

# BULLETIN

## ON CONSTITUTIONAL CASE-LAW

Date : 01/07/93

No. 1

### - THE VENICE COMMISSION -

The European Commission for Democracy through Law, also known as the Venice Commission, was established in 1990 pursuant to a Partial Agreement of the Council of Europe. It is a consultative body which co-operates with member states of the Council of Europe and with non-member states. It is composed of independent experts in the fields of law and political science whose main tasks are the following :

- to help new Central and Eastern Europe democracies to set up new political and legal infrastructures;
- to reinforce existing democratic structures;
- to promote and strengthen principles and institutions which represent the bases of true democracy.

The activities of the Venice Commission comprise, *inter alia*, research, seminars and legal opinions on issues of constitutional reform, on draft constitutional charters, electoral laws and the protection of minorities, as well as the collection and dissemination of case-law in matters of constitutional law from Constitutional Courts and other courts throughout Europe.

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### EDITORIAL

Today, with the emergence of a whole new European democratic order, the need for a closer link between bodies which guarantee basic democratic principles, not only in Western Europe but also in Central and Eastern Europe, is at the same time advisable and essential.

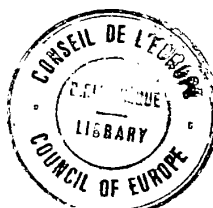
That is to say that in order to better and further strengthen the safeguard throughout Europe *inter alia* of the rule of law, the separation of powers, the independence of the judiciary and of individual rights - all these being principles guaranteed by democratic constitutional charters - a documentation centre gathering European Constitutional Courts' case-law will certainly help national judges to arrive at a common solution to critical questions being reviewed by national Constitutional Courts, which questions often arise simultaneously in different countries.

Therefore, I can only hope that such a Documentation Centre on Constitutional Case-Law will soon be operational so as to permit an exchange of information and experience among old and new European democracies in the field of judge-made law. The older democracies may thereby move towards closer cooperation and to a greater degree of uniformity in the field of constitutional law, towards an enrichment and revitalisation of their national constitutional experience, while the newer democracies may draw upon the western experience in the creation of entirely new constitutional systems.

Nevertheless, I am aware that the establishment of this Documentation Centre on Constitutional Case-Law is a rather ambitious project which certainly requires a lot of work and some time before it may become a guide for present and future European constitutional issues. In this respect, I welcome the provisional initiative of a periodical bulletin containing summaries of the most important decisions of Constitutional Courts and sundry information concerning these Courts.

This bulletin will, in fact, provide for a first exchange of information and experience touching upon the kind of complaints lodged with European Constitutional Courts. This will help the Venice Commission not only in the development of this project, but also in responding to the ever-growing requests for legal opinions on constitutional matters coming from the new European democracies.

Antonio LA PERGOLA  
President of The Venice Commission



## FOREWORD

*This bulletin is the first practical achievement of the project for a Documentation Centre on Constitutional Case-Law elaborated within the European Commission for Democracy through Law. It is edited by the Secretariat of the Venice Commission on the basis of contributions from liaison officers of Constitutional Courts or equivalent bodies.*

*It contains concise information on the activities of the courts as well as summaries of their most significant decisions taken from January 1st 1993 to March 31st 1993.*

*The pattern for the summaries includes the following elements, as agreed upon by the Venice Commission on a proposal from Mr Ryckeboer and Mr Vandernoot :*

- 1. concise identification data;*
- 2. keywords from the systematic thesaurus which allow the decisions to be classified within a uniform system;*
- 3. keywords from an alphabetical index which will help to indicate the content and effect of the decision;*
- 4. a summary giving a concise account of the decision or of its relevant portions, together with a brief description of the facts and distinctive features of the case where they prove to be important for the ruling;*
- 5. optional further information relating to the position of the decision within the case-law such as "isolated judgment", "constant jurisprudence", etc.*

*The next edition of the bulletin, which will probably be issued three times a year, should be published in Autumn 1993. A special bulletin including descriptions of the various and different constitutional systems is also envisaged.*

AUSTRIAN CONSTITUTIONAL COURT
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Reference period : December 1992 - March 1993

NUMBER OF DECISIONS

495 in December 1992

708 in March 1993

SUBJECT MATTER OF IMPORTANT DECISIONS

1. Litigation in respect of fundamental rights and freedoms; equality; personal liberty; administrative acts; procedural aspects of constitutionality of laws; international treaties; common principles or techniques of interpretation (G 142/92, 144-154/92, 200/92-12 Dezember 1992; B 1387/92, 1542/92 - 16 Dezember 1992; B 1035/92 - 16 Dezember 1992 - law on the right of asylum).
2. Subject of review - legislation and rules having the force of law; common principles or techniques of interpretation, right to family life; European Convention on Human Rights (G 212-215/92 ua 13 März 1993 - Passports Act).
3. Litigation in respect of (horizontal) distribution of powers between state authorities; subject of review - constitution; institutions; legislative bodies; executive bodies; court of auditors (body responsible for monitoring public accounts; KR 1/92 - 15 März 1993).
4. Subject of review - constitutional law of a region; constitutional proceedings; types of claim; legislative bodies; action by a public body; institutions; executive bodies, composition; territorial decentralisation, municipality; equality (G 76/92 - 13 März 1993).

OTHER INFORMATION

The Constitutional Court publishes an annual activity report. The numerical data refer to file numbers. Each case (application) is counted separately. In view of the fact that several cases may be considered jointly and settled by a single "decision" = "Erkenntnis", "Beschluß", it is possible for a "decision" to be indicated by several letter codes and figures.

<b>BELGIAN COURT OF ARBITRATION</b>
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Reference period : 1 January 1993 to 31 March 1993

STATISTICAL DATA

- \* 26 judgments
- \* total number of cases dealt with (taking into account the joinder of cases) : 38
- \* 28 new cases
- \* average length of proceedings : 14 months (unchanged)
  
- \* 17 judgments concerning proceedings for annulment
- \* 8 judgments concerning preliminary points of law
- \* 1 judgment concerning applications for suspension
  
- \* 6 cases settled by summary procedure  
5 cases : manifest lack of jurisdiction  
1 case : manifest inadmissibility
  
- \* In 5 of the 17 cases concerning proceedings for annulment, the Court decided to annul the rules contested in whole or in part.
  
- \* None of the 8 cases concerning preliminary points of law resulted in a declaration of unconstitutionality.

SUBJECT MATTER OF IMPORTANT DECISIONS

Judgment No. 10/93 of 11 February 1993

FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Commercial freedom.  
FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of association.

Judgment No. 18/93 of 4 March 1993

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of worship.  
FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Freedom of education.

Judgment No. 20/93 of 4 March 1993

FUNDAMENTAL RIGHTS - The problem in general - Entitlement to rights - Nationals and aliens.  
FUNDAMENTAL RIGHTS - Civil and political rights - Right of asylum.



1. Identification : Belgium - Court of Arbitration - 21 January 1993 - Judgment No. 3/93 - Case list Nos. 350 and 367 to 374 - *Moniteur belge*, 5 February 1993.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Types of claim - Action by a private body or individual.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Procedure before the Constitutional Court - Parties - Interest.

3. Keywords of the alphabetical index :

Applicant / Interest

4. Summary :

Article 107 ter of the Constitution and Section 2 (2) of the Special Act of 6 January 1989 on the Court of Arbitration require any natural person or corporate body submitting an application to show proof of an interest in bringing proceedings before the Court.

The required interest exists as an attribute of those whose situation could be directly and unfavourably affected by the disputed rule. (1.B.1)

5. Supplementary information : Constant Jurisprudence

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1. Identification : Belgium - Court of Arbitration - 21 January 1993 - Judgment No. 3/93 - Case list Nos. 350 and 367 to 374 - *Moniteur belge*, 5 February 1993.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Common principles or techniques of interpretation - principle of equality.

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

3. Keywords of the alphabetical index :

Equality / Non-discrimination

4. Summary :

The Constitutional rules relating to equality of Belgians before the law and to non-discrimination do not rule out differences of treatment in respect of certain categories of persons, provided that the criterion of differentiation is capable of objective and reasonable justification. The existence of such justification has to be evaluated in the light of the purpose and effects of the impugned measure as well as the nature of the principles involved; the principle of equality is infringed when it is established that the means employed are not reasonably proportionate to the aim in view. (3.B.2)

5. Supplementary information :

Constant Jurisprudence - Compare with the Case-law of the European Court of Human Rights concerning Article 14 of the Human Rights Convention.

1. Identification : Belgium - Court of Arbitration - 27 January 1993 - Judgment No. 8/93 - Case list No. 358 - *Moniteur belge*, 23 February 1993.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Subject of review - International treaties.

CONSTITUTIONAL JUSTICE - Subject of review - Constitution.

SOURCES OF CONSTITUTIONAL LAW - Hierarchy - Non-national and national sources - Treaties and Constitutions.

3. Keywords of the alphabetical index :

Jurisdiction of the Constitutional Court / Equality / Non-discrimination / International law.

4. Summary :

When parties submitting an application rely on provisions of international law in conjunction with Articles 6 and 6 bis of the Constitution providing for guarantees of equality and non-discrimination respectively and they do not refer to those provisions for arguments separate from the ones based on Articles 6 and 6 bis, reliance on such provisions cannot lead to the annulment of the provision at issue (A.1.1 and B.5)

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1. Identification : Belgium - Court of Arbitration - 11 February 1993 - Judgment No. 9/93 - Case list No. 362 - *Moniteur belge*, 6 March 1993.

