



Strasbourg, 23 December 2014

CDL-JU(2014)021
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SEMINAR

**THE INTERNAL ORGANISATION
OF A CONSTITUTIONAL COURT**

Amman, Jordan, 10 December 2014

REPORT

**EXTERNAL AND INTERNATIONAL RELATIONS
OF THE CONSTITUTIONAL COURT**

by

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Introduction

I. Cooperation within the framework of proceedings (national, international)

II. Cooperation between courts (cooperation between the Constitutional Court and courts of general jurisdiction)

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Introduction

[1] Cooperation of the court is significant in:

- 1) organising the work of the court (ensuring the functioning of the court). Adequate funding, ensuring functioning of the court in practice, etc. are the first things that come to mind.
- 2) successful organisation of the legal proceedings;
- 3) high quality outcome – in preparing a reasoned and well-considered court ruling;
- 4) ensuring the authority of the court;
- 5) execution of the rulings. The enforcement of rulings depends not only upon the authority of the court. Sometimes the cooperation between the court and other institutions may be of importance in ensuring high quality enforcement. Even if it is not envisaged in law, unofficial involvement of the court (though, usually not on the level of judges) in the enforcement of the judgement (i.e., explaining the most accurate way for enforcing the judgement) is not only admissible, but even desirable.

I. Cooperation within the framework of proceedings.

[2] All issues linked to the legal proceedings, also “cooperation” within the framework of proceedings, is regulated only by the Constitutional Court Law and the Rules of Procedure of Constitutional Court¹, which are elaborated and adopted by the Constitutional Court itself with the absolute majority vote of the full panel of justices.

[3] Communication on behalf of the Constitutional Court is **formally** done by the court (full composition of justices), the President of the Court, a panel comprised of three justices or a justice. The law defines, who in the particular stage of the proceedings represents the Constitutional Court in communication with the persons involved in the case.

In practice other employees of the court are involved in this communication (cooperation): in the majority of cases – the assistant to the justice (prepares the draft document), the secretary of the court sittings (prepares the accompanying letters), the Secretariat (forwards information).

[4] As regards the relations of the Constitutional Court within the framework of a case, basically this is cooperation with the parties, with the summoned persons (invited persons), state and local government institutions, bodies or officials, the opinion of which should be heard in the case².

¹ Section 14 of the Constitutional Court Law:

“Section 14. Rules of Procedure of the Constitutional Court

The structure and work organisation of the Constitutional Court shall be defined by the rules of procedure of the Constitutional Court that are adopted with an absolute majority vote of all court members.”

² Section 22(3) of the Constitutional Court Law:

The law clearly defines the types of cooperation and communication, terms and other requirements.

According to the law, the parties are:

- 1) the applicant³;
- 2) the institution or the official, who has adopted the contested act (with this regard the jurisdiction of the Constitutional Court should be taken into consideration⁴).

The institutions or officials, or summoned persons, whose opinion might contribute to comprehensive and impartial examination of the case, are determined by the justice, who is preparing the case for hearing.

[5] To a certain extent, within the framework of the proceedings, cooperation with the official journal also takes place, since the law defines particular information⁵, which must be published in it within a specific term.

[6] Cross-border (international) cooperation is also possible within the framework of proceedings.

Thus, for example, in examining some cases the Constitutional Court has considered that hearing the opinion of a foreign specialist in the case could facilitate comprehensive and impartial examination of the case (for example, in the case regarding the prohibition set to a judge to be a member of a political party; in the case regarding Latvian – Russian boarder agreement).

[7] The Constitutional Court has not used the opinion by the Venice Commission in a case. However, this possibility is worth mentioning. I.e., upon the request of the Constitutional Court

“(3) At the decision of a judge any person may be recognised as an invited person if hearing this person’s opinion may favour the comprehensive and objective adjudication of a case.”

