constitutional Court in its decision-making processes. However, the activities of the Constitutional Court are conducted in public (Article 3 of the *Constitutional Court Act, Official Gazette RS*, No. 15/94; Article 5 and Articles 53 to 55 of the *Rules of Procedure of the Constitutional Court, Official Gazette RS*, No. 49/98). Therefore the corresponding databases were not created for internal users only (judges and legal advisers of the Court); from the very beginning they were intended for external users of legal information concerned with practice and theory related to constitutional review.

4. The Independence and the Autonomy of the Organization of the Constitutional Court

Most systems of constitutional/judicial review allow for the organizational autonomy of the empowered body on the basis of the *Constitution* or on the basis of the *Constitutional Court Act*. This means they authorize the respective constitutional/judicial review bodies to follow their own rules regarding their internal organization. Special services of the Constitutional Courts are organized in a similar way: they consist of clerks and clerical staff, whereby the head of special services generally holds the status of a secretary general.

¹⁵ Just a broad individual access to the constitutional review contributes to the protection of human rights and fundamental freedoms, accelerates the democratisation of any legal order and promotes the state governed by the rule of law at the same time. Furthermore, it is a matter of a democratic supervision over the commanding state bodies and the exclusion of contradictions from the legal order and by this means its gradual improvement (bringing in the accordance with the constitution) as well. Accordingly, a broader individual access to the Constitutional Court stimulates the democratisation of the legal order which citizens have an opportunity to initiate a direct and immediate control over the legislative, executive and judicial state power. In some cases such control would certainly contradict the major will, however just such kind of tension is surely a basic element of the constitutional democracy.

The Constitutional Court of the Republic of Slovenia regulates its organization and work with its rules of procedure and other general acts (Para 2 of Article 2 of the *Constitutional Court Act*). The new *Rules of Procedure* were adopted on 17 September 2007 (*Official Gazette RS*, No. 86/07).

Concerning legal information, two special services were established as follows:

The Analysis and International Cooperation Department gathers data and other information of a legal nature needed for the work of the Legal Advisory Department, prepares comparative legal materials and analyses necessary for cases being considered by the Constitutional Court, prepares the legal basis for the constitutional court records, provides translations of the Constitutional Court decisions into English, and performs tasks in the field of international cooperation (Article 17 of the *Rules of Procedure*).

The Documentation and Information Technology Department ensures information technology support for the work of the Constitutional Court, provides for the computer-supported operation of the Constitutional Court, maintains constitutional court records, and performs library services required by the Constitutional Court (Article 18 of the *Rules of Procedure*).

The fully computerized internal administration information system was introduced in 2005. The last larger upgrade of the information system was initiated in 2004 and has not yet been completed. That year, an integrated system was introduced that incorporated all previously separate applications and documents into the Integrated Information and Case Management System, which is used by all staff of the Constitutional Court who take part in the business processes of the Constitutional Court regarding cases. Furthermore, the official Court's website www.us-rs.si (including the free search database of constitutional case-law in Slovenian and English) has been upgraded frequently.

Generally speaking, the Information System of the Constitutional Court from the users' perspective includes the following components: integrated case management system, document assembly system (which is actually a part of the case management system), intranet and extranet, information services, internal and external legal databases, website, user tools (Word, Outlook, etc.), other applications (e.g. finance, human resources, etc.), which are not essential for the legal part of the business process.

5. The use of Codices Standards

From the beginning on, the Slovenian Constitutional Court has been participating in the Venice Commission activities when as early as September 1991, at the Venice meeting of the Working Group on Constitutional Justice, it was decided to establish a special documentation centre to collect and disseminate constitutional case-law of all constitutional courts and/or equivalent bodies participating in the Venice Commission¹⁶, as well as to make such case-law as widely

¹⁶ The central section of the Venice Commission is the Constitutional Judiciary, because in this field the exchange information and ideas between the traditional and the new democracies is of the highest importance. Therefore, the Commission in 1992 decided to establish a documentation center, to accelerate the mutual exchange of information between the constitutional courts and equivalent bodies of constitutional and judicial review and to inform the interested public about constitutional case-law. To this purpose, the Commission established a network of liaison officers from constitutional courts and equivalent bodies of the Commission's member states. They prepare the contributions of the current constitutional case-law three times a year to the *Bulletin of Constitutional Case-Law* and to the database CODICES Commission (*Digest of Constitutional Cases*) with unique systematic thesaurus. The establishment of the Joint Council on Constitutional Justice in 2002 has institutionalized this mentioned cooperation between the institutions of constitutional and/or judicial and the Commission.

available as possible. The first Slovenian liaison officer was appointed by the Court in 1991¹⁷.

