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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

THE ROLE OF DOCUMENTATION IN COMPARATIVE STUDIES

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THE ROLE OF DOCUMENTATION IN COMPARATIVE STUDIES

It is difficult to imagine somebody who, without having an efficient documentary workshop, can make use of achievements in a given field of knowledge. It is impossible because of multitude of sources and their diffusion. It is also true that one of the elements of the workshop's correctness is basing research on the comparative studies. It concerns not only historical or empirical research but also, or rather above all, theoretical and practical one. Basing most of research on the comparative studies is necessary also in the field of widely understood law. Nowadays, a lawyer can not limit himself to knowing exclusively the law of his country. Regardless of international relations, the international contexts should be taken into account. Improving the law and eliminating mistakes, as well as juxtaposing results based on different legal regulations are the effects of the comparative studies. More and more cases must be settled by application of foreign law based on the international law. The comparative studies allow for standardization and classification of the law as well as development of the theory of the state and law. Application of comparative methods may facilitate further development and improvement of research and teaching legal sciences, for example in the fields of law requiring additional, more detailed reference books.

The scope of necessary comparative research in the field of law include the comparison of:

1. norms, legal and political institutions;
2. branches of law;
3. domestic and foreign legal systems allowing critical assessment of particular solutions, as well as determining similarities and discrepancies;
4. political legal cultures;
5. history and theory of law including detailed issues concerning, among others, the philosophy of law, jurisdiction, sociology and ethnology of law;

Basic functions of the comparative studies in the legal sciences:

1. cognitive;
2. didactic;
3. formation of law;
4. interpretation of law;
5. standardization of law;
6. political;

The basis of the comparative studies in the field of law is domestic law and analysis of foreign legal systems. As far as the analysis of foreign legal systems is concerned, one should be aware of certain dangers resulting from differences among various constitutional systems and especially difficulties with translating terminology. In order to be able to name an institution having similar function in a similar way, knowledge of the whole legal system of a given country is necessary. For example, two years ago we started to prepare a multi-volume reference book containing legal regulations regarding the way of functioning of European Constitutional Courts. The book was translated into Polish in order to make knowledge about constitutional jurisdiction available to more people. [*Volume I was published regarding: Austria, France, Germany, and Italy; volume II is being edited regarding: Bulgaria, the Czech Republic, Spain,*

Slovakia, and Hungary; we plan to publish 5 volumes and their order results only from the order of acquiring source materials, as well as time available to translators and specialists on constitutional law preparing theoretical introductions]. Each volume consists of general characteristics of constitutional system of a given country, an excerpt from the constitution concerning the Constitutional Court, legislation and the organizational regulations of the Court. We have received a very interesting comparative material regarding the role of the Court in protecting the constitution in the functioning of the democratic law abiding state, especially useful in connection with the works upon the Constitution of the Republic of Poland. The changes that have been taking place since 1989 lead to formation of a democratic system of government. Constitution is the basic element stabilizing this system. Work connected with drafting a new Constitution require solving many institutional problems. One of them is the position of the Constitutional Tribunal. In the work of the Parliamentary Constitutional Commission and in various discussions, taken into account are solutions used in other countries - both in countries having well established democratic traditions and in countries which, like Poland, undergo a transformation period. The most difficult task for a documentarist preparing the above mentioned reference book was standardization of the names of legal institutions occurring in different countries. The theoretical introductions preceding the legal regulations included in the book are an important element of it. This problem was also taken into account in the works of the Documentation Centre on Constitutional Justice - Venice Commission - one of the special issues of the Bulletin discusses in short the constitutional systems of respective countries.

Today's Europe again has broadened its geographical and intellectual boundaries. Changes in the international relations in Europe influenced also forms of functioning of the multilateral international cooperation. Therefore, we need the tools making the cooperation possible in these new conditions. The role of the documentary workshop is not overestimated. One could say that documentation and scientific information are of greatest importance in every professional activity. Also the amount of time in which an information can be obtained is crucial - a basic task of a documentary service is to organize work in such a way as to shorten to minimum the time needed to obtain the initial materials.

Documentation as an organized system has its beginnings in the activities of the International Bibliographic Institute founded in 1895 in Brussels [Institut International de Bibliographie, the name later changed into the International Federation of Scientific Documentation and Scientific Information] and its founders P. Otlet and H.M. Lafontaine.

