

Strasbourg, 8 January 1998

<s:\cdl\doc\98\cdl-ju\1.e>

Restricted  
**CDL-JU (98) 1**  
**Or. Engl. only**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**THE BUDGET OF THE CONSTITUTIONAL COURT,  
CONTROL AND MANAGEMENT WITH RESPECT  
TO THE INDEPENDENCE AND AUTONOMY OF THE COURT**

by Mr Arne MAV\_I\_,  
Secretary General  
Constitutional Court of Slovenia

---

**Workshop on  
"The Budget of the Constitutional Court: Control and Management"  
Kyiv, Ukraine, 19-21 January 1998**

## SUMMARY

The paper describes the structure and the forms of regulation of the financial basis of the activity of the Constitutional Court in general, in connection with the principle of independence of the Constitutional Court as well as the principle of the autonomy of the Court. The respective topic is presented by a general comparative overview associated with the systems in force in the Republic of Ukraine as well as in the Republic of Slovenia.

### **I Financing/the Budget of the Constitutional Court as a Basis for the Independence**

Most constitutional/judicial review bodies have an independent budget<sup>1</sup> as a separate part of the whole State budget, and they are fully independent in its control. In addition, a financing of some new introduced Constitutional Courts (*e.g.* The Russian Federation, Lithuania, Belarus) are regulated in greater detail as other formerly established Courts, *e.g.*:

**Bulgaria:** The Constitutional Court shall have an independent budget (Article 3 of the *Constitutional Court Act* of 30 July 1991).

**Spain:** Under second additional Article of the *Constitutional Court Act No. 2/1979 of 3 October 1979* the Constitutional Court shall propose the budget, which is managed as a part of the whole State budget. The Secretary General of the Constitutional Court shall prepare the budget by help of the administration; in addition, he shall implement the budget and prepare the closing balance.

**Portugal:** Under Article 5 of the *Organisation, Activity and Procedure of the Constitutional Court Act No. 28/82 of 15 November 1982*, the Constitutional Court shall dispose with its budget which shall be adopted within the scope of "general expenses" of the State budget.

**Germany:** Under Article 1 of the *Constitutional Court Act (of 12 March 1951 with amendments)* the Constitutional Court has more independent and autonomous position in comparison with other constitutional bodies. Therefore the Constitutional Court as a constitutional body is not financially subordinated to any ministry, but it is autonomously managing and budgetary independent body. The Court budget may be adopted only as a particular autonomous plan to be included into the whole State budget. The Court may manage the budgetary funds independently. The budget shall be discussed and adopted by the plenary Court session (Article 1.2 of the *Rules of procedure of the Constitutional Court of 2 September 1975, amended on 5 December 1978*). Consequently, the Plenum of the Court involves a special Budgetary Council (Article 3.1.c of the *Rules of Procedure of the Constitutional Court*).

**Hungary:** The Constitutional Court shall draw up its own budget and shall submit it, as part of the State Budget, for approval to the Parliament (Article 2 of the *Act No. XXXII of 1989 on the*

---

<sup>1</sup> Or not explicitly declared as an independent budget, but a part of the whole State budget, *e.g.* Article 30 of the *Constitutional Court of the Republic of Uzbekistan Act of 30 August 1995*, Article 11.1 of the *Constitutional Court of the Republic of Kyrgyzstan Act of 18 December 1993*; Article 39.1 of the *Constitutional Court of the Republic of Yakutia/The Russian Federation Act of 6 February 1992*.

*Constitutional Court*).

**Austria:** The Court budget is not regulated either by a statute or by rules of procedure or any other internal regulation of the Constitutional Court. However, the Court has its own budget in the practice, as per agreement with the Ministry of Justice. The Court may manage its budget as a part of the whole State budget, adopted by the Parliament. The Court budget constitutes a special chapter of the State budget, similar to budgets of other State bodies.

**Italy:** Under Article 14.2.1. of the *Organisation and Procedure of the Constitutional Court Act. No. 87/1953 of 11 March 1953*, the Constitutional Court may autonomously manage its expenditure within the scope of funds adopted by a statute.

**France:** The funds, required for the activity of the Constitutional Council shall be determined within the scope of the whole general State budget. The President of the Constitutional Council is empowered to provide budgetary expenses. (Article 16 of the *Decree on the Constitutional Council No. 58/1067 of 7 November 1958 with amendments*).

**Belgium:** The funds, necessary for the functioning of the Court of Arbitration shall be allocated under the allocations budget (Article 123.1 of the *Special Law of 6 January 1989 on the Court of Arbitration*).

**The Russian Federation:** Under Article 124 of the *Constitution* the courts shall be financed only from the Federal budget thus providing a complete and independent administration of justice in accordance with the Federal Law. In addition, the *Federal Constitutional Law on the Constitutional Court of the Russian Federation of 24 June 1994* contains exhaustive provisions concerning guarantees of activity of the Constitutional Court (Article 7 of the *Law*): the Federal Constitutional Court shall be independent of any other body in organisational, financial, and material and technical terms. Funding of the Court shall be provided for in the federal budget and shall ensure an independent and comprehensive carrying out of constitutional judicial proceedings. The federal budget shall annually allocate in a separate item funds needed to ensure activity of the Constitutional Court of the Russian Federation that shall be managed by the Court autonomously. Spending estimates of the Court may not be reduced as compared to a preceding financial year.<sup>2</sup> The Court shall autonomously and independently provide for informational and personnel support of its activity. The property required by the Court to implement its activity and managed by it shall be the federal property. The Court may vest the right to manage the mentioned property in the structural units comprising its staff. No restrictions of legal, organisational, financial, informational, material and technical and other conditions of activity of the Court, prescribed by the present *Constitution*, shall be permitted.