³ The right to submit an application is held by:

- 1) the President;
- 2) the Saeima;
- 3) not less than twenty deputies of the Saeima;
- 4) the Cabinet;
- 5) the Prosecutor General;
- 6) the Council of the State Audit Office;
- 7) a local government council;
- 8) the Ombudsman, if the authority or official, who has issued the disputed act, has not rectified the established deficiencies within the time period specified by the Ombudsman;
- 9) a court, on adjudicating a civil case, criminal case or administrative case;
- 10) the Land Register Office judge in performing an entry of immovable property or associated corroboration of rights thereof in the Land Register;
- 11) a person in the case of the fundamental rights being infringed upon as defined in the Constitution; or
- 12) the Judicial Council in the frameworks of jurisdiction established by law.

⁴ The Constitutional Court shall adjudicate cases regarding:

- 1) compliance of **laws** with the Constitution;
- 2) compliance of **international agreements** signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Saeima) with the Constitution;
- 3) compliance of **other regulatory enactments** or parts thereof with the norms (acts) **of a higher legal force**;
- 4) compliance of other acts of the Saeima, the Cabinet, the President, the Speaker of the Saeima and the Prime Minister, except for administrative acts, with law;
- 5) compliance with law of such an order with which a Minister authorised by the Cabinet has suspended a decision taken by a local government council; and,
- 6) compliance of Latvian national legal norms **with those international agreements** entered into by Latvia that is not in conflict with the Constitution.

⁵ A judgement of the Constitutional Court shall, not later than within 5 days after making thereof, be published in the newspaper “*Latvijas Vēstnesis*”. If the dissenting opinions of judges are appended to the case, they shall be published in the newspaper “*Latvijas Vēstnesis*” not later than within a period of two months after making of the Constitutional Court judgement. If a decision regarding initiation of a case has been taken, within three days after taking thereof [...] information regarding initiation of a case shall be sent to the newspaper “*Latvijas Vēstnesis*” for publication [...].

the Venice Commission provides *amicus curiae* on a particular case (providing answers to concrete questions put by the Court). For example, in 2013, *amicus curiae* was provided in two cases, upon the request of the President of Moldova Constitutional Court – in a case regarding the immunity of judges and in a case regarding the prohibition to use symbols of totalitarian regimes).

The Constitutional Court of the Republic of Latvia until now has not used this opportunity.

II. Cooperation between courts (cooperation between the Constitutional Court and courts of general jurisdiction)

[8] The cooperation and communication between the Constitutional Court and courts of general jurisdiction, i.e., “the dialogue” between the courts is aimed at the protection of human rights, safeguarding of the legal order and the constitutional order of the state. The dialogue (mutual communication) between the Constitutional Court and courts of general jurisdiction manifests itself in various types of cooperation of the courts.

I would like to single out three ways, in which the cooperation (dialogue) between the courts of general jurisdiction and the Constitutional Court manifests itself.

[8.1] The first type of cooperation is exchange of information between judges, lawyers (court employees) in connection with various issues of law. Conferences are one example of this type of dialogue. Publications in legal periodicals and constructive criticism in analysing court rulings is also a certain kind of cooperation.

[8.2] The second type of cooperation is reciprocal use of the case law.

The Constitutional Court, in preparing a case, *inter alia*, studies also the case law of the Supreme Court. References to it can be found in a number of Judgements by the Constitutional Court.

Whereas the judgements by the Constitutional Court and the interpretation of a particular legal norm provided in them⁶, as well as the interpretation of legal norms provided in decisions on terminating legal proceedings⁷ are binding upon the courts of general jurisdiction, as well as other state and local government institutions (also courts) and their officials, as well as upon natural and legal persons.

[8.3] The third type of cooperation (dialogue), which possibly, is the most complicated, is the dialogue with the framework of legal proceedings before the Constitutional Court.

On 30 November 2000 the Parliament adopted the law “Amendments to the Constitutional Court Law”. It granted to the Constitutional Court, alongside the right to conduct abstract control of norms, also the right to conduct concrete control of norms, and the obligation of courts to turn to the Constitutional Court upon finding that the applicable norm is incompatible with norms of higher legal force. These provisions entered into force together with amendments to the procedural laws.

The Constitutional Court received the first application from a court on 10 April 2003.

