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REPORT

**“IMPORTANCE OF LEGAL INFORMATION
WITH A SPECIAL REFERENCE TO (ORDINARY) COURTS
AND/OR CONSTITUTIONAL COURTS”**

by

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The legal information on legal information as supported by different means of communication or media, taking into consideration the principle of the public nature of the activities of each (ordinary) court and of the Constitutional Court as well, circulate from the (ordinary) court or from the Constitutional Court as a decision issuer, to the public, external users - the potential applicants before the (ordinary) court or the Constitutional Court, who receive information which may motivate their new applications. This stream of information constitutes a certain procedural circle due to the nature of proceedings before the Constitutional Court, which are in principle proposed proceedings (juridiccion voluntaria).

Concerning public character of activities of constitutional courts, only a permanent inflow of applications to the Constitutional Court actually justifies its existence and function. The constitutional case-law system should further insure the rapid spread of constitutional and legal principles in force and should contribute to greater legal safety. Accordingly, the collected or electronically available case-law might be interesting for a legal expert who is in search of a constitutional case-law that might be similar to the case they are working on, as well as for someone who plans to lodge an application before the Constitutional Court, or for a constitutional framer or legislature as a user creating new legal rules, as well as for a constitutional court or an ordinary court as a user exercising its constitutional review and/or judicial function.

1. SIGNIFICANCE OF (COMPARATIVE) CONSTITUTIONAL CASE-LAW INFORMATION FOR THE ACTIVITIES OF THE CONSTITUTIONAL COURT

Limiting myself to issues regarding constitutional courts (what may from the legal information point of view concern any ordinary court as well) I would emphasize that the universal participation of constitutional courts in the modern information exchange became a very important change, in particular because until 1990 legal informatics in the domain of constitutional matters, with a few exceptions, generally speaking, did not keep up with general trends in other domains. In many cases the documents issued by constitutional courts (mainly decisions) used to be processed by other subjects, at that time more advanced in informatics.

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

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

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

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

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

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

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

- Aid to the constitutional court activities;
- Scientific contribution to the theory on constitutional review;
- Historical survey of constitutional review;
- Practical aid in the domain of implementation of law.

Information on the constitutional case-law is classified under scientific information of the vast domain of law and legislation. This encompasses the use of specific knowledge from the domain of constitutional justice. As a matter of fact, this area includes information on anomalies in law. The information on the practice of constitutional courts is relevant for the investigation of systems of constitutional review from the comparative point of view. On the other hand, the information in question is designed for monitoring social phenomena that are relevant for safeguarding the rule of the Constitution and the law and that are reflected in the practice of constitutional courts. A complex solution of any social case, however, requires a high level of technical, scientific and research work whereby information on the standpoints of constitutional justice might be useful as well.

2. THE SLOVENIAN CHRONICLE - FORMER EXPERIENCES OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SLOVENIA

Starting with 1963, the legal information system of the Constitutional Court of the Republic of Slovenia included the constitutional case-law of the Slovenian Constitutional Court in the uniform legal database including also the constitutional case-law of all other constitutional courts from the territory of the former Yugoslavia. The compiled data on the decisions of nine constitutional courts at that time were, however, an indispensable basis for their work. Therefore, since the introduction of constitutional courts in the former Yugoslavia in 1963, the then Legal Information Centre of the Slovenian Constitutional Court was engaged in a systematic acquisition and comparative processing of decisions of all former Yugoslav constitutional courts. These efforts developed into comprehensive records on the decisions of Yugoslav constitutional courts (translated into one language – into Slovenian), organized in files. This was an excellent basis for transition to computer processing of the constitutional case-law. The mentioned database was computerized by 1 January 1987. The database was based on the then full-text program packages of different generations and was open to the public at many locations. The database included full-text documents (covering constitutional practice and theory) and was subject to monthly updating.

Very early, an exchange of constitutional case-law has been practiced with the constitutional courts of Italy, Austria and Germany; besides, in 1989 the first on-line computer communications with foreign information systems were introduced, such as ECHO, Luxembourg, JURIS (including all CELEX bases), Germany, and ALEXIS (including RDB Austria), Germany-Austria.

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

The Slovenian Constitutional Court's information exchange with other similar information systems, databases and other similar sources of legal information influenced and still influences the creation of common standards especially concerning the structure of constitutional review, powers, organization and procedure before constitutional courts, and even the unification of some systemic legislative solutions.

The question as to whether Slovenian constitutional case-law from the period after the adoption of the *1991 Constitution* (Official Gazette RS, No. 33/991), in its relations to the fundamental rights and freedoms, has adapted to or is more comparable with foreign constitutional case-law, can be answered in the sense that the Slovenian constitutional case-law comes close to the foreign case-law in its approach to fundamental rights. The number of examples from this field has increased. In this respect it is necessary to bear in mind that the "frequency" of individual rights before Constitution Courts mainly depends on what kind of problem appellants place before Constitutional Court. The Constitutional Court now appears as the guardian of the constitutionality and legality (see Para. 1 of Article 1 of the *Constitutional Court Act*, Official Gazette RS, No. 64/07) in such a way that it decides not only on the accordance of general legal acts with the constitutional provisions on fundamental constitutional rights (in the sense of abstract and specific review of general legal acts) but also on constitutional complaints against the violation of human rights and fundamental freedoms by individual acts (Item 6 of Para. 1 of Article 160 of the *Constitution*; Articles 50-60 of the *Constitutional Court Act*).