Since 1992 the Slovenian Constitutional Court has been providing not only the Slovenian version of the Court's case-law but also the English version. Additionally, the Venice systematic thesaurus translated into Slovenian¹⁸ and extended by particular Slovenian procedural terms has been used as a basic tool for the processing of decisions in their Slovenian and English versions. The same thesaurus has been used as an index for purposes of the Slovenian Constitutional Court's Official Digest.

6. A Private Special Website of Comparative Constitutional and Judicial Review

The interest for the comparative studies of systems of constitutional/judicial review substantially increased when the *Constitutional Court Act of 1994*¹⁹ was drafted. At that time needs appeared to implement the existing foreign solutions and experiences. Accordingly, the author's private website (www.concourts.net)²⁰ was established containing an overview of systems of constitutional and judicial review what might be of value for the theory and practice in the respective fields of activities.

The website presents a comparative constitutional analysis of the system of constitutional/judicial review in more than 150 countries.

The website's author describes different models of constitutional/judicial review and the equivalent bodies that hold this special and exclusive decision-making power on constitutional matters. It classifies the constitutional/judicial review bodies as special bodies responsible for protecting the constitutionality for which they hold a certain legal superiority in relation to other branches of power. Their review quite often covers legislative acts that are the highest legal instruments of a specific legal and political system. This gives the constitutional/judicial review body a special status with power to provide constitutional/judicial review under the system of the separation of powers, especially in relation to the legislative power in that it may even annul statutes adopted by the legislative body.

The site is designed in Slovenian, English, French, Spanish and Russian, partially in several other languages as well.

There are three main blocks presented on the website: Comparisons, Lectures and Projects.

The Lectures concern different issues of the knowledge and techniques of national systems of constitutional/judicial review. A comparison of certain topical views could add to the analysis of sources of a national democratic process and culture²¹. Accordingly, it could have

¹⁷ The author acted as a liaison officer and expert from 1991 to 2009.

¹⁸ Slovenia is the only country which translated the Thesaurus into its national language.

¹⁹ Official Gazette RS, No. 15/94.

²⁰ Author: Prof. Dr. Arne Marjan Mavcic; Design & Programming: Edo Milavec, MV d.o.o., Postojna, Slovenia; info@concourts.net

The Author expresses his gratitude to Mr. Edo Milavec for his excellent and professional electronic support of the mentioned website from the very beginning.

²¹ See comments such as: The Challenge of Democracy, Ninth Edition, Janda/Barry/Goldman, Chapter 14, © 2005-2008 Copyright Cengage Learning. All Rights Reserved. http://college.cengage.com/polisci/janda/chall_dem/9e/resources/internet_exercises14.html □ Professor Arne Mavcic holds several academic and government positions in the Republic of Slovenia. One of his missions is to provide a worldview of judicial review and constitutional courts. He has set out a number of different models for judicial review, only one of which is the American version, at www.concourts.net.

□ One link compares different constitutional court models by country: <http://www.concourts.net/chartm.php>. Another link compares different constitutional court models by population: <http://www.concourts.net/chartpo.php>. How does

direct applicative value in the search for systemic solutions in different countries. There are the following issues presented: Systems of Constitutional/Judicial Review (English); Constitutional/Judicial Review in the Federal States (English); Organization of Constitutional Review Bodies (Slovenian); Tables regarding several Issues of Constitutional/Judicial Review (Slovenian); Comparative Constitutional Law in Short (Slovenian).

Under Projects there are included:

- some close relevant links (The Venice Commission of the Council of Europe, author's Human Rights Reports for Slovenia for FRALEX EU; International Constitutional Law Database in Bern);
- some foreign research projects based on the www.concourts.net website²²,

the American model compare to each model in terms of the number of countries in the world and the population governed by each model?

Does it surprise you that some countries still have no form of constitutional court? Which ones besides the United Kingdom lack judicial review?