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

CONSTITUTIONAL JUSTICE - Constitutional jurisdiction - Relations with other institutions - Legislative bodies.

CONSTITUTIONAL JUSTICE - Subject of review - Laws and other rules having the force of law.

3. Keywords of the alphabetical index :

Jurisdiction of the Constitutional Court / Equality / Non-discrimination

4. Summary :

When the national authority responsible for legislation or legislative decrees regulates an aspect of social life, it assumes the task of assessing which factors determine differences or equality of treatment in given situations.

Article 107 ter of the Constitution does not confer on the Court of Arbitration powers of discretion and of decision comparable to those of the national legislative or decree-making authority. The Court has no power to substitute its own assessment for that of the competent legislator with regard to the choice of criteria on which distinctions are based, provided that the choice in question is not guided by a manifestly erroneous assessment. The Court can only denounce regulations when the latter establish a distinction for which there is no objective and reasonable justification. (B.2.5)

1. Identification : Belgium - Court of Arbitration - 11 February 1993 - Judgment No. 9/93 - Case list No. 362 - *Moniteur belge*, 6 March 1993.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Procedure - Grounds.

3. Keywords of the alphabetical index :

Application / Grounds / Adversarial hearings

4. Summary :

The grounds set forth in the application satisfy the provisions of Section 6 of the Special Act of 6 January 1989 on the Court of Arbitration when they indicate or facilitate identification of the constitutional rules or rules of jurisdiction alleged to have been violated as well as the provisions considered to infringe those rules and the manner in which they are thought to have been infringed.

These requirements are dictated on the one hand by the fact that the Court must be in a position to determine the exact scope of the action for annulment as soon as the application is lodged and on the other hand, by the fact that the other parties to the proceedings must be given an opportunity to reply to the arguments of the applicants. It is accordingly essential to have a clear and unequivocal statement of the grounds. (B.5.1)

5. Supplementary information : Constant Jurisprudence

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1. Identification : Belgium - Court of Arbitration - 11 February 1993 - Judgment No. 10/93 - Case list No. 364 - *Moniteur belge*, 9 March 1993.

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of association.

FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Commercial freedom.

3. Keywords of the alphabetical index :

Commercial freedom / Freedom of association

4. Summary :

Commercial and industrial freedom cannot be conceived as an unlimited right. In many cases, a law or a decree - whether in the economic sector or other sectors - will limit the Freedom of action of the persons or firms concerned and will thus necessarily have an impact on commercial and industrial freedom. Legislation may be said to infringe commercial and industrial freedom if it limits such freedom unnecessarily or if the limitation in question was manifestly disproportionate to the aim pursued.

Nor does the Freedom of association guaranteed in Article 20 of the Constitution prevent private organisations which wish to co-operate closely with a public law institution from being subject to operational and supervisory procedures justified by this particular relationship and, more especially in this case, by the use of public resources. (B.8.3)

1. Identification : Belgium - Court of Arbitration - 11 February 1993 - Judgment No. 10/93 - Case list No. 364 - *Moniteur belge*, 9 March 1993.

2. Keywords of the systematic thesaurus :

SOURCES OF CONSTITUTIONAL LAW - Categories - Unwritten rules - General principles.

3. Keywords of the alphabetical index :

Equality / Non-discrimination / Basic principles of the Belgian legal system / Certainty of the law.

4. Summary :

In accordance with the fundamental principle of legal certainty the legislator cannot, without objective and reasonable justification, interfere with the interest of legal persons in being able to foresee the legal consequences of their acts.

Because Section 90 of the Act of 17 June 1991 itself clearly states which principles must be respected, professional credit institutions can clearly establish, when submitting their application for approval by the National Professional Credit Fund, what the effects of such approval will be. Particular arguments based on alleged violations of the principle of equality and non-discrimination in connection with the fundamental principle of legal certainty are not well-founded. (B.9.3)

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1. Identification : Belgium - Court of Arbitration - 11 February 1993 - Judgment No. 11/93 - Case list No. 367 - *Moniteur belge*, 26 February 1993.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Procedure before the Constitutional Court - Parties - Interest.

3. Keywords of the alphabetical index :

Applicant / Interest.

4. Summary :

In order for proceedings for annulment to be admissible, it is not enough for the applicant to establish that the contested provision is applicable to him; he must further show that the provision in question unfavourably affects him or, in other words, that it might cause him damage. (B.2)

5. Supplementary information :

Cf. Judgment No. 3/93

1. Identification : Belgium - Court of Arbitration - 18 February 1993 - Judgment No. 14/93 - Case list No.387 - *Moniteur belge*, 3 March 1993.

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - European Convention on Human Rights.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Other international sources

3. Keywords of the alphabetical index :

Jurisdiction of the Constitutional Court / European Convention on Human Rights / United Nations Covenant on Civil and Political Rights / Equality / Non discrimination.

4. Summary :

The rights and freedoms guaranteed by Article 6 and 6bis of the Constitution concerning the principles of equality and non-discrimination include those arising out of the provisions of international conventions binding Belgium which are made applicable in the domestic legal system by an act of assent. This is true at least of the rights and freedoms arising out of provisions having direct effect, which is the case with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 17 of the International Covenant on Civil and Political Rights of 19 December 1966. (B.2.7)

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1. Identification : Belgium - Court of Arbitration - 18 February 1993 - Judgment No.15/93 - Case list No.392 - *Moniteur belge*, not yet published.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Types of claim - Referral by a Court.

3. Keywords of the alphabetical index :

Jurisdiction of the Constitutional Court / Preliminary reference

4. Summaries :

It is for the judge raising a preliminary point of law to ascertain in advance whether that point has to be settled before he can give his decision. Following lawful referral of the case, the Court is not required to consider whether its reply will be of benefit to the defence of the person facing prosecution before the lower court. Its only task is to state whether or not the provision at issue gives rise to discrimination. (B.1)

1. Identification : Belgium - Court of Arbitration - 18 February 1993 - Judgment No.16/93 - Case list No.497 - *Moniteur belge*, 3 March 1993.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Types of claim - Referral by a court.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Procedure - Summary procedure.

CONSTITUTIONAL JUSTICE - Subject of review - Rules issued by the executive.

3. Keywords of the alphabetical index :

Jurisdiction of the Constitutional Court / Act of the executive / Summary procedure / Preliminary reference

4. Summary :

Neither section 26 (1) of the Special Act of 6 January 1989 on the Court of Arbitration nor any other statutory provision confers on the Court the power to make a preliminary ruling on the question whether a royal order is at variance with Articles 6 and 6bis of the Constitution.

5. Supplementary information :

Constant Jurisprudence

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1. Identification : Belgium - Court of Arbitration - 4 March 1993 - Judgment No.18/93 - Case list No.339-340 - *Moniteur belge*, 24 March 1993.

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Governing principles - Entitlement to rights - Private persons.  
FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Educational freedom.

3. Keywords of the alphabetical index :

Education / Educational freedom

4. Summary :

The educational freedom guaranteed by Article 17 (1) of the Constitution implies that private individuals may - with no prior authorisation and subject to respect for fundamental freedoms and rights - organise and see to the provision of education in accordance with their own way of thinking, as regards both the form and the content of such education. Freedom of education extends to a freedom in the organising authority to select the staff who will be called upon to fulfil specific educational objectives. (B.3.3)

1. Identification : Belgium - Court of Arbitration - 4 March 1993 - Judgment No.18/93 - Case list Nos.339-340 - *Moniteur belge*, 24 March 1993.

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of worship.

FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Freedom of education.

3. Keywords of the alphabetical index :

Education / Freedom of worship

4. Summary :

An entitlement to grants for religious education may be made subject to intervention by a body independent of the public authorities which guarantees the legitimacy of such entitlement. It is then exclusively a matter for the religious order concerned to determine which body is competent to confirm the said legitimacy. (B.3.5)

The decree-making authority was reasonably empowered to require, on the part of all religions eligible for subsidies in respect of education, that they comply with minimum standards of organisation with a view to the appointment of a body potentially qualified to contribute to the recruitment of teachers to provide the religious education concerned (B.5)

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1. Identification : Belgium - Court of Arbitration - 4 March 1993 - Judgment No.20/93 - Case list Nos.377-379-381 - *Moniteur belge*, 25 March 1993.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Types of claim - Action by a private body or individual - Non-profit-making corporate body.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Procedure before the Constitutional Court - Parties - Interest.

3. Keywords of the alphabetical index :

Applicant / Interest / Non-profit-making corporate body.

4. Summary :

When a non-profit association claiming to represent a collective interest wishes to have access to the Court, the requirement is that the social purpose of the association should be of a particular nature and, hence, distinct from the public interest; that the collective interest should not be limited to the individual interests of its members; that the purpose in question should be subject to the influence of business standards; that the social purpose is genuinely pursued, as should be made clear by the specific activities of the association; and that the association should show proof of sustained activity, both in the past and in the present. (B.1.3)

5. Supplementary information : Constant Jurisprudence

1. Identification : Belgium - Court of Arbitration - 4 March 1993 - Judgment No.20/93 - Case list Nos. 377-379-381 - *Moniteur belge*, 25 March 1993.

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - The problem in general - Entitlement to rights - Nationals and foreigners.

FUNDAMENTAL RIGHTS - Civil and political rights - Right of asylum.

