



Strasbourg, 23 December 2014

CDL-JU(2014)020  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**SEMINAR**

**THE INTERNAL ORGANISATION  
OF A CONSTITUTIONAL COURT**

**Amman, Jordan, 10 December 2014**

**REPORT**

**THE CONSTITUTIONAL COURT  
AND RELATIONS WITH THE PUBLIC**

by

**Teodor Antić**

**(Secretary General of the Constitutional Court, Croatia)**

Dear colleagues, ladies and gentlemen,

First of all let me thank you for organising this workshop and giving me an opportunity to speak about the Constitutional Court of the Republic of Croatia and its practice and experience on a very interesting issue (or maybe better to say a challenge): RELATIONS WITH THE PUBLIC.

## **SLIDE 2. HUMAN RIGHTS DAY**

But before I start my presentation on the assigned topic, let me remind you that today, on the 10th of December we celebrate the Human Rights Day.

The date was chosen to honour the United Nations General Assembly's adoption and proclamation of the Universal Declaration of Human Rights in 1948.

The Declaration was the first global enunciation of human rights and one of the first major achievements of the new United Nations Organization.

## **SLIDE 3. CONTENTS**

For this workshop I have chosen to talk about the RELATIONS WITH THE PUBLIC.

My presentation deals with the following:

1. Public and its opinion
2. Exposure of the Constitutional Court to the public
3. Regular public relations activities
4. Reactions to negative criticism
5. Media relations

## **SLIDE 4. PUBLIC OPINION**

The public and public opinion play an important role in social life and development.

There is no doubt that decision-makers want to ensure public support, which provides their decisions with legitimacy or at least creates an appearance of legitimacy. Even a faulty or wrong decision can seem well-founded and just if it concurs with public opinion.

Sometimes the power of public opinion can place the decision-maker before a serious dilemma: whether to make an unpopular decision or to yield to public pressure and secure public support, from which it might later secure some kind of benefit.

## **SLIDE 5. PUBLIC OPINION – DEFINITION**

Public opinion is usually seen as the opinion a relatively large number of persons in a particular society have about a particular issue. It develops when many people think the same about that issue and are aware that their opinions agree.

However, when public opinion is assessed it is always necessary to remember that "having an opinion about something" does not necessarily mean "knowing something about it" and consequently, the existence of public opinion about a subject or controversial issue does not mean that it is right.

## **SLIDE 6. PUBLIC – CATEGORIES**

Although this concept is difficult to define and does not always have only one meaning, from the aspect of its participation in and influence on social events the general public may be divided into smaller groups.

Thus, for example, there is the division into:

1. Non-publics – people who are not concerned with a certain issue or organisation and who therefore do not undertake anything,
2. Latent or hidden publics – people who observe a common issue as the consequence of an organisation's activities but are not aware of their connections to a situation,
3. Aware publics – people who observe and understand the issue, but do not act, and
4. Active publics – people who confront the issue, recognise it and organise themselves so as to discuss it and do something about it.

Publics can also be grouped by how they behave toward messages and issues:

- Apathetic publics – those who are inattentive and inactive on all issues,
- All-issue publics – those who are active on all issues,
- Single-issue publics – those who are (usually fervently) active on a particular issue or a limited number of kindred issues,
- Hot-issue publics – people who respond and become active only after the media have revealed almost all the actors, and the issue has become one of a widespread public discussion.

## **SLIDE 7. EXPOSURE OF THE CC TO THE PUBLIC**

Generally speaking, the public is always interested in activities of constitutional court.

In accordance with the principle of transparency, Constitutional Court, as a one of the highest state institutions and public authority bodies, is bound to publish relevant information about its operations regularly and in an appropriate manner.

But besides that regular obligation, within Constitutional Court relations with the public, a special aspect of it exists in practice.

Namely, the constitutional court may have to control the constitutionality of a regulation which the public has already found unconstitutional and a media campaign is already under way clearly telling the court what is expected from it. The constitutional court can easily predict that it will be applauded if it decides in accordance with these expectations, but if it decides otherwise it will be criticised.