Website Analisis
Perbandingan
Mahkamah Konstitusi
www.concourts.net

Seperti yang tertulis pada halaman depan situs, pengadministrasinya menjanjikan situs ini akan berisi analisis komparatif dari berbagai sistem pengujian konstitusional di lebih dari 150 negara. Sebagai sebuah situs internet yang hanya diasuh oleh satu orang, yaitu seorang pakar konstitusi asal Slovenia yang bernama Arne Mavèè, LLD. seorang *Head of the Analysis and International Cooperation Department* pada mahkamah konstitusi Slovenia, situs ini cukup komplit, bahkan dilengkapi dengan tabel dan diagram peta yang interaktif. tampilan situs ini juga cukup nyaman di mata dan mudah digunakan. Dari halaman utama kita sudah diberikan petunjuk untuk menuju ke tabel perbandingan sistem pengujian, diagram, peta bahkan pada materi perkuliahan dan biografi singkat pengasuh situs. Tabel-tabel perbandingan pun disediakan dalam lima bahasa, Inggris, Perancis, Slovenia, dan Russia

Konstitusi Maya, http://www.mahkamahkonstitusi.go.id/putusan/BOOK_BMK15.pdf

²² There were several research projects inspired by the www.concourts.net website, e.g.:

The judicial review of legislation can be configured in any of a number of ways. In particular this task may be concentrated in a constitutional court, or diffused among ordinary judges. Recent studies have shown that the design of judicial institutions can have important legal, social, and economic consequences for a given polity. Scholars have dwelled on the reasons that lead political actors to the choice of one model of judicial review over another, but there has been little empirical study on this choice. Here, several hypotheses as to the circumstances that lead to the establishment of constitutional courts are tested on the basis of a data set of 128 democratic constitutions. I find that the degree of political uncertainty facing politicians is an important predictor of whether or not a constitutional court will be established. Submitted: July 18, 2005, Accepted: January 1, 2006 · Published: August 7, 2006; Recommended Citation: Ramos, Francisco (2006) "The Establishment of Constitutional Courts: A Study of 128 Democratic Constitutions," *Review of Law & Economics*: Vol. 2 : Iss. 1, Article 6. DOI: 10.2202/1555-5879.1043 Available at: <http://www.bepress.com/rle/vol2/iss1/art6>

Baslar, Kemal, Anayasa Yargısında Yeniden Yapılanma, Demokrasi Platformu, Yıl 1, Sayı 2, Bahar 2005 (www.anayasa.gen.tr/baslar-yenidenyapilanma.htm), Turk Anayasa Hukuku sitesi, anayasa.gen.tr, op. 12, op. 16, op. 29, op. 59;

Solyom Laszlo, Az Alkotmany Orei (<http://www.mindentudas.hu/solyomlaszlo/20050523solyom1.html?pidx=1>);

Gerhard Casper, The Karlsruhe Republic – Keynote address at the State Ceremony Celebrating the 50th anniversary the Federal Constitutional Court, German Law Journal, Vol. 2 No. 18-01 December 2001 – Public Law, op. 21.

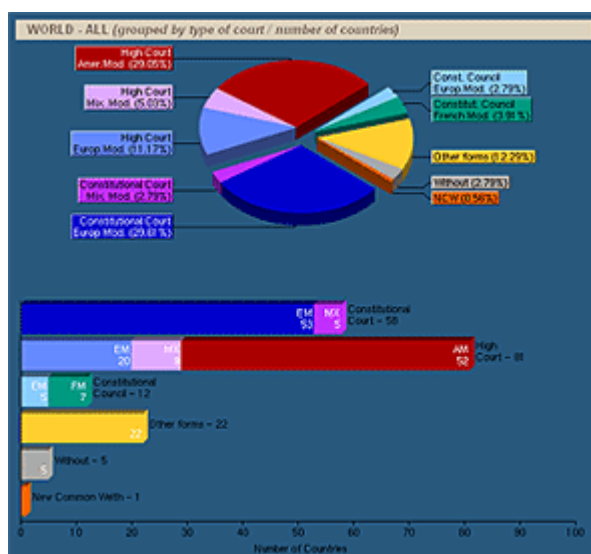
Schor, Miguel, Suffolk University Law School, Legal Studies Research Paper Series, *Research Paper No. 07-24* Comparative Research in Law and Political Economy, Law Research Institute Research Paper Series, *Research Paper No. 3/2007*, Mapping Comparative Judicial Review, *Suffolk University Law School*, This paper can be downloaded without charge from the Social Science Research Network Electronic Paper Collection at: <http://ssrn.com/abstract=988848>

Lynch, Horacio, Los Tribunales Supremos y un plan de reingeniería para la Corte Suprema de la Argentina Un proyecto de reforma integral exige determinar los objetivos, principios, criterios y finalidad. Con estas características se formuló la propuesta "REINGENIERÍA DE LA CORTE SUPREMA DE LA NACIÓN -

- several author's publications regarding constitutional/judicial review issues and human rights issues, in English, Slovenian, Spanish, German, Russian, Georgian, Azeri, Arabic and Hungarian.