3. PUBLIC CONTROL/THE PUBLIC NATURE OF THE COURT'S ACTIVITIES

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

3.1. Public hearings

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

The principle of the public nature of the activities, declared by the above mentioned provision, is of general importance concerning all kinds of proceedings; the purpose of the mentioned principle is to ensure a control on the activities of the Court to the parties of the proceedings and also other citizens (the unlimited circle of individuals). The respective function is ensured e.g. also by the legal provision on public hearings before the

Constitutional Court (Article 35 and 36 of the *Constitutional Court Act*). The constitutional Court may exclude the public from a hearing or part thereof on the grounds of protecting public morals, public order, national security, the right to privacy and personal rights (Articles 37 and 38 of the *Constitutional Court Act*). The public nature of the activities of the Constitutional Court results also from some former internal regulations or systems adopted by the Constitutional Court¹ - the then *Legal Information System of the Constitutional Court* introduced in 1987, the computerised database of Slovenian Constitutional Case-Law as a public database, in principle accessible to all users of legal information.

3.2. The publication of Court decisions in official gazettes, official digests, as well as in legal journals

Providing information to the public concerning decisions of the Constitutional Court is, moreover, one of the functions, following the principle of the public nature of the activities of the Constitutional Court, set forth in laws and in other regulations.² The Constitutional Court applies this principle by publishing its decisions in official publications (e.g. Official Gazette, see Article 69 of the *Constitutional Court Act* and Article 46 of the *Rules of Procedure of the Constitutional Court*) and by allowing access to information on its decisions in its database.

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

- in *Odločbe in sklepi Ustavnega sodišča* (the Official Digest of the Constitutional Court; Slovenian full text version, including dissenting/concurring opinions, and English abstracts) since 1992;
- in the *Pravna Praksa* (Legal Practice Journal; Slovenian abstracts, with the full-text version of the dissenting/concurring opinions);
- since 1 January 1987 to 18 July 2003 via the on-line *STAIRS database* (Slovenian full text version; since 1963; English full-text version since 1992); for this purpose a special English-Slovenian glossary was created containing terms on constitutional law;
- the only original CD-ROM containing the Slovenian Constitutional Case-Law (in Slovenian) was issued in May 1998;
- since 1993 in the *Bulletin on Constitutional Case Law* of the Venice Commission of the Council of Europe (including English and French summaries of the most important current decisions), as well as in the *CODICES database* issued on CD-ROM (Slovenian and English full-text versions and summaries in English and French), <http://www.codices.coe.int>; <http://www.coe.fr/codices>;
- since August 1995 on the Internet (Slovenian constitutional case law since 1990 (full text in Slovenian as well as in English - <http://www.us-rs.si>);
- since 1998 on the homepage of the A.C.C.P.U.F. (the French Speaking Group of Constitutional Courts) (<http://www.accpuf.org>);
- since 2000 on the website of the Ius-Info database of constitutional case-law (abstracts and full texts of decisions) and literature (abstracts) in Slovenian from 1963 onwards (<http://www.ius-software.si>);

¹ Articles 4 and 39 of the *Rules of Procedure of the Constitutional Court* (Official Gazette SR, No. 10/74; Articles 39-41 of the *Regulation on Internal Office Administration* of 26 May and 7 July 1977 and of 16 January 1992; *Conclusions on the Assurance of the Public Nature of the Activities of the Constitutional Court Through the Public Media* of 13 January 1983 and 24 December 1987.

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

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

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

4. THE INDEPENDENCE AND THE AUTONOMY OF THE ORGANIZATION OF THE CONSTITUTIONAL COURT

Most systems of constitutional/judicial review allow for the organizational autonomy of the empowered body on the basis of the *Constitution* or on the basis of the *Constitutional Court Act*. This means they authorize the respective constitutional/judicial review bodies to follow their own rules regarding their internal organization. Special services of the Constitutional Courts are organized in a similar way: they consist of clerks and clerical staff, whereby the head of special services generally holds the status of a secretary general.³

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

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

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

³ Some Courts have also established additional special services supporting the activities of the Court, e.g. the Constitutional Court of the Republic of Uzbekistan under the *Provisions on the Expert Advice Council of the Constitutional Court of the Republic of Uzbekistan of 5 July 1996*.

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

The complete external and internal (legal) information system was introduced in 2005. Namely, since 1991, when the Constitutional Court of the Republic of Slovenia was established, the development of information technology has progressed through many stages: from using the computer as a writing machine, to the Integrated Information and Case Management System used at present. The last larger upgrade of the information system was initiated in 2004 and has not yet been completed. That year, an integrated system was introduced that incorporated all previously separate applications and documents into the Integrated Information and Case Management System (CMS), which is used by all staff of the Constitutional Court who take part in the business processes of the Constitutional Court regarding cases.⁴

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

5. THE USE OF CODICES STANDARDS

From the beginning on, Slovenia has been participating in the Venice Commission activities when as early as September 1991, at the Venice meeting of the Working Group on Constitutional Justice, it was decided to establish a documentation centre to collect and disseminate constitutional case-law as well as to make such case-law as widely available as possible. The Slovenian liaison officer was appointed by the Court in 1991.

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

⁴ Torbic, Milos, The Presentation of Certain Issues of the Information System of the Constitutional Court of the Republic of Slovenia, www.us-rs.si.

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