3. Keywords of the alphabetical index :

Equality / Non discrimination / Foreigners / Refugees

4. Summary :

Foreigners may rely on the principles of equality and non discrimination enshrined in Articles 6 and 6bis of the Constitution, on two conditions : that they are present on the territory of Belgium and that they are not legally excluded from the operation of this rule (B.2.2)

It follows from Article 31 of the Geneva Convention relating to the Status of Refugees, an article which has direct effect in the domestic legal system, that foreigners who apply for refugee status must be considered resident in Belgium as long as no final decision has been taken with regard to the admissibility of their application. They must therefore be considered resident on the territory of Belgium for the purposes of the application of Article 128 of the Constitution. (B.2.3)

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1. Identification : Belgium - Court of Arbitration - 4 March 1993 - Judgment No.20/93 - Case list Nos. 377-379-381 - *Moniteur belge*, 25 March 1993.

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Governing principles - Entitlement to rights - Nationals and foreigners.

FUNDAMENTAL RIGHTS - Civil and political rights - Right of asylum.

3. Keywords of the alphabetical index :

Equality / Non-discrimination / Foreigners / Refugees.

4. Summary :

The distinction between asylum seekers in general and applicants from a country which, during the preceding year, accounted for at least 5% of asylum seekers, in respect of whom less than 5% of decisions resulted in the granting of refugee status (a distinction which results, in the case of the latter category, in a reversal of the burden of proof in considering the admissibility of such applications for refugee status), is based on objective findings and is consistent with the aim pursued, *viz.* quicker action to dismiss applications for asylum which totally fail to fit the definition contained in the Geneva Convention relating to the status of refugees.

However, this distinction is not relevant to someone who may be covered by other provisions of the law relating to refugees, which apply to all foreigners claiming refugee status.

5. Supplementary information : An amendment to the law in question is being considered



FRANCE - CONSTITUTIONAL COUNCIL
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Reference period : 1 January to 31 March 1993

### STATISTICS

- . Three decisions handed down in references made in December 1992.
- . Deadline imposed by constitutional instruments - one month.

Of the three decisions :

- two were given under the optional provision of the second paragraph of Article 61 of the Constitution;
- one was given under the mandatory provision of the first paragraph of Article 61 of the Constitution.

In all three decisions the Constitutional Council struck down in part the instruments submitted to it.

### IMPORTANT DECISIONS

1. Identification : France - Constitutional Council - 12 January 1993 - Decision 92-315 DC, Resolution to insert in the Rules of Procedure of the Senate provisions to give effect to Article 88(4) of the Constitution.

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Common principles or techniques of interpretation - Concept of constitutionality dependent on a specified interpretation.

INSTITUTIONS - Legislative bodies - Parliaments - Organisation.

INSTITUTIONS - Legislative bodies - Parliaments - Competence.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Quasi-constitutional legislation and norms.

3. Keywords of the alphabetical index :

Senate / Review of Community measures / Arrangement of sessions / Institutional Acts.

4. Summary

The provision whereby the Senate was given a minimum time in which to consider a proposal for a Community instrument was held unconstitutional in that it encroached upon the prerogatives of the Government.

The Council also held that the language of the new Article 88(4) of the Constitution was not such as to create an obligation on the Government to transmit proposals for Community instruments which it considered not to contain provisions of a legislative nature.

5. Further information

The amendment of the Senate's Rules of Procedure under consideration follows upon a comparable change in those of the National Assembly (dated 18 November 1992), resulting from a constitutional provision introduced during the debate on the ratification of the Maastricht Treaty.

1. Identification : France - Constitutional Council - 20 January 1993 - Decision 92-316 DC, Act to prevent corruption and to promote transparency in business and in

public procedures.

2. Keywords of the systematic thesaurus

INSTITUTIONS - Legislative bodies - Parliaments - Powers.

INSTITUTIONS - Federalism and regionalism - Basic principles.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of expression.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of information.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to own property.

FUNDAMENTAL RIGHTS - Civil and political rights - Personal liberty.

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Commercial and industrial freedom.

FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Freedom to work for remuneration.

3. Keywords of the alphabetical index :

Right to amend / Autonomy of local authorities / Judicial guarantee of individual freedom / Proportionality of penalties / Equal sharing of public expenditure burden / Equality before the law.

4. Summary

Provisions giving the central corruption-prevention agency set up by the Act inadequately defined investigative powers, and conferring upon the agency a right to see any document or to hear any person, are liable to infringe individual liberty without any guarantee of judicial control, to undermine the right to property and to disregard personal liberty.

Regulation of contractual relationships between advertisers, middlemen and sellers of advertising space does not violate the freedom to engage in business, provided that all such restrictions on that freedom are required in the general interest.

The autonomy of *collectivités territoriales* precludes the Prefect from obtaining, on application to the administrative courts, a suspension of a decision made by an organ of the *collectivités locales*.

<b>HUNGARY - CONSTITUTIONAL COURT</b>
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Reference period : (1 January 1993 - 31 March 1993)

NUMBER OF DECISIONS

Decisions by the plenary Court published in the official gazette (Magyar Közlöny) : 14  
Decisions by chambers published in the official gazette : 8  
Number of other decisions by the plenary Court : 14  
Number of other decisions by chambers : 13  
Number of other (procedural) orders : 17  
Total number of decisions : 66

SUBJECT MATTER AND SUMMARY OF IMPORTANT DECISIONS

1. Identification : Hungary - Constitutional Court - Decision No. 2/1993. (I.22.) AB határozat  
Popular Referendum Case

2. Keywords of the systematic thesaurus :

INSTITUTIONS - Principles of State organisation - Sovereignty.  
INSTITUTIONS - Legislative bodies - Parliaments - Powers.  
SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution.

3. Keywords of the alphabetical index :

Popular referendum

4. Summary :

The Court declared that representation is the primary form of the exercise of sovereignty. The Parliament cannot be dissolved by popular referendum (there had been a popular initiative to hold a referendum on the possible dissolution of the existing Parliament). The Constitution defines the circumstances in which Parliament can be dissolved and a popular referendum is not mentioned among them. The result of a popular referendum cannot result in an implied amendment of the Constitution.

1. Identification : Hungary - Constitutional Court - Decision No. 4/1993. (II.12.) AB határozat Church Property Case

2. Keywords of the systematic thesaurus :

INSTITUTIONS - Principles of State organisation - Relations between the State and bodies of a religious or ideological nature.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of conscience.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of worship.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to property.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Quasi-constitutional legislation and norms.

4. Summary :

The State must remain neutral in religious matters. The schools operated by the State must not be committed to any denomination. Where the State gives back school buildings as restitution to the church, it has to make it possible for children to attend non-religious schools. This conclusion cannot mean that a disproportionate burden is placed on those who wish to attend such non-denominational schools. The Court also declared that even if in some cases the Constitution requires a two-thirds majority vote for the enactment of a legislative act on a fundamental right, the same requirement does not apply in respect of all laws touching upon that specific right.

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1. Identification : Hungary - Constitutional Court - Decision No. 8/1993. (II.27.) AB határozat Church Case

2. Keywords of the systematic thesaurus :

INSTITUTIONS - Principle of state organisation - Relation between the state and bodies of a religious or ideological nature.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of conscience.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of worship

4. Summary :

The Law on freedom of religion and on the churches requires at least one hundred members to found a church. The Constitutional Court upheld the constitutionality of this provision. The distinction had no influence on the most important functions of the churches, such as worship, education, social charity, etc. Moreover, the State cannot interfere with the affairs of religious communities, even if they are not established as a church.

1. Identification : Hungary - Constitutional Court - Decision No. 10/1993. (II.27.) AB határozat  
Saturday Work Case

2. Keywords of the systematic thesaurus :

INSTITUTIONS - Principle of state organisation - Relations between the State and bodies of a religious or ideological nature.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of conscience.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of worship.

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

4. Summary :

Leaders of the Jewish religious community complained that the greatest Jewish holidays are not public holidays. The Court found that this circumstance did not itself give rise to an unconstitutionality, because it does not discriminate among the different religions. The biggest holidays of the Christian religions nowadays have a secularized and general social character. They are red-letter days not because of their religious content but because of economic considerations and because they comply with the expectations of society. Under Hungarian labour law, citizens have the right to go on leave at least for five days a year without the consent of the employer. This provision primarily serves the interests of those who profess a religion and operates to provide an effective guarantee of the free exercise of religion.

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1. Identification : Hungary - Constitutional Court - Decision No. 15/1993. (III.12.) AB határozat  
Compensation Case 5

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Right to property.

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

4. Summary :

The constant jurisprudence of the Court concerning compensation for expropriations during the Communist regime was summed up for the fifth time in this decision. It summarised the theoretical arguments justifying the partial character of the compensation (there is no reprivatization, the injured persons receive bonds as compensation, etc.). The ruling upheld the constitutionality of the Compensation Law with the exception of one provision that discriminated in favour of a group of former land-owners, making it possible for them to get five times more compensation than other former owners.

1. Identification : Hungary - Constitutional Court - Decision No. 16/1993. (III.12.) AB  
határozat  
Jewish Property Restitution Case

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Right to property.

4. Summary :

The ruling concerns Jewish property (jewels and gold) confiscated under Nazi rule. International agreements (namely the Paris peace treaties) oblige Hungary to give "adequate compensation" to injured Jewish citizens. The Court ruled that the partial compensation offered to all injured people fulfils this requirement. But the Court found an unconstitutionality in that the legislation failed to provide for the compensation of those who died without successor. The compensation sum in such cases should be attributed to a special fund.