The most important part of the website is Comparisons which includes:

1. Introduction which describes the historical steps in the development of systems of constitutional review and the origin of currently existing systems (models) of constitutional/judicial review (Slovenian, English, Spanish, French, Russian).
2. Several Statistical Charts Regarding Systems of Constitutional and Judicial Review (sorted by: Type of Court/Countries, Type of Court/Population, Type of Model/Countries), for example:



Aspectos organizativos, funcionales y de gobierno del Alto Tribunal". Éstos se concentran sólo en temas constitucionales con la consecuencia - en orden a lo que estamos analizando - de tener mucho menos casos que los del modelo norteamericano y generalmente tampoco asumen la responsabilidad de la dirección del sistema judicial (en el estudio de estos antecedentes destacamos el trabajo de un alto funcionario de la Corte Suprema de Eslovenia, el Dr. Arne Mavčič quien ha realizado una tarea encomiable al confeccionar una muy completa base de datos en la cual se pueden distinguir los distintos modelos de revisión constitucional/judicial, los poderes que ejercen en cuanto a dicha revisión).

Available : <http://www.foresjusticia.org.ar/investigaciones/Libros/Estudios2/TribunSupremos.pdf>

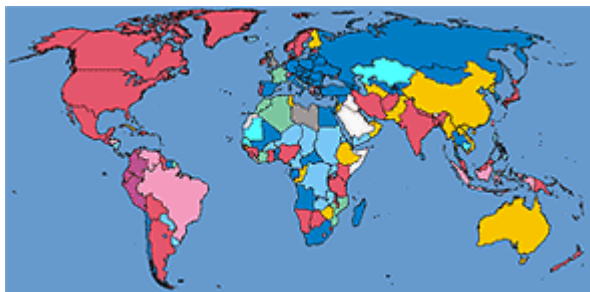
Squatrito, Theresa, **Europe Courts: Serving a Minority of States**, Political Science Association 2009 Annual Conference Chicago, April 3, 2009,

[http://www.allacademic.com/meta/p_mla_apa_research_citation/3/6/4/5/1/pages364517/p364517-](http://www.allacademic.com/meta/p_mla_apa_research_citation/3/6/4/5/1/pages364517/p364517-1.php)

[1.php](http://www.allacademic.com/meta/p_mla_apa_research_citation/3/6/4/5/1/pages364517/p364517-1.php). Constitutional review is that act of a court review the constitutionality of a government action or legislative statute. I use data provided by the Concourts.net project by Arne Mavčič at the University of Ljubljana. 11 This project is a comprehensive comparative constitutional analysis of constitutional review powers in more than 150 countries. 12 Using this data, I created a scale of constitutional review powers ranging from 0 to 3, where 0 signifies the country's courts have no constitutional review powers. A score of 1 meant that the country has one of three potential forms of constitutional review power. These three forms of constitutional review included abstract a priori review, abstract posteriori review and concrete review. A score of 2 11 To access the concourts.net project database, go to: <http://www.concourts.net/tab/tab1.php?lng=en&stat=1&prt=0&srt=0> (accessed February 2009). 12 For more information on this project, see the following link: <http://www.concourts.net/> (accessed February 2009).

United Nations Development Programme, Nepal, Support to Constitution Building, Centre for Constitutional Dialog, www.ccd.org.np, Constitutional Courts (This site has resources materials on the comparative study of different constitutional courts in the world: <http://www.concourts.net/comparison.php>, <http://www.undp.org.np/constitutionbuilding/constitutiondesign/legalsystem/court.php>

3. Additionally, the following a special clickable map presents several constitutional and judicial review (systems) models arranged by main regions: Europe, Eastern Europe, Africa, Asia, the Middle East as well as North, Central and South America. These (systems) models are presented by different colors.