In that sense, the Constitutional Court can be strongly exposed to the public opinion and this can be manifested as pressure before and during constitutional court proceedings and as assessments (either positive or negative) made after the Court has reached its decision.

I'll get back to that issue a little bit later.

## **SLIDE 8. THE RULES OF PROCEDURE OF THE CROATIAN CC**

Now let me present some practice and solutions of the Croatian Constitutional Court with regard to regular relations with the public.

In accordance with the Rules of Procedure public access to the operations of the Constitutional Court shall be provided:

- 1) through publication of Constitutional Court decisions, rulings and reports in the Official Gazette,
- 2) through posting Constitutional Court case-law and all important data on the official Website of the Constitutional Court (<http://www.usud.hr>),
- 3) through publication of collections of decisions, rulings and reports,
- 4) through the presence of representatives of the press and other public media at the Session of the Constitutional Court,
- 5) through television and radio broadcasts from the Constitutional Court,
- 6) by the release of official communications in the public media,
- 7) by holding press conferences.

#### **SLIDE 9. PORTPAROL**

There are various options as to who should address the public on behalf of the constitutional court:

- a) always and only the president of the constitutional court;
- b) each judge of the constitutional court,
- c) the judge who was involved in the specific case (the reporting judge);
- d) a special person in charge of public relations by the constitutional court (spokesperson);
- e) a combination of several or all of the above options.

#### **SLIDE 10. WEBSITE**

The increasing use of information and communication technology (ICT) in particular the Internet has become prominent and has the potential to change fundamentally Court relations with the public.

Court official website provides a platform for efficient communication and access to information. It is a very useful tool for transparency and democracy because it enables citizens to easily interact with the Court and find relevant information.

Generally speaking, websites offer great benefits to citizens. Such benefits, however, cannot be realized if websites are not user friendly. In that sense very important part of the website is its menu.

Let me show you now the menu of the Croatian CC website.

The main menu offers you the following pages:

- HOME
- News Archive
- About the Court
- Legal Basis
- Management of the Court
- Employment Opportunities
- Agenda and Minutes
- Case-Law
- European Court of Human Rights Case-Law
- International Relations
- Publications
- Access to information
- Links
- Contact

## **SLIDE 11. WEBSITE**

The page ABOUT THE COURT has a submenu which offers the following pages:

- Organisation
- Jurisdiction
- Judges
- Secretary General
- Former Presidents and Judges

The page MANAGEMENT OF THE COURT has a submenu which offers the following pages:

- Internal General Enactments
- General Secretary's Reports
- Statistics
- Public Procurement

## **SLIDE 12. RIGHT TO INFORMATION**

It is also important to know that the special Law which regulates the right of access to information, exists in the Croatian legal system, and it applies to all public authority bodies, including the CC.

In accordance with this Act, any information held by the public authority is available to any local or foreign person or legal entity under the terms and restrictions of its provisions.

“The right of access to information” encompasses:

- the right of the beneficiaries to seek and acquire information, as well as
- the obligation of the public authority bodies to ensure access to requested information as well as to disclose information regardless of the request, when so required by law or other regulations.

## **SLIDE 13. RIGHT TO INFORMATION**

In accordance with the mentioned Act, the public authority body is bound to appoint a special official in charge of resolving the issues of exercising the right of access to information (Information Officer).

The second degree body in this procedure is the Information Commissioner who is appointed by Croatian Parliament.

But it is important to know that this procedure applies to general public and does not apply to the parties taking part in the court, administrative and other legally grounded proceedings, who are granted access to information by other (special) acts.

## **SLIDE 14. EXPOSURE OF THE CC TO PUBLIC OPINION AND POSSIBLE CRITICISM**

Now I wish to come back to the issue of exposure of the CC to public opinion and possible criticism.

How should the constitutional court act in a situation when its professional findings differ from public opinion?

To answer this question, I will paraphrase a Hollywood film: *It is not difficult to do what is right; it is difficult to decide what is right. And when you have decided, then there is nothing else you can do!*

It is therefore not difficult to say how the CC should act when its professional findings and convictions differ from public opinion.