**Lithuania:** The Constitutional Court freedom and independence from other institutions shall be ensured by financial, material, technical as well as organisational guarantees secured by law (Article 5-1.1 of the *Constitutional Court Act No. I-67 of 3 February 1993, as amended by the Act No. I-1475 of 11 July 1996*). The Constitutional Court shall be financed from the State budget by ensuring the possibility to the Constitutional Court to independently and properly perform the functions of constitutional review. The estimate of expenditure shall be approved

---

<sup>2</sup> See also a similar provision of Article 93 of the *Constitutional Court of the Republic of Azerbaijan Act*.

by the Constitutional Court which shall also independently dispose of the means that are allocated to it (Article 5-1.2 of the *Constitutional Court Act*). The buildings and other possessions which are used by the Constitutional Court shall be State property transferred into possession, use and disposal of for the Constitutional Court on trust. These possessions may not be seized or transferred to other subjects without the consent of the Constitutional Court (Article 5-1.3 of the *Constitutional Court Act*). Restrictions of legal, organisational, financial, informational, material, technical and other conditions of Court activities provided by the *Constitutional Court Act* shall be prohibited (Article 5-1.5 of the *Constitutional Court Act*).

**Belarus:** Guarantees of the activity of the Constitutional Court: Funding for the Constitutional Court shall be drawn from the budget of the Republic and shall guarantee the complete independence of legal proceedings before the Court. A separate heading in the annual budget of the Republic shall provide for the funds required to guarantee the work of the Constitutional Court, and the Court shall be free to use those funds as it sees fit (Article 24.1 of the *Constitutional Court Act No. 2914/XII of 30 March 1994*).

The premises required by the Constitutional Court to carry out its duties shall be the property of the Republic; the Court shall be responsible for their day-to-day management (Article 24.2 of the *Constitutional Court Act*).

**Latvia:** The Constitutional Court shall be financed from the State budget (Article 37 of the *Constitutional Court Act of 5 June 1996*).

**Georgia:** Under Article 4.2 of the *Constitutional Court Act of 31 January 1996* expenses connected with the organization and activities of the Constitutional Court are determined by the separate part of the State budget. The President of the Constitutional Court submits draft of expenses connected with the activity of the Constitutional Court by the procedure determined by law.

**Romania:** Under Article 50 of the *Organisation and Activity of the Constitutional Court Act No.47/1992* the Court has its own budget as a part of the whole State budget. A draft budget shall be approved by the judges of the Constitutional Court by the majority of votes and proposed to the Government to be adopted and included into the whole State budget.

**Croatia:** Under the *Constitutional Court Constitutional Act* (Narodne novine, No. 13/1991, with amendments) the Constitutional Court has its own budget which shall be adopted as a special part of the State budget by the representative chamber of the Parliament on the proposal of the Constitutional Court.

**Slovakia:** The Constitutional Court shall have a separate chapter in the State budget (Article 77 of the *Act on the Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the Status of Judges, of 20 January 1993*).

**Turkey:** The Constitutional Court shall, within the framework of the general budget, be administered by its own budget (Article 56 of the *Law of the Organisation and Trial Procedures of the Constitutional Court No. 2949 of 12 November 1983*). In the first instance, the President is responsible for covering expenses out of the budget. In the second instance, responsibility for expenses is assigned to the Secretary-General. Accounting shall be done by

the department of Accounts to be established within the Constitutional Court. The payment of expenses shall be administered by the Directory of the Financial Department of the Court. The Minister of Justice, or by consent, the Secretary General of the Court shall participate in discussions relating to the budget and conducted before the Parliamentary Assembly. The President and members of the Court may not, however, be summoned to present oral explanations.

**Ukraine:** Financing the Constitutional Court is foreseen by the State budget in a separate item (Article 31.1 of the *Constitutional Court Act*). Proposals as to the volume of financing of the Court as well as the draft of the respective estimate are submitted by the President of the Court to the Cabinet of Ministers of the State and the Parliament during the formulation of the proposed State budget for each following year (Article 31.2 of the *Constitutional Court Act*).

### **A Brief Overview of the Slovenian State Budget Regime**

Despite the Principle of the independent Budget regime of the Constitutional Court it is necessary, concerning its management, to take into consideration the basic principles of the State Budget regime.

#### **A special character of the *Budget Act***

The Slovenian system in force (the *Referendum and Public initiative Act*) excludes from the decision-making by the referendum all laws passed on fast procedure, among others also laws implementing the adopted State budget (Article 10 of the *Referendum and Public initiative Act*).

As a representative body, the National Assembly also adopts the State budget (Article 148 of the *Constitution*; Articles 215-228 of the *Rules of Procedure of the National Assembly*).

### **The Basic Principles of the State Budget**

**The Principle of Annuality of the State Budget:** The Budget shall be adopted for one year and it is valid for the year which it is concerned (Article 14.2 of the *Public Consumption Financing Act*).

**The Principle of Legality of the State Budget:** Each year, the National Assembly approves the budget as well as the budget account.

**The Principle of Universality of the Budget:** All revenues raised, and all monies expended, for public purposes by the State shall be accounted for in their respective budgets (Article 148.1 of the *Constitution*). Where the budget of the State has not been officially adopted as and when due, the expenditures of the State shall be temporarily financed in accordance with the terms of the last preceding budget of the State (Article 148.2 of the *Constitution*).