In the following discussion I would like to concentrate mostly on the problems connected with the scientific documentation, at the same time, stressing the importance of the office and administrative documentation.

For the sake of the following discussion let me define the „**scientific documentation**” as a number of activities connected with gathering, recording, elaborating, searching for, presenting and rendering accessible the materials connected with a given branch of knowledge and based on the fields of science being important for its theoretical and practical bases such as: scientific organization of the keeping of archives, bibliography, library administration, computer science, linguistics and semiotics, cybernetics, organization and management, as well as sciences using new technologies making data processing more efficient. In case of creating the documentary base for the constitutional jurisdiction (constitutional tribunals and courts as well as their equivalents) it is a widely understood law and some related fields connected with jurisdiction of

these courts such as: political science, demography and sociology.

The discussed topic is too broad to be exhausted in one short discussion. Therefore, I will try to enumerate the problems connected with the documentary activities in the field of law and especially present their important role in the process of exchanging scientific thought in the comparative studies. Methodology of the documentary work is rather similar regardless of where it is done. The differences in the organizational solutions in different countries result mainly from the financial possibilities of the documentary service and its position in the organizational structures of the court.

Users of legal documentation:

1. judges;
2. employees of the state institutions;
3. lawyers - practitioners (barristers, employees of the legislative branch centers, labor institutions, etc.);
4. scientists (lecturers at universities, employees of the science and research institutions), students of the faculty of law;
5. librarians and employees of the scientific documentation and information centers;
6. other persons - looking for, e.g. decisions of the Tribunal as additional arguments for a case at court;

Tasks of the documentary service

A documentarist is a go-between data bases and their users and his main responsibility is to give a possibly exhaustive information and to quickly provide the users with an access to the documents concerning a given problem. A judge interested in a particular topic, e.g. „privatization of real estates ceased after World War II”, „protection of the human rights”, or „abortion”, must receive not only bibliography for the subject, but also suitable documents containing legal regulations, expertise, official publications, documentation of the work of parliamentary commissions, interpretations by appropriate Ministries, judgments issued so far together with glosses, as well as a selection of press articles and other materials connected with the case. Documentation prepared on the basis of foreign sources is also necessary. However, it is clear that preparing such complex and detailed information requires systematic work of many people starting from preparing a policy of gathering and elaborating documents and finishing at rendering a document or its copy accessible. If some documents are not available in a given library, they can be brought from another library on the basis of inter-library exchange.

There are three basic stages of cooperation between an employee of the documentary service and a user:

1. specification of a topic, determining the domain and type of information, form of a document, as well as specification of certain problems to look for formulated in the form of key words. Quite often specification of a subject and clear formulation of a keyword is a difficult task for a user. Using technical terminology poses another problem;
2. providing the user with the information in the form of bibliographic descriptions, abstracts or summaries or factual information;
3. providing the user with full source texts or selected excerpts in the original form or

copy;

Completeness, scope, access time and relevancy of obtained scientific information and, in turn, source documents are strictly dependent on the information base and, above all, on the information „tools” offered by the library and the scientific information center, as well as on the extent of scientific documents which can be provided to the user.

Types of documentation data bases of the Constitutional Courts:

4. alphabetical and thematic catalogues of the library’s resources and of the collection of judges and their assistants’ books and magazines - with a possibility of multi-aspect searching for data;
5. thematic files including: specialized bibliographies, synthetic registers of sources of law with extensive thematic bibliographic juxtapositions, files regarding articles from scientific magazines as well as home and foreign collective publications; search for materials for a particular case conducted especially for judges with the use of comparative materials, register of newly purchased materials and information about addresses where one can find materials for a given subject which are not available in the library recourses. It is also possible to use the Internet in order to search for information about scientific conferences, etc.;
6. information of the „current contents” type taken from Polish and foreign scientific magazines;
7. press information including contacts with the media, elaboration of the informative bulletins, documentation of the press cuttings, review of the more important television journalistic programs, etc.;
8. jurisdiction (jurisdiction of the Constitutional Tribunal, the Supreme Court, Supreme Administrative Court, the Arbitration Court, and other) with the possibility of multi-aspect searching for data with the help of the thematic indexes. [Documentation of the judiciary jurisdiction plays a very important role in comparative studies of many problems, e.g. in those concerning protection of the human rights];
9. documentation of written statements of claim or defense in a court action;
10. courts’ own publications: publishing of judgments, comments on judgments resulting from Court jurisdiction as well as concerning theoretical legal problems, thematic bibliographies, glosses to the judgments;
11. data bases of Polish and international legal regulations;
12. CODICES - system of the Venetian Commission of the Council of Europe containing the documentation of the selected judgments of special importance in the precedential law system of the constitutional courts and their equivalents (including The European Tribunal of Human Rights, the European Tribunal of Justice and the Supreme Court of the USA), judgments concerning compliance of the law with the constitution. There is an English and French version of the system with the possibility of multi-aspect searching for data. So far about 40 countries are involved in creating the above mentioned data base which allows to conduct comparative studies on a large scale. Let me quote some examples of topics which were very popular in the practice of the Polish tribunal and to which the source of documentary information were the Bulletins: „protection of the human rights”, „inspection of the former communists”, „abortion”, „privatization of real estates ceased after World War II”, „access to information, freedom of the press, censorship, media”, „participation of the prosecutor in the legal

proceedings before the constitutional court". I know that also my colleagues - documentarists from different tribunals, looked for materials to some of the above issues;

13. documentation of the normative acts regulating functioning of the European Constitutional Courts;

Typology of the legal documentary service at the Constitutional Courts

Documentary work is conducted in the following organizational units:

- library;
- scientific documentation and information center;
- analyses and expert's report unit;
- archives;
- press department;
- publishing department;
- computer science unit.

The above units function together or as separate organizational units in different countries. In case they function separately, they closely cooperate with one another.

Libraries and their integral parts - the scientific documentation centers of the Constitutional Courts and of courts functioning as constitutional ones are technical libraries serving mainly judges and Court practice staff. Basically, these libraries are closed for the public, however, most of them render their resources accessible to other readers for the scientific purposes. The library's resources include mainly constitutional law and related fields reference books as well as documentation connected with the organizational and jurisdiction activities of courts - particularly Polish and foreign jurisdiction and materials which are especially helpful in the Tribunal's work (articles, statistics, etc.).

The libraries publish information in the form of: *Register of Newly Purchased Items*, *Bulletins of the Magazines - Current Contents*, different kinds of *Documents Bulletins* containing source materials of primary importance for the court. For example, The Library of the Constitutional Tribunal of Spain publishes in such a bulletin most important decrees of the State and Autonomous Commonwealths, as well as all documents concerning the Tribunal; drafts of bills passed to the Chambers of Cortes and the rest of parliamentary documents which may be of use for the Tribunal.

The libraries cooperate with domestic and foreign documentation centers which keep data bases which are of interest to the tribunals.

Some libraries perform the function of the Central Legal Library, e.g. the Library of the Supreme Court of Canada - it belongs to the network of the federal libraries which makes it possible to have access into the university libraries, the Parliament's library, the National Library and other libraries. The library is open to all readers. Judges also have their personal collection of books in their offices. The library closely cooperates with the computer science department in the following areas: preparing legal data bases, improving the process of data automatization, searching for data software, on-line information searching system.

Activities of the libraries are supported by the library commissions, e.g. (in Belgium, Poland, Germany and Italy) with judges currently holding offices acting as their members and with heads of the libraries acting as their secretaries. Some commissions allow retired judges to act as the consultants (e.g. in Italy - maximum 2 judges). The documentary service, among others, consists also of the translation unit. Library and documentary activities in the sphere of correctness of data processing are aided by the computer specialists who provide technical help and advise what kind of computer equipment should be bought. On the basis of the documentary department's experience, the computer specialists are given guidelines for the creation of data bases.

Press department:

- provides media with the information about the activities of the Constitutional Tribunal;
- gathers and prepares press documentation;
- manages the press archives;
- press bulletins are prepared in courts which have well developed press service. For example, in Spain each issue of the Bulletin prepared daily contains legal information which may be interesting for the judges. It also contains information concerning all the cases heard by the Tribunal. The information is taken from Spanish newspapers and magazines, as well as from some of the most important foreign weeklies. Moreover, a monthly informative bulletin is published - reporters accredited to the Constitutional Tribunal receive the statistical data concerning cases lodged into the Tribunal and the information about the settled cases. Usually, a copy of the sentence or judgment of the Tribunal is enclosed.