However, this brings us to the next question:

### **SLIDE 15. REACTION TO NEGATIVE CRITICISM**

How to react when the decision of the constitutional court is subjected to the criticism of opposing public opinion?

Some constitutional judges deem that the constitutional court, in view of its legal position and professional superiority, should never react to criticism of its decisions.

However, other constitutional judges hold more moderate opinions and think that it is wrong to ignore all criticism and absolutely “respond by silence”, because this has a contrary effect to the purpose and aim of the constitutional justice: it forms a public perception about an elitist group that does not answer to anyone for anything, which generally weakens people’s confidence in democratic institutions.

Therefore, if a decision of the constitutional court is criticised, it is first necessary to decide whether to react to the criticism, and this depends on its content and how serious it is.

The constitutional court must certainly react in a fitting way to criticism that is seriously inaccurate and unjustified, taking care not to infringe on the freedom of expression or prevent the expression of criticism as such.

### **SLIDE 16. WHEN TO REACT TO NEGATIVE CRITICISM**

It is appropriate to respond to criticism:

- if it results from not understanding how the system works, or the role of the constitutional court, or if it is partly based on that kind of misconception,
- when the criticism is serious and will probably have a significant negative social influence,
- when it contains inaccuracies or is deceptive .

### **SLIDE 17. REACTION TO NEGATIVE CRITICISM**

In making a final decision about whether to react to criticism and how to do so it is necessary to assess:

- can the answer additionally clarify the procedure or the reasons for making a decision,
- will the answer rectify the wrong, inaccurate or deceptive informing of the public,
- will the answer have the adequate meaning and serve to inform the public,
- could the answer be misunderstood as having been given in the court’s own interest,
- can the answer contribute to the public being better informed about an issue that was the subject of the proceedings or that is connected to them in some way.

### **SLIDE 18. MEDIA RELATIONS**

If the subjects are of great public interest and the media are campaigning by reporting about them every day, it is likely that the communication of the constitutional court or the statements of its judges can be misquoted, wrongly interpreted or that the media could denigrate the court in some other way. This kind of treatment could adversely affect understanding, assessing and accepting the court's decisions.

There are three basic explanations for such a negative media presentation:

1. a mistake,
2. they believe that they are writing (telling) the truth, or
3. they have bad intentions.

### **SLIDE 19. PRACTICAL TECHNIQUES**

Constitutional courts have the following practical techniques and manners of reacting to criticism of their decisions:

- a request to publish a correction,
- a public statement,
- a press conference,
- an interview,
- writing and publishing expert materials.

The decision about which of the mentioned tools to choose in a particular case may depend, among other things, on the relationship between the constitutional court and the media.

### **SLIDE 20. WARNING**

Whatever the case, we must bear in mind the following two rules when dealing with media attacks and assessing how to react to them:

1. if you react too strongly, you risk informing even those people who had not been aware of the attack against you in the first place;
2. if you are conducting a war against the media, your reaction cannot bring you victory – if it is a good reaction, it may possibly help you lose with a better score.

### **SLIDE 21. FINAL REMARKS**

In the end, let me say a few final remarks.

When a constitutional court decision is especially strongly criticised, the reasons for this must be discovered. In doing so it is important to perform an objective analysis to answer two inter-connected groups of questions:

1. what is the reason for the negative public criticism: disinformation and manipulation by smaller groups, insufficient knowledge about the legal and constitutional framework, loss of confidence in institutions or something else?
2. whether and how to react to public criticism: in general or only in a specific situation, institutionally or informally, in the short or the long term?

**SLIDE 22. FINAL REMARKS**

However there is no universal recipe. Constitutional courts will always face the same doubts and risks, from state to state, from court to court, from case to case.

But from each separate case a lesson and experience should be drawn for use in some future case.

However, there is no guarantee that no mistakes will be made. It is, therefore, perhaps the simplest to accept the rule:

Try again, make a mistake again, but make a better mistake.

**SLIDE 23. THANK YOU**

Dear colleagues, thank you for your attention.