**The Principle of Specialisation:** A payment may only be made for the purpose the Budget Law has authorised the expenditure for (Article 20 of the *Public Consumption Financing Act*).

**The Public Nature of the Budget and the Accounts:** As the budget and the accounts of the State are approved by law, they have gone through all stages of legislative procedure, including the

publication in the Official Gazette RS (Article 154 of the *Constitution*).

### **The Procedure for the Adoption of the State Budget and the Closing Balance in Slovenia**

The *Rules of Procedure of the National Assembly* specify a special procedure concerning the adoption of the State Budget and the Closing Balance (Articles 215-228 of the *Rules of Procedure of the National Assembly*).<sup>3</sup>

The general State Budget shall be proposed before the National Assembly by the Government at least until 1 October of the running year in the form of the proposal accompanied by the budgetary memorandum (Article 215 of the *Rules of Procedure of the National Assembly*). To the proposed budget, amendments can be lodged (Articles 217-221 of the *Rules of Procedure of the National Assembly*). After voting on the particular parts of the budget, depending on the situation the reconciliation takes place. In addition, the National Assembly shall take a vote on the State Budget on the whole (Article 222 of the *Rules of Procedure of the National Assembly*). During the year the Government may propose the Budget Adjustment which shall be adopted by the fast legislative procedure (Article 225 of the *Rules of Procedure of the National Assembly*).

The Closing Balance concerning the previous year shall be proposed by the Government at least until the session of the National Assembly in June (Article 226 of the *Rules of Procedure of the National Assembly*). The National Assembly shall take a vote on the Closing Balance on the whole (Article 228 of the *Rules of Procedure of the National Assembly*).

### **Techniques of Financial Supervision in Slovenia**

This traditional method is exercised through voting taxes and by means of approving the budget and the accounts of the State (Article 148 of the *Constitution*).

### **The Budget of the Slovenian Constitutional Court**

The material basis of the real autonomy and independence of the Constitutional Court involves also the autonomy as regards a management of the budgetary funds. Therefore the statute declared that the funds for the work of the Constitutional Court shall be determined by the National Assembly at the proposal of the Constitutional Court and shall constitute a part of the Republic of Slovenia Budget (Article 8.1 of the *Constitutional Court Act*). The Constitutional Court proposing the budget is not dependent on the Government, which otherwise proposes the State budget. The Constitutional Court shall decide on the use of the mentioned funds (Article 8.2 of the *Constitutional Court Act*).

Control of the use of these funds shall be performed by the Court of Auditors (Article 8.3. of the *Constitutional Court Act*), which shall be the body with the ultimate responsibility for auditing State finances, the State budget and monies expended for public purposes (Article 150.1 of the

---

<sup>3</sup> Articles 215-228 of the *Rules of Procedure of the National Assembly*. The budget does not determine rights and responsibilities of citizens and other persons, so it is not in conflict with Article 87 of the *Constitution* if it is not determined in the *Standing Orders of the National Assembly* that the National Assembly must adopt it as statute (*Constitutional Court of the Republic of Slovenia, Decision No. U-I-40/96, 3 April 1997, Official Gazette RS No. 24/97; OdlUS VI, 46*).

*Constitution*).

Some systems introduced as an additional financial source a State fee concerning the proceedings before the Constitutional Court. However, the Court may exempt a citizen from paying the State fee or reduce the fee given his material standing (*e.g.* Article 39 of the *Federal Constitutional Law on the Constitutional Court of the Russian Federation of 24 June 1994* ). Sometimes the fee may be explicitly excluded or the petitioners may be exempt from taxes, fees, and other such financial impositions (*e.g.* Turkey - Article 52 of the *Law of the Organisation and Trial Procedures of the Constitutional Court No. 2940 of 12 November 1983*). The majority of systems didn't introduce such fee on principle. On the other hand, prescribing a fee in case of abuse of petition or the payment of the costs of the proceedings is explicitly foreseen in cases of frivolous applications (*e.g.* Germany, Austria, Portugal, Spain, Switzerland, Malta, Georgia).

**Ukraine:** Costs of the participants in constitutional examination are compensated at the expense of the budgetary funds as decided by the Constitutional court of Ukraine (Article 59 of the *Constitutional Court Act*).

Before the Slovenian Constitutional Court each participant shall bear his own costs in proceedings before the Court, unless the Court decides otherwise (Article 34.1 of the *Constitutional Court Act*). If a participant fails to provide the necessary information for the Court due to unexcused absence, unreadiness or some other reason and, as a result, the hearing must be postponed, the Court may decide that the postponement of the hearing shall be at expense of such participant (Article 34.2 of the *Constitutional Court Act*). An initiator shall pay court fees in accordance with a special statute (Article 34.3 of the *Constitutional Court Act*). Up until now, such a statute was not passed.

## **II Powers of the Constitutional Court as a Proof of its Independence**

The extent of powers of constitutional/judicial review bodies is as follows: in the traditional approach the constitutional review body has no positive power in relation to the Legislature. It may only be a negative Legislature, whereas the role of a positive Legislature is reserved for the Parliament. However, the negative powers of the Constitutional Court in relation to the Legislature are also subject to certain limits, whereby the function of cassation of constitutional justice is limited to the benefit of certain rights reserved for the legislative and the executive power (*e.g.* the principle of judicial self-restraint, the political question doctrine).