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1. Identification : Hungary - Constitutional Court - Decision No. 17/1993. (III.19.) AB  
határozat  
Radio and Television Case

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of the written press.

4. Summary :

The Constitutional Court had previously declared a Government decree on the control over public radio and television to be unconstitutional. The Court set a deadline for the legislature to enact a law on mass media. The deadline expired without success. Now the Court ruled that the unconstitutional decree will be abrogated only on the very day when the newly enacted law on radio and television enters into force.

IRELAND - SUPREME COURT
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1. Identification : Ireland - Supreme Court - 25 February 1993 - Appeal N° 216/92 - O'Callaghan. v. Attorney General and Director of Public Prosecutions - English

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of fundamental rights and freedoms.

CONSTITUTIONAL JUSTICE - The subject of review - Legislative or quasi-legislative regulations.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to a fair trial.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution.

4. Summary :

The Supreme Court ruled that a legislative provision that the verdict of a jury in criminal proceedings need not be unanimous is not invalid having regard to the provisions of the Constitution.

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1. Identification : Ireland - Supreme Court - 8 March 1993 - Appeal N° 101/92 - Eastern Health Board. v. An Bord Uchtala (Adoption Board) - English

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation regarding fundamental freedoms and rights.

CONSTITUTIONAL JUSTICE - The subject of review - Legislative or quasi-legislative regulations.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to family life

4. Summary :

The Supreme Court held that the provisions of the Adoption Acts are applicable to a child born to unknown parents in another country.

ITALY - CONSTITUTIONAL COURT
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127 pronouncements, including 76 judgments and 51 orders, were filed in the registry of the Court during the first quarter of 1993.

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1. Identification: Italy - Constitutional Court - 12/19 January 1993 - Judgment No. 10.

2. Keywords in the systematic thesaurus :

INSTITUTIONS - Courts - Procedural safeguards - Rights of the defence

INSTITUTIONS - Courts - Procedural safeguards - Languages.

SOURCES OF CONSTITUTIONAL LAW - Hierarchy - Hierarchy as between national and non-national sources - European Convention on Human Rights and constitutions.

SOURCES OF CONSTITUTIONAL LAW - Hierarchy - Hierarchy as between national and non-national sources - European Convention on Human Rights and other domestic legal instruments.

FUNDAMENTAL RIGHTS - Governing principles - Entitlement to rights - Nationals and foreigners.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to a fair trial.

3. Keywords of the alphabetical index :

Interlocutory order / State law / Constitutional legitimacy from the standpoint of the reasoning / International Covenant on Civil and Political Rights

4. Summary :

Article 143 paragraph 1 of the Code of Criminal Procedure, which sanctions the individual right of the accused to receive the free assistance of an interpreter, possesses the status of a rule ensuring essential safeguards for the enjoyment of a fundamental right of the defence - a right recognised by the international community in treaties signed by Italy (European Convention for the Protection of Human Rights and Fundamental Freedoms and International Covenant on Civil and Political Rights) and one connected with the Constitutional principles concerned with the rights of the defence, which are secured for all (citizens or foreigners) in Article 247 of the Constitution. This provision (Art. 143 (1)) is not confined in scope to the oral part of criminal proceedings, but has to be interpreted as a general clause. It is therefore a rule intended to apply and to extend to circumstances where, in the course of the particular steps in the proceedings, it is necessary to give effect to the accused person's right to be informed immediately, in detail and in his own language, of the nature and grounds of the charges against him.



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1. Identification : Italy - Constitutional Court - 16 January / 4 February 1993 - Judgment No. 32.

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Other litigation.  
INSTITUTIONS - Legislative bodies.

3. Keywords of the alphabetical index :

Validity of the Italian Referendum / Senate / Electoral system.

4. Summary<sup>1</sup> :

1. Electoral laws relating to constitutional or quasi-constitutional bodies may also be made subject to popular referendum. (2)
2. The referendum result was in favour of the abrogation of the current electoral system, meaning in effect its transformation from the current essentially proportional system into a mixed but predominately single-ballot, first-past-the-post (majority) system (3).
3. While it was aware that the prescriptive rules produced by the positive outcome of the referendum might give rise to some drawbacks, the Court held that the latter were not such as to influence the operation of the resulting electoral system, nor that of the Senate, and could not therefore call into question the admissibility of the referendum at issue (5).
4. The legislature may correct, amend or supplement the legislative sanction derived from the positive result of the referendum, having regard also to the prohibition on re-enacting , in substance or in form, the law which was thereby abrogated (5).

Note :

The referendum concerning certain rules of election to the Senate of the Republic, which was held on 18 April 1993, produced a result in favour of the abrogation of the above-mentioned rule. The legal rules which remain give a distinctly majoritarian slant to the system of election to the Senate.

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<sup>1</sup> The numbers in brackets indicate paragraphs of the reasoned judgments to which the summaries refer.

1. Identification : Italy - Constitutional Court, 28 January 1993/10 February 1993 - Judgment No. 39.
2. Keywords in the systematic thesaurus :  
CONSTITUTIONAL JUSTICE - Constitutional proceedings - Decisions - Types.
3. Keywords of the alphabetical index :  
Interlocutory order / State law / Declaration of unconstitutionality / Retroactive laws / Infringement of principle of equality / Unequal treatment / Infringement of the right to social security / Frustration of people's entitlement to legal certainty.

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1. Identification : Italy - Constitutional Court - 8/16 February 1993 - Order No. 68.
2. Keywords in the systematic thesaurus :  
CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of the distribution of powers between state authorities.  
INSTITUTIONS - Legislative bodies - Guarantees as to the exercise of power.  
INSTITUTIONS - Legislative bodies - Relations with the courts.
3. Keywords of the alphabetical index :  
Leave to proceed in a jurisdictional dispute between government authorities.
4. Summary :  
The Civil Court of Rome, having before it a civil action for damages against a member of the Senate, could consider an argument pleaded in defence that the proceedings presented a conflict of jurisdiction with the Senate, namely that the remarks made by the defendant Senator could not, within the meaning of Article 68 of the Constitution, be liable to penalties and that consequently no legal action could be brought against the said Senator. The Court, in accordance with its doctrine, held that independent judicial organs may legitimately become parties to conflicts of jurisdiction in the carrying out of their functions.

1. Identification : Italy - Constitutional Court - 26 February/11 March 1993 - Judgment No. 81.
2. Keywords in the systematic thesaurus :  
  
FUNDAMENTAL RIGHTS - Civil and political rights - Confidentiality of telephonic communications.
3. Keywords of the alphabetical index :  
  
Interlocutory Order / Constitutional validity from the standpoint of the reasoning.
4. Summary :
  1. As the Court has already affirmed (see judgment 34/73 et seq.), Article 15 of the Constitution guarantees two different types of interest : the freedom and privacy of communication, which is bound up with the inviolability of human rights (Article 2 of the Constitution); and the public interest in preventing and punishing offences. The legislative principles expressed in provisions of the Code of Criminal Procedure lay down exhaustive rules for wire taps as an authorised method of investigation and their use as evidence in a trial (2).
  2. The said rules, provided for in Articles 266-271 of the Code of Criminal Procedure as a means of monitoring the freedom and privacy of telephone communications, refer exclusively to the interception of the content of such communications, and not to such intervention as is designed to obtain information other than the content itself, such as the identity of the persons concerned or the time and place of the communications (3). Nevertheless, the monitoring of communications between predetermined individuals, as provided for in Article 15 of the Constitution, is to be understood as extending not only to the confidentiality of the substance but also to the non-disclosure of the identity of persons concerned and to the time and place of the communications (4).
  4. The Court has consistently held that: "Freedom and privacy of correspondence and of all other means of communication constitute an individual right recognised as one of the highest constitutional values; as a result, it is expressly termed an inviolable right in Article 15 of the Constitution" (see Judgment 366/91).
  5. On the one hand, and in the absence of appropriate guarantees provided by law, Article 15 of the Constitution excludes direct or indirect disclosure to third parties of information and news capable of individualising external telephone communications data; on the other hand, it imposes an obligation on those who for professional reasons come to know of the content and/or the external form of communications, to maintain the strictest discretion with regard to the above-mentioned information (4).
  6. Within the meaning of Article 15 of the Constitution, information or data entailing interference in the private sphere covered by the inviolable right to freedom and privacy of communication can only be acquired by means of a reasoned decision of a judicial authority (5).

1. Identification : Italy - Constitutional Court - 10 March/19 March 1993 - Judgment No. 103.

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Decisions - Reasoning.  
 INSTITUTIONS - Executive bodies - Territorial administrative decentralisation - Municipalities.

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to a fair trial.

FUNDAMENTAL RIGHTS - Civil and political rights - Electoral rights.

3. Keywords of the alphabetical index :

Interlocutory order / State Law / Principle of sound administration.

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1. Identification : Italy - Constitutional Court - 24/26 March 1993 - Judgment No. 112.

2. Keywords in the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of information.

FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Commercial and industrial freedom.

3. Keywords of the alphabetical index :

Interlocutory order / State law / Constitutional legitimacy.

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1. Identification : Italy - Constitutional Court - 25/29 March 1993 - Judgment No. 124.