4. A Tabular Presentation of Different Systems of Constitutional and Judicial Review around the World:

Different (systems) models of constitutional courts and the equivalent bodies as special bodies that as protectors of constitutionality enjoy a certain legal superiority in relation to the other branches of power. From an organizational point of view, it is possible to distinguish different current models (systems) of constitutional/judicial review. Furthermore, constitutional courts and equivalent bodies are here also presented from the point of view of their powers exercised in accordance with constitutional and statutory regulations in force.

	CONSTITUT. COURT	HIGH COURT or SPECIAL SENATE OF THE HIGH COURT	CONSTITUT. COUNCIL	Constitutional Review	Constitutional Review	Constitutional Review	Constitutional Review
Burkina Faso		HC-EM					
Bu	CC-EM						
Ca		HC-EM					
Cape Verde	CC-EM						
Central Africa			HC-MA				

The first drafts of the above mentioned tables were gradually designed in cooperation with Mr. Edo Milavec as a part of some early author's publications relating to the comparative constitutional/judicial review issues²³.

Later, many more extended and detailed analyses followed, deriving from several author's studies at the Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Universität Heidelberg, Germany, at the Groupe d'Etudes et de Recherches sur la Justice Constitutionnelle, Université d'Aix Marseille, Aix-en-Provence, France, at the Swiss Institute of Comparative Law, Dorigny, Lausanne, Switzerland, and at the Washington College of Law of the American University, Washington D.C., U.S.A. Results of the mentioned comparative

²³ Mavcic, Arne. *The Constitutional Review*. The Netherlands: BookWorld Publications, cop. 2001. 240 str., ilustr., zvd. ISBN 90-75228-18-X. [COBISS.SI-ID [152063](#)]
Mavcic, Arne. *Slovenian Constitutional Review : Its Position in the World and its Role in the Transition to a New Democratic System*. Ljubljana: Nova revija, 1995. 235 str., [18] str. pril. ISBN 961-6017-25-X. [COBISS.SI-ID [55585280](#)]

researches inspired the further development and extension of the above tables. Additionally, their translation into several languages followed²⁴.

Currently, there are five tables presented.

The first table (1) contains models of constitutional and/or judicial review sorted and combined by countries, type of constitutional courts and equivalent bodies exercising constitutional/judicial review (constitutional court, constitutional council, high court or a special high court's chamber) and several existing models of review (European model, American model, mixed model, French model, New Commonwealth Model, other institutional forms of the constitutional/judicial review, systems without constitutional/judicial review.

Next three tables (2-4) contain currently existing different forms of constitutional and judicial review sorted by countries, different types of objects of constitutional (judicial review (different sorts of regulations classified in accordance with their hierarchy), other powers of constitutional courts and equivalent bodies sorted by countries.

Additionally, the last (5) table contains (sorted by countries) currently existing different forms of the protection of human rights and fundamental freedoms through the procedure before constitutional courts and equivalent bodies: ordinary Court proceedings (the human rights revision – extraordinary legal remedies to revise the ordinary court's judgments, e. g. the habeas corpus proceedings, the habeas data, mandamus, prohibition, certiorari, quo-warranto, respondeat superior, amparo (emparo), mandado de seguridad, mandado de injuncao, recurso de proteccion; before the Constitutional Court through the special procedure, e.g. the subsidiary amparo (accion de tutela); the popular complaint (e.g. actio popularis and quasi action popularis); the indirect access to the Constitutional Court (through an abstract review of rules, or through a specific - concrete - review of rules, or through a preventive abstract review of rules); the constitutional complaint²⁵.

The program packages supporting the website allow for permanent monitoring of its usage and origin of interested users. Such special monitoring system motivates the frequency of updating of the website and its development.

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²⁴ Some translations were kindly provided by some users of the author's website, e.g. the Russian Institute for Comparative Law, Moscow; the AACPUF, Paris; Horacio Lynch and his research group, Buenos Aires.

²⁵ More about different forms of the human rights protection in : Mavcic, Arne. *The Protection of Fundamental Rights by the Constitutional Court and the Practice of the Constitutional Court of the Republic of Slovenia*, The Protection of Fundamental Rights by the Constitutional Courts. Proceedings of the UniDem Seminar, Brioni/Croatia, on 23-25 September 1995, European Commission for Democracy through Law, Collection Science and Technique of Democracy, No. 15, Council of Europe Publishing, 1996, p. 204-231.

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