Today, however, the decision-making of constitutional justice is no more limited to the mere function of cassation and the so-called positive decisions taken by the Constitutional Courts are gradually gaining their importance:

- One of these forms involve the **appellate decisions** (Germany, USA), in which the Constitutional Court appeals to the Legislature (explicitly or implicitly, with or without time limit) to adopt certain regulations in the respective domain. Recently certain states even imposed special provisions regarding the right of constitutional/judicial review bodies to appeal to the Legislature. Such "positive" authorization of constitutional justice in a rather narrow form is known in the German, Austrian and Polish systems, even more intensely in the Italian, Portuguese, Hungarian and Brazilian systems of the constitutional/judicial review. The

Portuguese Constitutional Court is provided with an express constitutional authorization to identify the existence of unconstitutionality due to **omission**. This does not involve the fact that the proceedings of abstract review of rules reveals legislative omission due to insufficient or incorrect solution of a specific issue, but aims at direct and independent evaluation and identification of omission caused by the Legislature. The typical nature of the *Portuguese Constitution*, which imposes upon the Legislature the obligation of legislative activity, has influenced the fact that the Portuguese Constitutional Court actually acquired such power. Considering the sensitive nature of this power the Constitutional Court can only be active in the respective domain on the basis of the role of a narrow circle of legitimate petitioners. Hungarian Constitutional Court, too, has jurisdiction to eliminate the unconstitutional situation developed due to the omission caused by a government body; the proceedings is possible upon the initiative of the Constitutional Court alone or on the proposal of any government body or aggrieved person. The Brazilian constitutional/judicial review system knows a special abstract complaint due to omission whereby government bodies, political parties represented in the Parliament and political organisations act as the main legitimate petitioners of the proceedings. At the same time this system knows a special individual complaint against the omission caused by the Legislature (*mandado de injuncao*). The Italian constitutional review system is above all characterized by the so-called creative decisions with which the Constitutional Court may even change or add the wording of the regulation in question.

- Another form of decision-making are the **guidelines** given by the constitutional/judicial review; such guidelines for the future action of the Legislature, the government and the administration may include appellate decisions, partly also other decisions (decisions of abrogation, decisions of annulment, possibly also declaratory decision relating to conformity with the *Constitution*). Sometimes such decisions already clearly indicate the essential point of the legal regulation, so that the Legislature has only to elaborate the details and to provide for official adoption of the statute. This phenomenon is sometimes even referred to as negative legislative activity of Constitutional Courts or as paralegislative or superlegislative activity of the modern Constitutional Courts. Nevertheless, from a global point of view, positive decisions of constitutional justice are of substitutional character. The extent of this function is proportional to the intensity with which constitutional rights are affected.

- Decisions on unconstitutionality with reservation or with interpretations created by the Constitutional Court itself (the **interpretative decisions**). In these decisions the Constitutional Court secures with its own interpretation that in the future the implementation of the statute complies with the *Constitution*.

The specific feature of the Slovenian system is the use of the so-called appellate judgments taken by the Constitutional Court, and of the contents-related guidelines. As a matter of fact, the novelty of the *Constitutional Court Act* is also the possibility of the Constitutional Court to assess whether the Legislature has omitted the necessary legal regulation arising out of the *Constitution*. If the Constitutional Court determines that a statute, a regulation or a general act for exercising of public powers was unconstitutional or illegal because a certain matter which it should have regulated was not regulated or is regulated in a manner which makes it impossible to be abrogated either retroactively or prospectively, a declaratory judgment shall be adopted. The Legislature or the body having issued such unconstitutional or illegal general act (or the general act was issued for exercising public powers) shall abolish the ascertained unconstitutionality or illegality within the period set by the Constitutional Court (Article 48 of



the *Constitutional Court Act*). In this way the *Constitutional Court Act* offers new possibilities (techniques, modes) of Constitutional Court decision-making among which the Constitutional Court is free to choose when looking for adequate expressional form of its decision. Thus, for example, interpretative decisions are necessary and reasonable whenever in practice an disputed provision is understood and applied in several ways whereof certain are constitutionally acceptable and others are not. In such case abrogation of the provision would not be reasonable because it would also affect those who have already applied the provision in conformity with the *Constitution*; accordingly, it is necessary to use the interpretative decision through which the Constitutional Court preserves the provision disputed in the legal system in its undisputed extent or its meaning conforming to the *Constitution*, at the same time indirectly eliminating from the legal system and the use of the disputed provision if it is inconsistent with the *Constitution* (through the duty of all government bodies to act in compliance with the decision taken by the Constitutional Court).<sup>4</sup>

Irrespective of the above, the Constitutional Court in its relation to the Legislature usually follows the principle of self-restraint: the interpretation of the provision does not exceed its limits, *i.e.* there is no direct amendment or modification of the provision by the Constitutional Court.

### **III Immunity, Incompatibility, Material Independence, the Protocolary Rank**

Most systems recognise the immunity of constitutional judges and certain systems recognise explicit parliamentary immunity (*e.g.* Italy, Spain, Czech Republic, Bulgaria, Slovenia). The independent position of a constitutional judge also implies to the recognition of the corresponding material independence, as well as the adequate protocolary rank. The respective matters is regulated mainly by the *Constitutional Court Acts* (passed by the Parliament), but sometimes by special parliamentary regulations or by internal regulations adopted by the Constitutional Court.