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of the distribution of powers between central government and its subdivisions.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Decisions - Types - Annulment.

INSTITUTIONS - Federalism and regionalism - Distribution of powers.

3. Keywords in the alphabetic index :

Conflict of powers between central and regional authorities / Regional measures / Nullification.

4. Summary :

The signing of a "declaration of intent" by the adviser on labour, emigration and vocational training of the Puglia region, on the one hand, and by the Ministers of Labour and Education of the Albanian Government, on the other, without prior notification to the Government with a view to obtaining its consent, constitutes an infringement of State powers and justifies the granting of leave to proceed in proceedings brought by the State against the region of Puglia.

NETHERLANDS - SUPREME COURT
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1. Identification : Netherlands - Hoge Raad der Nederlanden (Supreme Court) - Third Chamber (Tax law) - Octobre 7th, 1992 - no. 26974 - BNB 1993, 4; AB 1993, 13

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - The subject of review - Rules issued by the executive.

FUNDAMENTAL RIGHTS - Civil and political rights - Other.

SOURCES OF CONSTITUTIONAL LAW - Categories - Unwritten rules.

3. Keywords of the alphabetical index :

General principles of law / Legitimate expectations / Legislature / Municipal tax / Sublegislative regulations / Taxation / Transitory law / Legal security

4. Summary :

Issues of Law :

A municipality may, in return for services rendered, impose taxes (leges) whose rates and other features are laid down in municipal (sublegislative) regulations. In the instant case, an exemption from taxation was extended by the regulation to a certain group of persons and institutions. The municipality changed the regulations by abolishing this exemption. Before this change took place, a request for rendering such a service, namely the granting of a building permit, had been made by the plaintiff, a person belonging to the said group. The building permit was granted, and the municipality sought to impose the tax. The plaintiff contested his liability to the tax, invoking the principle of legal security.

Judgment :

(4.3.) The Supreme Court ruled, first, that a municipal taxing regulation, as a sublegislative regulation, may be tested against general principles of law.

(4.4.) In consequence, the Supreme Court ruled that the principle of legal security is, together with the rule against retroactive effect, concerned with respecting legitimate expectations. The municipal legislature infringed these expectations by applying the new regulation to all requests made, irrespective of the time the change was made public. This may be different in circumstances where the change does not relate to an exemption, but to an increase in existing taxes or to a new tax; but with an exemption the legislature has made a positive declaration of intent which cannot reasonably be expected to be subject to unilateral changes at any time.

In the instant case the change in the regulations was not binding and the exemption was found to apply.

1. Identification : Netherlands - Hoge Raad der Nederlanden (Supreme Court) - First Chamber (Civil Law) - February 5th, 1993 - no. 14823 - RvdW 1993, 49

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of the distribution of powers between central government and its subdivisions.

FUNDAMENTAL RIGHTS - Governing principles - Entitlement to rights - Public law bodies.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to a fair trial.

3. Keywords of the alphabetical index :

Civil court jurisdiction / Co-operation / Constitutional state / Public law contract / Rule of law / Supervision / Injury caused by public bodies

4. Summary :

Issues of Law :

The State entered into an agreement on decentralisation with the four largest municipalities. In compliance with this agreement the State issued a financial regulation by which the municipalities were, in respect of certain activities and facilities, in principle free to spend State funds in a way most suited to the local circumstances. This regulation also provided for certain restrictions. The Government reversed decisions of one of these municipalities, stating they were contrary to such restrictions. Basing the claim on those terms of the agreement which governed liability for injury to third parties, the municipality sought a court order annulling the decisions and awarding compensation in the amount of one million Guilders. The question arose as to whether the civil court had jurisdiction.

Judgment :

(4.1.) The municipality has based its claim on breach of contract, thus on an obligation as in art. 2 of the Judicial Organisation Act (Ro) and art. 112 of the Constitution (Gr.w.). In consequence, it falls within the jurisdiction of the civil court, having regard also to the fact that the matter for resolution is not exclusive jurisdiction of another court.

(4.2.) This civil court jurisdiction - and the admissibility of the claim - is not affected by the fact that the civil court is thereby called upon to judge the way in which the Government exercises its power under article 185 (1) of the Municipality Act (Gem.w.) to reverse decisions of municipalities. Thus, as long as there is no special and sufficiently safeguarded judicial procedure in these matters, a result is achieved which complies with the requirements of a constitutional State. As a matter of legal protection (which is not to be withheld from municipalities in disputes with the State), this interpretation is clearly to be preferred over one in which municipalities have no legal remedies at all in such disputes. This civil court jurisdiction - and the admissibility of the claim - is also not affected by the fact that this dispute arises from a public law contract.

(4.3.) Parties to such a contract may agree to exclude civil court jurisdiction. Such an agreement must be explicit.

1. Identification : Netherlands - Hoge Raad der Nederlanden (Supreme Court) - First Chamber (Civil Law) - January 22nd, 1993 - no. 14926 - RvdW 1993, 39; AB 1993,198

2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Governing principles - Entitlement to rights - Public law bodies

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of expression

3. Keywords of the alphabetical index :

Injury caused by public bodies / Freedom of expression of public bodies

4. Summary :

Legal Issues :

In civil proceedings, World War II resistance organisations and their members claimed :

1. a declaration that decisions made shortly after the war concerning the pension of the widow of a member of parliament whose party collaborated in the occupation are contrary to law;
2. an injunction prohibiting the State from declaring in public that these decisions were in accordance with the law.

Judgment :

(3.6.3.) The injunction cannot be imposed on the ground that the State has acted unlawfully in respect of the members of the former resistance and their organisations, it being a basic assumption in an open parliamentary debate that these decisions were in accordance with the law. What is at issue is an opinion on a legal question, namely the question as to whether decisions were made in accordance with the law, in which question the claimants are not immediately involved. The government has expressed this opinion in a public debate on a public matter. The right of freedom of expression, laid down in the Constitution as well as in international treaties, to which right the government too is entitled, prevents the State from being sued on the grounds that its opinion is wrong.

The right of freedom of expression, especially in a public debate such as this, in principle extends to opinions which may offend or shock others. The ECHR has repeatedly emphasised this aspect of the right (see for example the decision in *Castells v Spain*, 23 April 1992, Series A no. 236, p. 22, § 42).

<b>POLAND - CONSTITUTIONAL COURT</b>
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1. Identification : Poland - Constitutional Court - Decision of 16 February 1993 (Case N°. K 13/92)

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Types of claim - Claim by a private body or individual - Non-profit-making corporate body.

INSTITUTIONS - Principles of state organisation - Rule of law.

INSTITUTIONS - Principles of state organisation - Other.

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution.

3. Keywords of the alphabetical index :

Principle of social justice

4. Summary :

In the law governing corporate income tax, the provision which exempts the income of "farmers' unions" spent on financing their lawful activities is silent as to the income of "farmers' social and trade associations".

In accordance with the relevant legal regulations, the above-mentioned "farmers' social and trade associations" represent the social and professional interests of farmers in the same lawful capacity as "farmers' unions". As both types of farmers' organisations play the same role in the field of social and political representation, they should be treated by state agencies in the same way and the same provisions of law should be applied to them.



1. Identification : Poland - Constitutional Court - Decision of 26 January 1993 (Case N°. U 10/92)

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - The subject of review - Parliamentary rules.

CONSTITUTIONAL JUSTICE - Constitutional Proceedings - Types of claim - Claim by a public body - Other

INSTITUTIONS - Principles of State organisation - Social State.

INSTITUTIONS - Principles of state organisation - Other.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution

4. Summary :

The provision of the Rules of the Sejm specifying the minimum number of parliamentary members for a group at 15 is an aspect of the Parliament's autonomy, granted by the Constitution to the Houses in the field of defining their own structures and procedures. The provision is consistent with the constitutional principle of the rule of law and with the freedom of political parties.

Limitations on the creation of a group are a consequence of the provisions of the Constitution, which operate to ensure the effective performance of constitutional duties by the Parliament. Differentiation as between the legal status of internal parliamentary groups does not result in an interference with the individual rights of members of Parliament as representatives. The provision in question does not infringe on the freedom of political parties, as the role of a Sejm member - as emphasised by the Tribunal - may be reinforced through the exercise of a free mandate as well as by freedom of political action.

On a point of form, this interpretation of the provision does not indicate that it is contrary to the provisions of the law on the duties and rights of members of the Sejm and of the Senate, which include the right of the members of Parliament to form and join groups. Moreover, the Rules of the Sejm, being a law based directly on the Constitution and serving to supplement its provisions, may determine the arrangement of the groups in the Sejm in a manner consistent with that envisaged in the Constitution, providing always that such Rules do not exceed the limits of Parliament's powers.

1. Identification : Poland - Constitutional Court - Decision of 6 January 1993 (Case N°. W 9/92)
2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of jurisdictional conflict.

CONSTITUTIONAL JUSTICE - The subject of review - Legislative or quasi-legislative regulations.

CONSTITUTIONAL JUSTICE - Constitutional Proceedings - Types of claim - Claim by a public body - Other;

FUNDAMENTAL RIGHTS - Civil and political rights - Equality.

FUNDAMENTAL RIGHTS - Civil and political rights - Other.

4. Summary :

The judgment sets out the universally binding interpretation of the provision of the Turnover Tax Law (the Turnover Tax is to be replaced by Value Added Tax (VAT) in July 1993).