During the period from 2003 until 1 December 2014 the Panels of the Constitutional Court had examined 75 applications regarding initiation of a case, received from courts. On the basis of these applications 48 cases have been initiated (20 cases – on the basis of applications by the Supreme Court) and 27 decisions on refusal to initiate a case have been adopted. Until now, in view of the fact that a number of cases were combined and some cases are still pending, rulings have been adopted in 36 cases: 22 judgements (on the basis of Supreme Court applications – 9 judgements) and 14 decisions on terminating legal proceedings (6 decisions – on the basis of Supreme Court applications).

⁶ Constitutional Court Law, Section 32(2)

⁷ Constitutional Court Law, Section 29(2¹)

[9] Irrespectively of the breadth of opportunities for cooperation between the courts envisaged by the legislator, differences of opinions and legal discussions [irrespectively of the fact, whether these are included in court rulings or reasoned and substantiated opinions by lawyers (possibly, also – judges)] is a desirable and even a necessary kind of “dialogue”, having one aim – strengthening the state governed by the rule of law and protecting the rights of a person in an effective, independent and impartial court. A dialogue comprises reasoned analysis of court judgements and constructive criticism. In a democratic state governed by the rule of law it is not only admissible (as the freedom of speech), but even desirable (stimulates and promotes improving the quality, ensures the accountability of judges).

III. Cooperation outside the framework of proceedings

[10] Cooperation outside legal proceedings may be either formal (official) or informal (unofficial), international and national level.

Section 2 of the Constitutional Court Law envisages that “[d]irect or indirect interference in the activity of the Constitutional Court that is associated with a court case hearing shall not be permissible⁸”. This provision applies directly to the legal proceedings; however, it can and should be applied also to cooperation that takes place outside legal proceedings. Any actions, which can cause even the slightest doubt that these could influence the performance of the basic functions of the court, are not permissible.

1. National formal cooperation

[11] National formal cooperation: cooperation, which follows from the obligations directly defined in law or requirements that follow indirectly, it can also be based upon traditions.

[12] For example, the Constitutional Court Law directly envisages that the justices of the Constitutional Court (for the term of ten years) are **approved** by the *Saeima* (the Parliament). The justices are **nominated** for the office by three institutions (all three branches of power):

- 1) Cabinet of Ministers (the executive power nominates 3 candidates),
- 2) members of the Parliament (the legislative power nominates 3 candidates)
- 3) General Meeting of the Supreme Court (the judicial power nominates 2 candidates).

Both the Constitutional Court Law and the law “On Judicial Power” envisage that before justices are approved, the candidates for the office of the Constitutional Court Justice are heard by the Council for the Judiciary, which **submits its opinion** on them to the Parliament.

To ensure that this procedure takes place in due time, the law envisages that the Constitutional Court must inform the institution, which has to nominate the candidate for the office of the justice, at least three months in advance.

Justices **give their oaths** to the President of the State.

[13] Formally the law envisages concrete activities for each institution.

The question is: to what extent should the institutions cooperate in constituting the composition of the court.

The following traditions have evolved over the years:

- 1) Law envisages that the Parliament requests the Council for the Judiciary to provide opinion. However, the Constitutional Court itself informs the Council for the Judiciary in due time;

⁸ “Direct or indirect interference in the activity of the Constitutional Court that is associated with a court case hearing shall not be permissible”

- 2) Unless the case is exceptional, the institution or the officials, which nominate the candidate for the office of a justice, [unofficially] hear the opinion of the President of the Constitutional Court on what kind of legal specialist would be needed to ensure the best possible membership of the Court;
- 3) when the oath is given, then all members of the Court visit the President of the State. Both the employees of the Chancery of the President and the employees of the Constitutional Court are involved in organising this event (coordinating the date and time ect.).

[14] Elaboration, requesting and approving of the Constitutional Court budget.

The budget of the Constitutional Court is approved by the Parliament.

The draft budget is prepared by the accountant of the Court, taking into consideration instructions given by the President of the Court, and with the involvement of other persons authorised by the President. The draft budget is not approved by the Constitutional Court.

The draft budget is then submitted to the Cabinet of Ministers according to the procedure established by law. The law directly prohibits the Ministry of Finance from introducing any amendments in the requested budget and envisages the obligation both to the Cabinet of Ministers and the Parliament to hear the Constitutional Court in connection with the draft budget.