Publishing department: publishes judgments of the Tribunal, prepares monographic elaboration and information about organizational structure and activities of the court.

Archives, connected with elaboration of the Court documentation (e.g. press or jurisdiction documentation) may be situated either in the documentary units (e.g. in Germany and Romania), or function as separate organizational units (Spain - press archives, Poland - press archives in the Chairman's Office and jurisdiction documentation at the Tribunal Secretariat).

Thematic elaboration of the possessed documents so that the largest possible number of users could use them poses a serious problem. It especially concerns such materials as expertise, opinions, etc. As experience has shown, it is necessary to prepare a detailed thematic elaboration of particular documents so that it is possible to find a particular expertise and not only receive an information that the resources contain a file entitled „Expertise”.

It is widely known that the descriptor languages (thesauruses) suit best the requirements of the automatized systems. Such system is used in the works of, for example, the Documentation Centre on Constitutional Justice - Venice Commission. Such a legal documentation system has not been built in Poland so far. Libraries and the documentary centers use their own systems or translate foreign thesauruses. For example, the Parliament's Library serving as the Central Legal Library has chosen „EUROVOC”, the system elaborated and propagated by the informative services of the European Parliament. As far as I know, the Czech Republic and Lithuania are interested in this system as well. When choosing the „EUROVOC” system, the Library took into account its universal character in communication, its availability, and possibility of using European Community's data bases where documents are registered by

means of it. Naturally, the need to use possibly detailed thematic description evoked another need to use more specific and Polish descriptors. And that is how „STEBIS”, the system of micro-thesauruses was created.

Organizational notes

- thematic access: nowadays, one looking for sources to one's research is, practically, unable to find what one needs in the vast amount of documents without an efficient documentary workshop. Concern about order and proper arrangement of the possessed resources is a natural effect of gathering of anything. Basing research on the sound documentation is the most important factor necessary for the information to be quickly obtainable;
- current documentary organizations like UNESCO with its General Informative Program preparing international documentation and documentation in particular countries use the newest techniques and technologies, especially computer ones, e.g. automatized data banks, world-wide informative networks;
- it is very important to work out informative language making possible communication and the exchange of information among possibly largest number of users regardless of the systems they use. The thematic index used in document elaboration constantly undergoes modifications;
- resources of documents are becoming accessible as the catalogues are automatized. This means that knowledge included in most of the important information resources will gradually be accessible. Degree to which the documents themselves will be accessible depends on whether libraries and documentation centers are interested in rendering accessible the documents and if they are technically prepared to transmit them;
- storage and electronic transmission of full texts is much more expensive than in case of bibliographic data and the problem of copyrights much more complicated. However, it is important not to eliminate source materials being the cultural heritage of a country and replace them with those electronic imaging of documents;
- necessity of conducting systematic research of the scientific documentation users' needs both for the purpose of correcting the documentary workshop and for foreseeing of the future needs;
- necessity of properly choosing the documentary service's staff (lawyers, documentarists, librarians, translators and technical employees);
- the role of international cooperation. It is important to closely cooperate and exchange scientific documentation especially with the research centers having well established position like: French Group d'Etudes et de Recherches sur la Justice Constitutionnelle, Max Planck Institute, as well as important documentation centers of the European Commission, the Tribunal of the Human Rights in Strasbourg, the Tribunal of Justice of the European Community in Luxembourg, and the Supreme Court of the USA. There is a great necessity to use the international data bases. Organization and initiation of the system of the constitutional jurisdiction documentation is a great success of the Center's management and secretariat. I hope that development of the base and elaboration of certain topics like, e.g. glosses will be the next step;
- it seems that organizing the system of training and exchange of the scientific documentation service's staff would be very helpful;
- documentary functions have an interdisciplinary character;
- many institutions put information concerning the field of the constitutional law in the

Internet - information from the general outline of the legal system in a given country to the selected normative acts and judiciary judgments.