A special feature of the office of the constitutional judge is its incompatibility with certain activities. In almost all systems the office of constitutional judge is compatible with scientific

---

<sup>4</sup> An indirect form of such power of the Constitutional Court was recognised by the Constitution of 1974 in its Articles 410 and 417. Nevertheless, in the relation to the Legislature, the former system did not know the abrogation of statute or more severe forms of the relationship between the Constitutional Court and the legislation. Under Article 410 of the Constitution of 1974 the Constitutional Court, however, had a certain "preventative function" of integration into current processes of coordination, complementing and further development of the legal system (along with consideration of the principle of self-restraint of the Constitutional Court), hence the right and obligation to pursue the phenomena important for implementation of constitutionality and legality, as well as to inform the Parliament of the situation and the problems in the respective domain and to provide it with the opinions and proposals for issuing, modification or amendment of statutes as well as with other measures granting constitutionality and legality. It referred to the phenomena encountered by the Constitutional Court in the cases in which it had already adopted a specific decision, but thereby discovered that in practice the interpretation of the Constitution, the existing statutory regulation and implementation of the Constitution or statute may involve certain ambiguities or gaps for which the statute or other legal measures should be modified or amended or replaced by an adequate measure. Under Article 417 of the Constitution of 1974 this applied also to the cases when the Constitutional Court discovered that the competent body had not issued the rule for implementation of provisions of the Constitution, statute or other rule, although it had been obliged to do so.

and artistic activity, but incompatible with political and commercial activity. With reference to political activity there may be various grades of restriction, ranging from the absolute prohibition of membership in a political party (e.g. Czech Republic) to the prohibition of membership for a certain period prior to the election (e.g. Austria) or to the prohibition of membership in the bodies of a political party (e.g. Slovenia). The prevailing opinion regarding the appearance of constitutional judges in public is that they cannot be exclusively closed within the circle of their institution and that their activity in public contributes to the transparency of the Constitutional Court as well as to the pluralism of opinions.

Some significant systems in force are, as follows:

**Georgia:** Under Article 4.3 of the *Constitutional Court Act of 31 January 1996* the State is obliged to guarantee to a member of the Constitutional Court worthy conditions for activity and life to ensure his/her independence. The State guarantees the security of members of the Constitutional Court and his/her family (Article 4.4 of the *Constitutional Court Act*). The social guarantees to the members of the Constitutional Court are regulated by the special *Act No. 293-11G of 25 June 1996*.

**Belarus:** Guarantees of the independence of the Constitutional Court: The independence of Constitutional Court judges shall be guaranteed by their irremovability, their immunity, their equal rights as judges, the procedure for the suspension and termination of the appointment of judges established by this Law, the right to a pension, the obligatory nature of the established procedure for constitutional legal proceedings, the prohibition of any form of interference in court activities, the guarantee of judges' material and social circumstances, and guarantees of security corresponding to their elevated status (Article 25.1 of the *Constitutional Court Act*).

The salaries of the President, Vice-President and judges of the Constitutional Court shall be determined on the same scale as that governing the salaries of the Chairman, First Vice-Chairman and Vice-Chairmen of the Supreme Council respectively (Article 25.2 of the *Constitutional Court Act*).

Constitutional Court judges not possessing living space, having flats with several tenants or needing better accommodation for other reasons shall be granted comfortable, accommodation in the city of Minsk at the expense of the budget of the Republic, no later than six months after their election to the post of judge or the advent of the reasons mentioned hereinabove (Article 25.3 of the *Constitutional Court Act*).

If a Constitutional Court judge's term of office ceases before he reaches retirement age or in the particular cases provided the *Constitutional Court Act*, he may, at his request, return to his former post or be offered equivalent work if the post is not available (Article 25.4 of the *Constitutional Court Act*).

The placing in employment of former Constitutional Court judges shall be the responsibility of the Supreme Council of the Republic of Belarus. In this connection, the length of judges' service in the Constitutional Court shall be counted as part of the period of service completed in their previous work (Article 25.5 of the *Constitutional Court Act*).

Constitutional Court judges, including those who have resigned or retired, shall enjoy the

guarantees provided for in legislation on the status of judges in ordinary courts. In the event of other legislative acts affording Constitutional Court judges greater guarantees of independence than provided for in this Law, the provisions of those acts shall apply (Article 25.6 of the *Constitutional Court Act*).

**Ukraine:** The Constitutional Court is the sole body of constitutional jurisdiction in Ukraine (Article 1.1 of the *Constitutional Court Act* of 16 October 1996). Guarantees for the activity of judges of the Constitutional Court of Ukraine are as follows: the Independence of judges (Article 27 of the *Constitutional Court Act*), the immunity of the person of a judge (Article 28 of the *Constitutional Court Act*), the social and consumer provision of judges (Article 29 of the *Constitutional Court Act*).

## **Date and Context of the Establishment of the Constitutional Review in Slovenia**

### **History**

In Slovenia as a federal unit of the former Yugoslav Federation the Constitutional Court was adopted by the *Constitution of 1963* (Official Gazette SRS, No. 10/63), accompanied by the Principle of Unity of Powers. The jurisdiction of the Constitutional Court was determined in detail by the *Constitutional Court Act* (Official Gazette SRS, Nos. 39/63 and 1/64). Pursuant to this *Act*, the Court started to work on 15 February 1964. The first *Rules of Procedure of the Constitutional Court* were adopted on 23 February 1965 (Official Gazette RS, No. 11/65). The *1974 Constitution* brought some changes in the position and the jurisdiction of the Constitutional Court (Official Gazette SRS No. 6/74). More detailed provisions on jurisdiction and procedures were given by the *Constitutional Court of the Socialist Republic of Slovenia Act* (Official Gazette SRS, Nos. 39/74 and 28/76). New *Rules of Procedure of the Constitutional Court* were also adopted (Official Gazette SRS, No. 10/74). However, in years after the Court had mainly a formal function regarding the protection of constitutionality and legality.