Thus, at the time when the budget is drafted and adopted, the Constitutional Court cooperates with other institution. And this cooperation is directly regulated by law.

Communication regarding the budget of the court outside the framework of law would cause unnecessary questions regarding the independence of the Court; therefore the Court should strive to be as transparent as possible in this process.

On the basis of my own experience I can say that successful drafting of the budget requires not only formal regulation by law, but also good traditions with regard to respectful (not formal) cooperation and that the opinion of the Court is heard and respected in this process.

2. National informal cooperation

[15] In view of the special status of the Constitutional Court, requirements regarding its independence, the communication by the Court should be transparent, proper, the Court should demonstrate self-restraint, should respect not only the requirement to be independent, but also to look independent.

In its formal cooperation, the Court should be cautious in selecting the methods and content of communication. In the so-called “informal” cooperation the Court should be particularly cautious.

The particular caution does not mean being “secretive”. Possibly, it even requires greater openness, to demonstrate the good aims of the Court and its ability to be independent and impartial.

[16] As regards the Constitutional Court of Latvia, I would like to distinguish the following types of informal cooperation:

- 1) conferences, seminars;
- 2) meetings with high standing officials;
- 3) cooperation with institutions of higher education;
- 4) cooperation with media;
- 5) cooperation with [Latvian] judges of international courts;
- 6) training.

[16.1] Conferences, seminars (participation, organising, supporting).

The Constitutional Court of Latvia organises an annual conference – one year it is national, and every other year – international. These conferences are linked to the Court’s anniversary

(9 December). Other courts link them to the beginning of the court year, which may be January or, in other courts (also at the Constitutional Court of Latvia), September.

[16.2] Meetings with high standing officials.

In a democratic state the principle of the division of powers not only separates the branches of power, but also comprises the requirement of their mutual cooperation, since all branches of power share one aim – to strengthen democracy in the interests of people. Sometimes dealing effectively with some issues requires also cooperation outside the procedure regulated by law.

The Constitutional Court, in receiving applications, often identifies problems that remain outside the framework of the initiated cases. However, these problems should be dealt with. Therefore the Justices of the Constitutional Court, for example, at the beginning of every year organise a meeting with the highest officials and, without the presence of the press and media, discuss issues that are important for the State, the problems identified in the applications, most appropriate solutions to these problems are proposed. During these meetings the Justices refer to the judgements already passed by the Constitutional Courts of other states. One of the objectives of these meetings is to prevent actions, which might be incompatible with the Constitution, without examining a case before the Court.

If other democratic states have encountered similar problems and their Constitutional Courts have already passed judgements not favourable for the legislator, then it is more effective to eliminate problems and incompatibilities before a case is initiated.

This kind of unofficial cooperation between the branches of power facilitates ensuring the rule of law in the country, at the same time proving the importance of international judicial cooperation (it helps to identify problems and find the most appropriate solution in a timely manner).

[16.3] Cooperation with institutions of higher education.

As in any other country, the Justices of the Constitutional Court are simultaneously faculty members at institutions of higher education. Thus, in the framework of the particular subject of studies the Court (Justices and employees) have the possibility to engage in effective communication with regard to relevant issues in legal science and discuss solutions to them. However, the Justices should be sufficiently restrained in this communication, not to overstep the limit, where it could be considered that a Justice has been impartial in a case, because he or she had commented on the case before it was adjudicated.

Students of the institutions of higher education are offered internship possibilities at the Constitutional Court, and this is mutually beneficial: on the one hand, it is a unique opportunity for students to participate in the process of developing legal science, and, on the other hand, it is an opportunity for the Court to identify the most talented future legal specialists.

The Court employees participate in scientific research projects. Currently a large-scale project, organised by the University of Latvia, has been running already for three years – the leading Latvian specialists of constitutional law and other branches of legal science are elaborating the first commentaries on the Constitution. Almost all Justices and employees of the Constitutional Court are involved in this project.