Principles of fiscal justice dictate that the Turnover Tax should be levied on products imported by entities which carry out commercial activities as well as on products bought abroad for personal use by individual persons.

This conclusion also necessarily operates to give equal opportunities, within the free market, to imported products (usually exempted from border tax) and to goods produced in Poland.

1. Identification : Poland - Constitutional Court - Decision of 8 December 1992 (Case N°. K 3/92)

2. Keywords of the systematic thesaurus

CONSTITUTIONAL JUSTICE - The subject of review - Legislative or quasi-legislative regulations.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Types of claim - Claim by a public body - Other

INSTITUTIONS - Principles of state organisation - Rule of law.

INSTITUTIONS - Principles of state organisation - Other.

FUNDAMENTAL RIGHTS - Civil and political rights - Right of access to courts.

FUNDAMENTAL RIGHTS - Civil and political rights - Other.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - European Convention on Human Rights and constitutions.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Other international sources.

3. Keywords of the alphabetical index :

International Covenant on Civil and Political Rights

4. Summary :

This decision relates to provisions of the law on the administration of state/public lands designated for construction, which law operated to up-date (and in practice to increase) the fees for the perpetual exploitation of land pursuant to a unilateral declaration of the local administrative authority.

These provisions did not specify the formal conditions under which such declarations could be issued by the competent administrative authority. Nor did the newly-enforced law provide for the possibility of an appeal against the administrative authority's declaration to a court.

Notwithstanding the civil nature of the perpetual exploitation of land (emphasised by the legislature), the change effected by the new regulation had neither been negotiated nor approved by the parties concerned.

The lack of any appropriate administrative procedure of sufficient consistency and clarity to grant the persons concerned the protection of their rights results in a frustration of people's entitlement to legal certainty, which is one of the elements of the rule of law.

The absence of any procedure granting citizens the right to appeal against the declaration to a court was declared to be in contradiction with the constitutional principle that justice be administered exclusively by courts and found to be contrary to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant of Civil and Political Rights concerning the right of access to court.

1. Identification : Poland - Constitutional Court - Resolution of 9 December 1992 (Case N°. W 10/91)

2. Keywords of the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of jurisdictional conflict.

CONSTITUTIONAL JUSTICE - The subject of review - legislative or quasi-legislative regulations.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Types of claim - Claim by a public body - Other.

FUNDAMENTAL RIGHTS - Civil and Political Rights - Right to property.

4. Summary :

The resolution sets out the universally binding interpretation of the provisions of the law on the administration of state/public lands designated for construction, which provisions had until now been applied incorrectly by the competent administrative authorities.

The provisions interpreted by the Tribunal refer to the rules on the basis of which ownership of garages (and the perpetual exploitation of land under the garages) had been transferred to persons who, in the past, had built the garages on state-owned lands and pursuant to a legal partnership with the State.

PORTUGAL - CONSTITUTIONAL TRIBUNAL
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Reference period : 1 January 1993 to 31 March 1993

A. NUMBER AND TYPES OF DECISIONS

A.1. Total : 307 Acs.<sup>2</sup>, including

A.2. Preventive scrutiny 1(Ac. 124/93);

A.3. Ex post facto abstract supervision : 4(Acs. 151/93, 174/93, 175/93, 207/93);

A.4. Appeals : 284 Acs., broken down as follows :

- Questions of merit : 213 Acs. (158 of which are concerned with the "application" of a judgment standardising Case law, delivered in plenary session);
- Applications for a declaration of unConstitutionality with general binding effect : 16 Acs.;
- Procedural questions : 55 Acs.;

A.5. Claims : 16 Acs.;

A.6. Political parties and coalitions : 2 (Acs. 246/93 and 282/93).

B. SUBJECT MATTER OF THE MOST IMPORTANT DECISIONS

1. Identification : Portugal - Constitutional Tribunal - Acórdão 124/93

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of fundamental rights and freedoms.

INSTITUTIONS - Legislative bodies - Parliaments.

INSTITUTIONS - Legislative bodies - Law-making procedure.

FUNDAMENTAL RIGHTS - Economic, social and cultural rights - Rights of trade unions.

3. Keywords in the alphabetical index :

Preventive scrutiny

4. Summary :

A rule approved by the regional Parliament of the Azores concerning the "containment of expenses" (island allowance for officials of the regional and local administration) was declared unconstitutional in this decision.

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<sup>2</sup> Ac. = ACÓRDÃO = JUDGMENT

1. Identification : Portugal - Constitutional Tribunal - Acórdão 149/93 :

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of fundamental rights and freedoms.

CONSTITUTIONAL JUSTICE - The subject of review - Court decisions.

CONSTITUTIONAL JUSTICE - Common principles or techniques of interpretation - Principle of equality.

4. Summary :

The rule in the Civil Code which provides for the liability of the Commissioner in the event of a haulage accident was held not to be unconstitutional.

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1. Identification : Portugal - Constitutional Tribunal - Acórdão 150/93 :

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of fundamental rights and freedoms.

CONSTITUTIONAL JUSTICE - Common principles or techniques of interpretation - Concept of constitutionality dependent on a specified interpretation.

FUNDAMENTAL RIGHTS - Civil and political rights - Right to a fair trial.

3. Keywords in the alphabetical index :

Transfer to plenary court following a division among chambers.

4. Summary :

The provision of the 1929 Code of Criminal Procedure, governing the right of reply of the accused to a prosecution case which had called for harsher penalties against the accused, was held not to be unconstitutional.

1. Identification : Portugal - Constitutional Tribunal - Acórdão 151/93 :

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of the distribution of powers between central government and its subdivisions.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Decisions - Effects - Temporal effect - Limit on retrospective effect.

INSTITUTIONS - Federalism and regionalism - Distribution of powers.

3. Keywords in the alphabetical index :

Normative measures.

4. Summary :

The rules concerning the recruitment and selection of staff and the civil service examination in the autonomous region of the Azores were declared unconstitutional, with general binding effect.

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1. Identification : Portugal - Constitutional Tribunal - Acórdãos 152/93 and 153/93 :

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - The subject of review - Laws and other rules having the force of law.

CONSTITUTIONAL JUSTICE - Common principles or techniques of interpretation - Principle of equality.

3. Keywords in the alphabetical index :

Transfer to plenary court at the instance of the President.

4. Summary :

Rules granting an amnesty for offences in the field of labour law were held not to be unconstitutional.

1. Identification : Portugal - Constitutional Tribunal - Acórdão 172/93

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - The subject of review - Other.

3. Keywords in the alphabetical index :

Collective bargaining agreements

4. Summary :

The court had no jurisdiction in the instant case because clauses contained in a collective bargaining agreement are not subject to a specific review of constitutionality.

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1. Identification : Portugal - Constitutional Tribunal - Acórdão 174/93 :

2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of fundamental rights and freedoms.

INSTITUTIONS - Principles of State organisation - Relations between the State and bodies of a religious or ideological nature.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of conscience.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of worship.

3. Keywords in the alphabetical index :

Successive scrutiny of a preventive nature

4. Summary :

In this case, the Court declined to declare unconstitutional several rules concerning the teaching of Roman Catholic religion and doctrine in primary and higher education.



1. Identification : Portugal - Constitutional Tribunal - Acórdãos 205/93 and 206/93 :
2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of fundamental rights and freedoms.

CONSTITUTIONAL JUSTICE - Common principles or techniques of interpretation - Principle of equality.

INSTITUTIONS - Courts - Administrative courts - Procedure.

3. Keywords in the alphabetical index :

Right of access to courts/ Transfer to plenary court following a division among chambers.

4. Summary :

This decision upholds a number of judgments which had declared unconstitutional the rule concerning the non-suspensive effect of an appeal against decisions allocating land reserves in the field of agrarian reform.

\*\*\*\*\*

1. Identification : Portugal - Constitutional Tribunal - Acórdão 207/93 :
2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of the distribution of powers between state authorities.

CONSTITUTIONAL JUSTICE - Constitutional proceedings - Decisions - Effects.

INSTITUTIONS - Legislative bodies - Parliaments - Powers.

3. Keywords in the alphabetical index :

Imposition of taxes.

4. Summary :

The rules concerning the payment of a "rate" (a sort of tax) for the benefit of an economic co-ordination agency were declared unconstitutional, with general binding force.

1. Identification : Portugal - Constitutional Tribunal - Acórdão 265/93 :
2. Keywords in the systematic thesaurus :

CONSTITUTIONAL JUSTICE - Types of litigation - Litigation in respect of the distribution of powers between state authorities.

INSTITUTIONS - Legislative bodies - Parliaments - Powers.

INSTITUTIONS - Legislative bodies - Law-making procedure.

3. Keywords in the alphabetical index :

Imposition of taxes.

4. Summary :

A legislative decree approving the rules governing non-customs-related tax offences was held not to be unconstitutional.

**SLOVENIA - CONSTITUTIONAL COURT**

Reference period : 1 January 1993 to 31 March 1993

In the period under discussion, the Slovene Constitutional Court operated in partial composition; of 9 places on the Constitutional Court, only 6 places were occupied.

The Constitutional Court had 13 sessions during this period, in which it dealt with 68 cases in the field of constitutional and legal review (cases denoted U- in the constitutional court register). There were 110 unresolved cases from the previous year at the start of the period. The Constitutional Court accepted 78 new cases in the period of this report, confirming the trend of a steady increase in the number of new cases over the last four years.