In 1991 Slovenia became an independent, internationally recognized State. In addition, it has ceased to exist and is currently in the process of transition from real socialism into a contemporaneous political and legal system. The new *Constitution of 1991* (Official Gazette RS, No. 33/91) introduced the Principle of Separation of Powers and the Constitutional Court as the highest body of protection of human rights. The Court's jurisdiction and proceedings were specified in detail by the new *Constitutional Court Act* (Official Gazette RS, No. 15/94). Due to the certain tradition in this field a new system of constitutional review was relatively quickly adapted to the modified legal order. Within this scope the Court acquired the power to abrogate an unconstitutional statute and to decide upon constitutional complaints regarding violations of human rights.

### **The Position in the National Hierarchy of the Courts**

The Constitutional Court is the highest body of the judicial power for the protection of constitutionality, legality, human rights and basic freedoms (Article 1.1 of the *Constitutional Court Act*).

### **Present Situation/Standard Legal Reference**

The *Constitution of the Republic of Slovenia of 1991* again brought changes in the position and powers of the Constitutional Court (Official Gazette RS, No. 33/91). A new *Constitutional Court Act* (Official Gazette RS, No. 15/94) specified in detail the provisions about the powers and proceedings. The new *Internal Regulation of the Constitutional Court* are in the process of adoption.

### **Incompatibilities and Immunities**

The following activities are incompatible with their judicial function (Article 166 of the *Constitution* and Article 16 of *Constitutional Court Act*):

- functions in government bodies;
- local government functions;
- functions in political parties;
- other functions and activities deemed incompatible with the function of a judge of the Constitutional Court, according to the *Constitutional Court Act*.

As regards immunities, members of the Constitutional Court enjoy the same immunities as members of the National Assembly (Article 167 of the *Constitution*).

A judge of the Constitutional Court may not be held legally responsible for an opinion or a vote expressed at a public hearing or session. He may not be detained, nor may criminal proceedings be instituted against him/her without the permission of the National Assembly, unless the judge commits a crime for which a sentence of over five years is prescribed (Article 18 of the *Constitutional Court Act*).

## **Working Conditions of the Judges**

### **a) Salary and allowances**

The President of the Constitutional Court shall be entitled to a salary and an office-based allowance in the amount determined for the President of the National Assembly. A judge of the Constitutional Court shall be entitled to a salary and an office-based allowance in the amount determined for the Vice-President of the National Assembly. The Constitutional Court shall determine the salary of the secretary of the Constitutional Court. It shall be proportional to the salary of a judge of the Constitutional Court (Article 71 of the *Constitutional Court Act*).

A judge of the Constitutional Court shall be entitled to a compensation in the amount of his salary for the period of his annual leave and for the first 30 days of absence from work due to illness or injury (Article 72 of the *Constitutional Court Act*).

### **b) Employment period and social insurance**

The time during which a judge of the Constitutional Court performs his office shall be counted as part of his employment period. During the performance of his office as judge of the Constitutional Court the judge shall enjoy social insurance in accordance with the social insurance regulations for persons in permanent employment (Article 73 of the *Constitutional Court Act*).

### **c) Other personal incomes and reimbursements**

A judge of the Constitutional Court shall be entitled to:

- reimbursement of travel expenses to and from work,
- reimbursement of expenses for business trips (travel allowance, daily allowance, hotel expenses),
- allowance for meals during work,
- annual leave allowance,
- displacement allowance,
- reimbursement of costs incurred during days of in travelling from the place of business residence to the place of permanent residence and back,
- reimbursement of expenses of moving from the place of permanent residence to a place of business residence and back,
- reimbursement of training costs,
- long-service bonus,
- retirement bonus (Article 74.1 of the *Constitutional Court Act*).

Conditions for and the amount of allowances and reimbursements shall be determined by the Constitutional Court (Article 74.2 of the *Constitutional Court Act*).

### **d) Annual leave and other days off**

A judge of the Constitutional Court shall be entitled to annual leave of 40 days (Article 75.1 of the *Constitutional Court Act*). A judge of the Constitutional Court shall be entitled to extraordinary paid leave not exceeding 7 days each year for personal reasons (Article 75.2 of the

*Constitutional Court Act*). In exceptional cases a judge of the Constitutional Court may be allowed to take extraordinary leave not exceeding 30 days each year (Article 75.3 of the *Constitutional Court Act*). Conditions and examples mentioned in the preceding paragraphs shall be determined by the Constitutional Court (Article 75.4 of the *Constitutional Court Act*).

**e) Rights of judges of the Constitutional Court after termination of their term of office**

A judge of the Constitutional Court who, until his election as judge of the Constitutional Court, performed the office of court judge or another permanent office in a State body, shall have the right, after the termination of his office, to return to his previous office, if he fulfills all conditions for performing such office and if, within three months after termination of the said office, he notifies the competent body of his wish to return to his previous function office (Article 76 of the *Constitutional Court Act*).

A judge of the Constitutional Court who, until his election as judge of the Constitutional Court, was employed in a State body, public company or public institution, shall have the right to return to his job within three months after termination of his office, or to another job corresponding to his education and his level of professional skill (Article 77 of the *Constitutional Court Act*).

A judge of the Constitutional Court whose office has terminated and who, for objective reasons, is unable to continue doing his previous job, or who cannot find other suitable employment, and has not yet reached the age of retirement according to general regulations, shall have the right to a compensation in the amount of the salary he received as a judge until such time as he finds new employment or fulfills the conditions for retirement according to general regulations, but for no longer than one year after the termination of his office (Article 78.1 of the *Constitutional Court Act*).

The right to compensation under the preceding paragraph may be prolonged until the conditions for retirement are fulfilled according to general regulations, but for a period of no more than one further year (Article 78.2 of the *Constitutional Court Act*).

The period from the two preceding paragraphs shall be included in the employment period of a judge of the Constitutional Court whose office has terminated. During this period the judge shall enjoy social insurance in accordance with the social insurance regulations for persons in permanent employment. If a judge is entitled to annual leave during this period, he shall also be entitled to annual leave allowance. He shall be entitled to retirement bonus upon retiring (Article 78.3 of the *Constitutional Court Act*).

**f) Wages, allowances, other incomes and reimbursements of other personnel of the Constitutional Court**

The regulations which regulate the rights of officials in State bodies shall be applied mutatis mutandis in determining the rights of the secretary of the Constitutional Court to receive wages, allowances, other incomes, reimbursements and other rights (Article 79 of the *Constitutional Court Act*).

The regulations which regulate the rights of officials in State bodies shall be applied mutatis

mutandis in determining the rights of a director of a special services of the Constitutional Court and an adviser of the Constitutional Court to receive a salary, allowances, other incomes, reimbursements and other rights (Article 79.2 of the *Constitutional Court Act*).

The provisions of regulations on employees in State bodies shall be applied mutatis mutandis in determining the rights of other employees of the Constitutional Court to receive salaries, allowances, other incomes, reimbursements and other rights (Article 79.3 of the *Constitutional Court Act*).

#### **IV Appointment/Elections of Judges of the Constitutional Court**

The influence of the constitutional bodies upon the appointment or elections of the members of the Constitutional Court differs from system to system. The varieties applicable to elections or appointment of constitutional judges are as follows:

**1. The Appointment Based Systems (Without Participation of a Representative Body):** In France three members of the Constitutional Council are appointed by the President of the Republic, three by the President of the National Assembly and three by the President of the Senate. In Japan, Sweden and in many African states with constitutional/judicial review judges (of the Supreme Court) are appointed exclusively by the government. In Denmark, Ireland, Turkey, USA, South Africa, Cyprus and Senegal constitutional judges are exclusively appointed by the State sovereign or by the chief of the State. In the Argentinean province of Tucuman one part of constitutional judges are appointed by an electoral body composed of the judges of the Supreme Court and the rest of the judges are appointed by the executive power.

**2. The Election Based Systems:** As a rule Parliaments exercise greater influence upon the elections of constitutional judges as compared to the elections of judges of the regular Courts. In Germany, Slovenia, Switzerland, Belgium, Croatia, Estonia, Liechtenstein, Lithuania, Hungary and Poland constitutional judges are exclusively appointed by the legislative body. The same principle is followed by Portugal where constitutional judges, appointed by the Parliament, coopt a certain number of other constitutional judges. In case these systems involve the participation of executive power, its role is limited to the recruitment of candidates.

**3. The Mixed Systems (Appointment and Election):** In Andorra the appointment of constitutional judges is subject to the influence of the presidential body and the Parliament. In Austria, Albania, Bulgaria, Canada, Romania, Czech Republic and Slovakia one part of constitutional judges are elected by the Parliament or are appointed by the chief of the State or by the President of the Parliament, and the rest by executive power. In Italy, Peru, **Ukraine** and Spain one part of constitutional judges are elected by the Parliament, one part is appointed by the government and the remaining part by the (senior) judicial officials. With mixed systems, too, the role of the Parliament is prevalent and the role of the executive power is sometimes limited to a mere recruitment of the candidates.

**4. The Predetermined Composition Out of the Top Judicial Officials:** Because the body competent for constitutional/judicial review consists of representatives of the highest national Courts in Greece and in some other states (*e.g.* Hong Kong, Rwanda, Sudan, Mauritius) neither the Parliament nor the government exert direct influence on appointment of constitutional judges.

The independent position of the Constitutional Court is further symbolized by the mode of appointment of the President of the Constitutional Court. Its independence is even greater if the President is appointed by his/her colleagues - constitutional judges themselves (e.g. Italy, Spain, Belgium, Slovenia); in case of the opposite, the President is appointed by a qualified body outside the Constitutional Court (e.g. France, Austria, Germany, Poland).

## **V The Public Control/the Public Nature of the Activity of the Constitutional Court**

The public nature of the activity of the Constitutional Court may be declared by the *Constitution*, but mainly by the *Constitutional Court Act*.

The activity of the Slovenian Constitutional Court shall be conducted in public in accordance with the *Constitutional Court Act* (Article 3 of the *Constitutional Court Act*). the principle of the public nature of the activity, declared by this provision, shall be on the general importance concerning all kinds proceedings; the purpose of the mentioned principle is to ensure not only the parties of the proceedings but also other citizens (the unlimited circle of individuals) the control on activity of the Court. The respective function is ensured e.g. also by the statutory provision on public hearing 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 protection of public morals, public order, national security, the right of privacy and personal rights (Articles 37 and 38 of the *Constitutional Court Act*).

The public nature of the activity of the Slovenian Constitutional Court results also from some internal regulations or systems adopted by the Constitutional Court.<sup>5</sup>

## **VI The Independence and the Autonomy of the Organization of the Constitutional Court**

Most systems of constitutional/judicial review allow for organisational autonomy of the empowered body or 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 organisation. Special services of the Constitutional Courts are organised in a similar way: they consist of clerks and clerical staff, whereby the head of special services generally holds the status of the secretary general.<sup>6</sup>

---

<sup>5</sup> - 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 the Internal Administrative Operation of 26 May and 7 July 1977 and of 16 January 1992;  
- Conclusions of the Constitutional Court on the Assurance of the Public Nature of the Activity of the Constitutional Court Trough the Public Media of 13 January 1983 and 24 December 1987;  
- the Legal Information System of the Constitutional Court introduced in 1987 containing the computerised database of the Slovenian Constitutional Case-Law as a public database, in principle accessible all users of legal information.