During this period, the Constitutional Court issued the 1st volume of the permanent official collection of its decisions (for 1992), in Slovene, with abstracts in English, equipped with various indexes and overviews. To date, the Constitutional Court has issued a Bulletin, and has communicated computer data on its practice and procedure to users through its legal information system (see annex).

In the same period, the Constitutional Court resolved 32 cases, of which there were 7 Decisions and 25 Resolutions. All Decisions have been published in the Official Gazette of the Republic of Slovenia. As a rule, resolutions of the Constitutional Court are not published in an official bulletin, but only handed over to participants in the proceedings.

The content of the cases resolved in this period was the following :

- confirming mandates of delegates to the National Assembly (5)
- constitutional complaint in relation to the election of candidates as delegates to the Council of State (1)
- regional planning, or the regime applicable to building land (5)
- payment of advance on military pensions for service in the former Yugoslav army (1)
- the price of public utility services (water supply) (1)
- salaries of state office holders and public servants (2)
- citizens' contributions in the form of their own resources for the construction of communal infrastructure facilities (3)
- membership of doctors in the Medical Council (1)
- conditions for obtaining citizenship of the Republic of Slovenia (1)
- payment of tax on trade in goods and services (3)
- non-competence of the Constitutional Court to review the constitutionality or legality of acts which are not prescribed (1)
- handing over of business premises in rented buildings (1)
- security of personal property (1)
- freedom to perform commercial activities (1)
- privatisation of former social property (4)
- purchase of periods of cover in respect of pension insurance (1)

The issues in the more important cases during the period under consideration were the following:

## I

At the start of the period in question, post-electoral echoes were also reflected in constitutional and legal practice in Slovenia. The Constitutional Court thus dealt with a number of complaints against decisions of the National Assembly on confirming mandates of delegates. In these cases (Resolutions U-IV-5/93 of 7.1.1993, U-IV-1/93 of 7.1.1993, U-IV-165/92 of 7.1.1993, U-IV-166/92 of 7.1.1993 and U-IV-170/92 of 7.1.1993) it found that the complaints submitted were not admissible in law and it was therefore necessary to reject them. According to article 8 of the law on delegates (Official Gazette RS, n° 48/92), only those candidates whose mandate is not confirmed by the National Assembly have the right to lodge a complaint with the Constitutional Court. Accordingly, such right does not extend to candidates who, by decision of the electoral commission, were not elected nor, of course, to a member of a municipal assembly from the area of one of the electoral units.

Equally, a complaint to the Constitutional Court (Resolution U-IV-160/92 of 7.1.1993) is possible only against a decision of the Council of State if a mandate is not confirmed, and not against a decision of the Republican electoral commission. The complaint lodged was therefore inadmissible in law, and was thus rejected.

## II

With independence, the State of Slovenia undertook the payment of military pensions to its citizens who were former employees of the Yugoslav Army. Resolution U-I-2/93 of 21.1.1993 relates to this question, providing that the provisions of the decree of the Executive Council of the Assembly of the Republic of Slovenia, whereby from 1.11.1991 onwards an advance of pension is paid to military pensioners in an amount which appertained to September 1991, are not in accordance with article 18 of the constitutional law for implementing the Founding Charter on the Sovereignty and Independence of the Republic of Slovenia.

## III

By Resolution n° U-I-148/92 of 11.2.1993, the Constitutional Court found that the legislative arrangement which makes membership in the Medical Council compulsory for doctors who work directly with the sick is not in conflict with the Constitution. The Medical Council is an institution which is charged with the public supervision of medical practice in accordance with the law. In consequence, compulsory membership in the Medical Council does not signify a restriction of constitutional rights guaranteed by paragraph 2 of article 42 of the Constitution. The Constitutional Court discussed this decision also in the light of the decision of the European Court of Human Rights, decision A/43 para. 51 of 23.6.1981, in the case of *Le compte, Van Leuven and De Meyers*.

## IV

A fair number of decisions of the Constitutional Court related to the legal interest of an individual as a procedural precondition to commencing proceedings before the Constitutional Court, i.e., the establishment of a minimum test of *locus standi* for individual applications to the Court, a right guaranteed under the Slovene Constitution (form of popular complaint) (Resolutions U-I-136/92 of 11.2.1993, U-I-93/92 of 18.1.1993, U-I-159/92 of 18.3.1993, U-I-163/92 of 18.3.1993). According to the provisions of the second paragraph of article 162 of the Constitution of the Republic of Slovenia, anyone may initiate proceedings in the Constitutional Court if they can show a proper legal interest. Demonstrating the proper legal interest of the initiator is thus a constitutionally defined procedural precondition for initiating proceedings in the Constitutional Court. This is satisfied when it is the initiator's own personal and direct interest which is legally recognised and protected. The legal interest of an initiator is thus not

established if the initiator bases the claim on the presumed legal position of third parties rather than his own, or if it is based on personal interests which the law does not recognise and protect. A mere general interest in ensuring constitutionality and legality and in implementing the principles of the rule of law is not sufficient to fulfil the constitutionally defined provisions (Resolutions U-I-34/92 of 18.3.1993 and U-I-47/93 of 25.3.1993).

## V

The Constitutional Court frequently met with questions of urban regional planning. This subject is covered by specific legal provisions in the sphere of standards of municipal planning. However, in the case of anomalies, the intervention of the Constitutional Court is required : (Resolution U-I-158/92 of 18.3.1993). A decree of a municipal assembly on regional planning conditions whereby a smaller area of land is devoted to building than that envisaged in the long or medium term social plan of the municipality is not in accordance with the law (Decision U-I-108/92 of 25.2.1993, prom. Official Gazette RS, n° 13/93). The provisions of a decree of a municipal assembly on adopting amendments to the building plan, which have not been put forward for public debate, are not in accordance with the law (Decision and Resolution U-I-126/92 of 18.2.1993). The provisions of a decree of a municipal assembly which transfers its lawful powers to define the rate of compensation for the use of building land to the executive council of the municipal assembly are not in accordance with the law.

## VI

In connection with the possibilities of purchasing periods of cover in respect of pension insurance, a submission to the Constitutional Court raised the questions of the violation of the principle of equality before the law. However, the Constitutional Court found in Resolution U-I-84/92 of 18.3.1993, that there had been no violation of the constitutional principle of equality before the law (article 14 of the Constitution) in circumstances where the legislature determined different contributions for the purchase of pension insurance cover for different cases.

## VII

The Slovene Constitutional Court frequently met with the question of the contribution of citizens in the form of their own resources for constructing public infrastructural facilities. The arrangement of these matters is in the competence of local government, although they are bound to respect prescribed legal standards in the exercise of such powers. The most recent important decisions in this field were the following :

(Resolution U-I-26/93 of 25.3.1993). The resolution of a local council on holding a referendum on the implementation on a local self-imposed contribution, and the resolution on its implementation, had all the elements prescribed by the law on self-imposed contributions, including a definition of the responsibility of the council of the local authority to use the resources lawfully and for the intended purpose and an obligation on the council to report to its constituents at a meeting, and was in accordance generally with the law on self-imposed contributions.

(Decision U-I-114/91 of 28.1.1993), prom. Official Gazette RS, n° 8/93). A resolution on holding a referendum for the implementation of a self-imposed contribution is not in accordance with the law in circumstances where:

- it does not define the total amount necessary for the implementation of the programme, but only the resources envisaged to be collected by the self-imposed contribution, and
- it binds only those citizens whose income derives from agricultural activities on the basis of monthly earnings from such agricultural activities or on the basis of monthly earnings from land rental income. Such a system is in conflict with the legal principle whereby citizens have the same obligations under the same conditions in relation to the payment of self-imposed contributions, since those liable in respect of land rental income pay a relatively larger proportion than others.

A resolution on the implementation of a self-imposed contribution is not in accordance with the law in circumstances where it is adopted by the council of a local authority, even in purported compliance with the statute of the local authority and notwithstanding that it has purported to be adopted by its competent organ, if it does not contain provisions on the way the resources which remain after satisfying the needs for which the self-imposed contribution was imposed will be used.

## VIII

The problem of the constitutional protection of private property was the subject of Decision U-I-87/91 of 28.1.1993, prom. Official Gazette RS, n° 8/93. According to this decision, a list of public rights of way contained in a municipal decree on the management of such rights is not in accordance with article 33 (right to private property) and article 96 (dispossession) of the Constitution, on the grounds that it included among such alleged rights of way a path over private property.

## IX

Some decisions of the Constitutional Court also related to questions of public finance, and more particularly to sales taxes, as in the case of : (Decision U-I-92/92 of 18.2.1993, prom. Official Gazette RS, n° 12/93).

1. The provision of point 11 of article 18 of the law on sales tax (Official Gazette RS, n° 4/92) is not in conformity with the Constitution because an exemption of 20 % sales on the sale of goods enables the producer of these products to enjoy favourable access to the market or to lower his sales price by the level of the tax exempted.
2. In the opinion of the Constitutional Court, only such tax concessions are permissible and in accordance with the principle of equality before the law as are given to companies for employing invalids, thereby equalising their position with others on the market, since they would otherwise be in an inferior position because of the greater cost of employing invalids: they also provide an additional motivation without which employers would not be interested in making additional efforts to employ invalids, which is in the public interest. Such concessions must not be so large as to in themselves allow companies to offer lower prices than their competitors (Decision and Resolution U-I-145/92 of 11.3.1993). Provisions of regulations on the implementation of the law on sales tax are not in accordance with the law in circumstances where they impose on sellers and agents of newly imported private cars the obligation to account

separately for: basic tax (purchase value of imported private car + necessary expenses to the Slovene border), customs, import tax, tax level, tax tariff and the amount of tax calculated, nothing in paragraph 6 of the law on sales tax justifying such an extension of the tax base.