<sup>6</sup> Some Courts established also additional special services supporting the activity of the Court, e.g. the Constitutional Court of the Republic of Uzbekistan under the Provisions on the Scientific Advice Council under the Constitutional Court of the Republic of Uzbekistan of 5 July 1996.



Unless constitutional court acts especially provide otherwise, general labor law shall apply to the employees in the Constitutional Court (e.g. Czech Republic - Article 10 of the *Constitutional Court Act*, Latvia - Article 40 of the *Constitutional Court Act*). In addition, in some systems the constitutional courts may autonomously regulate the salaries of clerks and clerical staff, while the position of judges shall be regulated or by the Constitution, or by the Constitutional Act (e.g. Slovenia - Articles 71-79 of the *Constitutional Court Act*; Latvia - Articles 38-39 of the *Constitutional Court Act*); Japan - Articles 50-51 of the *Court Organisation Act No. 59 of 16 April 1947*; Turkey - Article 59 of the *Law of the Organisation and Trial Procedures of the Constitutional Court No. 2949 of 12 November 1983*), or by one (e.g. the Slovak Republic - Article 17 of the *Act on the Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the Status of Judges, of 20 January 1993*) or by many special acts (e.g. Georgia, Uzbekistan) or by general provisions regulating the position of State officers.

Some significant systems in force are, as follows:

**Belarus:** The Constitutional Court shall independently acquire the information facilities and personnel required for its activities (Article 24.3 of the *Constitutional Court Act*).

The physical and technical resources required for the activities of the Constitutional Court, including means of transport and communication, shall be provided by the appropriate State bodies in accordance with a procedure established by the President of the Republic of Belarus with the agreement of the Constitutional Court.

The existing level of physical and technical resources required for the activities of the Constitutional Court may be reduced only with the consent of the Supreme Council of the Republic of Belarus (Article 244 of the *Constitutional Court Act*).

**Latvia:** The Constitutional Court shall also freely and independently implement informational and organisational procurement for its activities (article 5-1.4 of the *Constitutional Court Act*).

**Ukraine:** The Constitutional Court adopts acts which regulate the organization of its internal work in conformity with the *Constitutional Court Act* (Article 3.2 of the *Constitutional Court Act*) taken into consideration statutory provisions on the Research consultants and assistants of judge of the Constitutional Court of Ukraine (Article 25 of the *Constitutional Court Act*), Organisation and activity of the Constitutional Court of Ukraine (Articles 30-37 of the *Constitutional Court Act*), which involves: a organisation (Article 30), a financing (Article 31, the Secretariat (Article 32), standing commissions (Article 33), temporary commissions (Article 34), the archive (Article 35), the library (Article 36) and the bulletin (Article 37). The organisation or the activity of the Court shall be determined by the *Constitution*, by the *Constitutional Court Act* as well as by internal acts of the Court.

The Constitutional Court of the Republic of Slovenia shall regulate its organization and work with its standing orders and other general acts (Article 2.2. of the *Constitutional Court Act*).

Administrative services of the Slovenian Constitutional Court: secretary of the Constitutional Court (matters of organization and legal knowledge); director/assistant secretary (financial

organizational matters) (Article 7 of the *Constitutional Court Act*).

Special services of the Constitutional Court: the Legal Information Center with the legal library; professional employees; clerical staff. The Constitutional Court shall appoint advisers to the Constitutional Court from among legal and other experts (Article 7.3 of the *Constitutional Court Act*). The Constitutional Court may employ probationers in accordance with statute (Article 7.4 of the *Constitutional Court Act*).

### **References:**

1. Mavcic, A., *Slovenian Constitutional Review, Its Position in the World and Its Role in the Transition to a New Democratic System*, Ljubljana, Zalo`ba Nova revija, 1995.
2. Mavcic, A., *The Role of the Slovenian Constitutional Court in Legal Transition*, Report on the Conference on Constitutional Transition, CCT'97, Hong Kong, 29 May -1 June, 1997, Offprint.
3. Mavcic, A., *Nature and Effects of Decisions of the Slovenian Constitutional Court, Temporary Order as an Element of the Constitutional Review Procedure*, Report on the *Colloquium ueber Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und Osteuropa, das Max-Planck-Institut fuer auslaendisches oeffentliches Recht und Voelkerrecht*, Heidelberg, 17-18 April, 1997, Offprint.
4. Mavcic, A., *The Issue of the Judicial Review of the Constitutionality of the Laws in a Newly Emerged Democracy: Slovenia*, The EU/Tacis Program Support to the Constitutional Court of Uzbekistan, Seminar in Tashkent, 11-15 September 1997, organised by the European Commission and the Greek Research Institute Center of European Constitutional Law Themistocles and Dimitris Tsasos Foundation, Offprint.
5. Mavcic, A., *Constitutional Courts: Models of Operation as Regards Federal States Systems*, Report on the Workshop on the Relationship of Central Constitutional Courts and Constitutional Courts of Federated Entities, Petrozavodsk, Russia, 22-24 September 1997, Offprint.
6. Steinberger, H., *Models of Constitutional Jurisdiction*, European Commission for Democracy Through Law, Council of Europe, Collection Science and Technique of Democracy, No. 2, Council of Europe Press, 1994.