X

The process of denationalisation of assets nationalised under the former regime is a characteristic of the new Slovene legal regime : this is the subject of the following decision of the Slovene Constitutional Court from the period in question : Decision U-I-25/92 of 4.3.1993, prom. Official Gazette RS, n° 13/93). Differences in the treatment of physical persons and legal entities in relation to the right to the denationalisation of nationalised assets constitutes a violation of the constitutional principle of equality before the law (article 14 of the Constitution).

The legal personality of church organisations and foundations is governed by national regulations.

The legal time limit for submitting claims for denationalisation must be the same for all rightful claimants, so this time limit shall start to run for those legal entities which were declared to be rightful claimants by decision of the Constitutional Court on the day on which that decision takes effect.

SWEDEN - SUPREME COURT
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NUMBER OF DECISIONS TAKEN : 1

1. Identification : Sweden - Supreme Court - Regeringsrättens dom i mal nr 155-1990
2. Keywords of the systematic thesaurus :

INSTITUTIONS - Legislative bodies.

CONSTITUTIONAL JUSTICE - The subject of review - Legislative or quasi-legislative regulations.

CONSTITUTIONAL JUSTICE - Constitutional Proceedings - Types of claim - Claim by a private body or individual - Profit-making corporate body.

INSTITUTIONS - Legislative bodies - Law-making procedure.

INSTITUTIONS - Legislative bodies - Relations with the courts.

SOURCES OF CONSTITUTIONAL LAW - Categories - Written rules - Constitution.

4. Summary :

Chapter II, Article 14 of the Swedish Constitution provides as follows :

"If a court, or any other public organ, considers that a provision is in conflict with a provision of a fundamental law or with a provision of any other superior statute, or that the procedure prescribed was not complied with in any important respect when the provision was adopted, then such provision may not be applied. However, if the provision has been adopted by the Riksdag (Parliament) or by the Government, the provision may be set aside only if the inaccuracy is obvious and apparent."

Pursuant to Article 27 of the Act on Emergency Storage of Oil and Coal, an enterprise which does not fulfil the requirements for such storage is liable to pay a so-called storage fee. This fee shall correspond with an estimated capital cost for the goods during one month with an additional 60 per cent. The Government determines the storage fee for each calendar month. Through an Ordinance, which entered into force on 1 January 1985, the Government fixed the storage fee for petrol at 29 SCR per cubic meter. This amount was not changed until 1 October 1989.

An enterprise which in August 1988 failed to fulfil its obligations with respect to the emergency storage of petrol was charged a storage fee of 29 SCR per cubic meter. The enterprise claimed that an estimate in accordance with the directives of the aforementioned Act showed that the fee should have been only 15 SCR per cubic meter. The provision of the Ordinance was thus in conflict with the provisions of the Act.

The Supreme Administrative Court held that the Act presupposes that the Government's fee shall correspond to pricing developments affecting the goods in question and to changes in bank rates. It also presupposes that the Government will modify the storage fee when significant changes have occurred. Furthermore, the Act presupposes that the Government review the amount of the storage fee once a year. The Government had, however, failed to undertake such review during the years 1985-1989.

The Supreme Administrative Court found that the storage fee for petrol in May 1988, estimated in accordance with the directives of the Act, should have been 15,26 SCR per cubic meter. The difference between this amount and the amount of 29 SCR stipulated in the Ordinance was of such magnitude that the storage fee imposed on the enterprise was not in conformity with any possible interpretation of the estimation method set out in the Act. The Supreme Administrative Court therefore declared that the said provision of the Ordinance concerning the amount of storage fee for petrol in August 1988 was obviously in conflict with the provisions of the Act and should be set aside. The Court decided that the storage fee to be imposed on the enterprise should, in accordance with the provisions of the Act, be 15 SCR per cubic meter.



SWITZERLAND - FEDERAL TRIBUNAL
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1. Identification : Switzerland - Federal Tribunal - Public Law Court - 7 August 1992 - 1P.212/1992/B against Public Prosecutor of the canton of Vaud - ATF 118 Ia ... (No. 44) - Decision : F/Summaries : F, D, I.
2. Keywords of the systematic thesaurus :  
  
INSTITUTIONS - Courts - Procedural safeguards - Fair trial.  
INSTITUTIONS - Courts - Procedural safeguards - Rights of the defence.  
INSTITUTIONS - Courts - Ordinary courts - Criminal courts.  
FUNDAMENTAL RIGHTS - Civil and political rights - Right to a fair trial.
3. Keywords in the alphabetical index :  
  
Fair trial / Criminal proceedings / Production of evidence / Prosecution witness / Anonymous witness / Undercover agent / Traffic in drugs.
4. Summary :  
  
Article 6 paras. 1 and 3 (d) of the European Convention on Human Rights, Art.4 of the Constitution; testimony of the undercover agent.  
Summary of the Case-law relating to the testimony of anonymous witnesses and undercover agents (recitals 2a-b).  
In this Case, the applicant ought to have been allowed to confront the undercover agent, more especially on the decisive question of the extent of his involvement (recitals para. 2c.).

<b>TURKEY - CONSTITUTIONAL COURT</b>
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NUMBER OF DECISIONS TAKEN : 13

Only 6 decisions were published in the Official Gazette. 4 Decisions were sent back to trial courts on procedural grounds. The Constitutional Court prepared written statements of reasons for 3 decisions. After the pronouncement of these decisions they will be made public and will be published in the Official Gazette.

The Court gave one important decision in this period :

1. Identification : Turkey - Constitutional Court - E.1992/36, K.1993/4, k.t.20.1.1993, Resmi Gazete (Official Gazette), 19.3.1993, p. 13-32.
2. Keywords of the systematic thesaurus :

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of Expression.

FUNDAMENTAL RIGHTS - Civil and political rights - Freedom of the Press.

FUNDAMENTAL RIGHTS - Governing principles - Limits and restrictions.

FUNDAMENTAL RIGHTS - Governing principles - Emergency situations.

4. Summary :

According to the 1952 Law on Workers and Employers in the Press Sector, the publication of newspapers is prohibited during the first days of two particular religious holidays. Instead of these daily newspapers, associations of journalists can publish newspapers on the actual days of religious celebration. If newspaper editors act contrary to the above-mentioned provision, they are liable to be punished according to the provisions of Law 5953.

The Constitutional Court held that the above provisions did not constitute a restriction on fundamental rights and freedoms, but rather a suspension of the exercise of such rights and freedoms. According to the Constitutional Court, it is only in emergency situations that freedoms can be partially or entirely suspended, or that measures may be taken to the extent required by the exigencies of the situation which derogate from the guarantees embodied in the Constitution, and providing always that obligations under international law are respected. Prohibition of publications of newspapers during religious holidays means the suspension of freedom of expression, of freedom of the press and of the right to publish periodicals; such a prohibition cannot be made unless emergency rule is declared. The notions of restriction and suspension are different concepts. Restriction means to limit the opportunities given to individuals to exercise their constitutional rights. However the suspension means the impossibility of the exercise of such freedoms or the obtaining of any benefit from the opportunities given to individuals in this respect. According to the court, the prohibition on publication of newspapers during religious holidays constituted a suspension of fundamental rights. For these reasons the provisions were in conflict with Articles 15 and 2 of the Constitution. Thus Articles 20 and 28 of the Law were declared unconstitutional and annulled.

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- Remuneration
- Resignation

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<sup>1</sup> Including the conditions and manner of such appointment (election, nomination, etc)

<sup>2</sup> Including the conditions and manner of such appointment (election, nomination, etc)

<sup>3</sup> Vice-presidents, presidents of chambers or of sections, etc.

<sup>4</sup> Persons or bodies vested with authority to prepare the case, e.g. Ministère public, auditorat, parquet, etc

<sup>5</sup> Registrars, assistants, auditors, general secretaries, researchers, other personnel, etc

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<sup>6</sup> E.g., assessors

<sup>7</sup> Registrars, assistants, auditors, general secretaries, researchers, other personnel, etc.

<sup>8</sup> Horizontal distribution of powers

<sup>9</sup> Vertical distribution of powers, particularly in respect of states of a federal or regionalised nature.

<sup>10</sup> Examination of procedural and formal aspects of laws and regulations, particularly in respect of the composition of parliaments, the validity of votes, the competence of law-making authorities, etc. Note that questions relating to the distribution of powers as between the State and its constituent organs are the subject of another keyword.

<sup>11</sup> E.g., validity of the petition for a referendum in Italy

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<sup>15</sup> Presumption of constitutionality, double construction rule.

<sup>16</sup> Separation of Church and State, State subsidisation and recognition of churches, secular nature, etc.

<sup>17</sup> Bicameral, monocameral, special competence of each assembly, etc.

<sup>18</sup> Presidency, bureau, sections, committees, etc.

<sup>19</sup> State budgetary contribution, other sources, etc.



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<sup>28</sup> This keyword allows for the inclusion of norms and principles arising from a separate constitutional chapter elaborated with reference to the original Constitution (Declarations of rights, Basic Charters, etc.)

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