Every year the leading institution of higher education in Latvia – the University of Latvia – organises constitutional moot court. The Justices of the Constitutional Court and also employees are involved in the juries. The final event is usually held at the courtroom of the Constitutional Court.

[16.4] Cooperation with media.

Cooperation with media is important both for high quality and objective reflection of the Court's work and, likewise, for strengthening the Court's authority.

The Court usually communicates through its press secretary – both by providing comments, as well as by regularly preparing and distributing press releases on topical issues and all rulings by the Court.

In some cases the President, the Vice-President or the Justices communicate with media. The Justices communicate with media only in exceptional cases (it is not a common practice).

In each particular instance the most appropriate type of communication is selected, by assessing the need to inform society and the need to ensure the Court's authority, as well as not to give reasons for doubting the independence and impartiality of the Justices.

[16.5] Cooperation with [Latvian] judges of international courts.

In view of the fact that in preparing concrete cases not only rulings by the Constitutional Courts of other countries, but also the rulings by international courts, in particular – ECtHR, are taken into consideration, the Constitutional Court holds an annual meeting with the Judge of ECtHR from Latvia, to discuss relevant human rights issues.

[16.6] Training.

The Constitutional Court, to the extent possible, provides training to its employees, also the Justices. It also provides support to their process of education. Many legal employees combine working with PhD level studies. At the same time the Justices and employees of the Constitutional Court usually do not turn down requests to share experience on preparing high quality applications to the Court (this training is organised both for lawyers and judges).

3. International formal cooperation

[17] As regards the Constitutional Court, the following types of formal international cooperation can be identified:

- 1) cooperation with the Venice Commission;
- 2) membership in the World Conference on Constitutional Justice;
- 3) regional cooperation – the Constitutional Court as a member of the Conference of European Constitutional Courts;
- 4) bilateral cooperation.

[17.1] Cooperation with the Venice Commission.

Latvia has been a member of the Council of Europe “Commission for Democracy through Law” (Venice Commission) since 11 September 1995.

Former Presidents of the Constitutional Court are the independent member and the substitute member of the Commission.

Constitutional Court participates in the activities of the Joint Council of the Venice Commission:

- 1) three times per year reports on the topical issues in the court work, sending the most relevant court rulings, which could be of greatest interest to other states (from the vantage point of law and constitutional issues). These rulings are placed in the database of rulings by constitutional courts, maintained by the Venice Commission – CODICES. The Constitutional Court successfully uses this database in its regular work.
- 2) provides answers to questions put by other Constitutional Courts regarding examined cases.

Justices and staff of the Constitutional Court participate in conferences, seminars and trainings organised in cooperation with the Venice Commission.

The Constitutional Court organises international conferences in cooperation with the Venice Commission. This comprises both intellectual (participation of Venice Commission experts) and financial support by the Venice Commission.

[17.2] Membership in the World Conference on Constitutional Justice.

The Constitutional Court has been a member of the World Conference for Constitutional Justice since 2012.

The Constitutional Court has participated in all Congresses thus far, preparing and submitting information regarding issues to be discussed⁹.

⁹ For information:

[17.3] Regional cooperation.¹⁰

The Constitutional Court has been a member of the Conference of European Constitutional Courts since 2000. All these years it has prepared national reports on relevant topics. The last Congress was held in May of 2014 in Vienna. The topic of the congress: "The Co-operation of Constitutional Courts in Europe – Current Situation and Perspectives."

[17.4] International conferences.

Direct cooperation takes place by participating, preparing and giving presentations, listening to other colleagues discussing the most topical issues (in other countries) in connection with the topic of the conference.

Usually the informal communication during these events is very important.

[17.5] Bilateral cooperation

Perhaps this is the most effective type of cooperation, most directly aimed at reaching an outcome.

Personalities play a certain role in selecting a country of cooperation; however, the similarity of the legal systems, jurisdictions and relevant problems is decisive. Moreover, a topic for discussion, which pertains to issues relevant for both countries, is chosen.

[17.5.1] Latvia – Lithuania.

Almost since the establishment of the Constitutional Court (for almost 20 years) we meet every year with colleagues from the Constitutional Court of Lithuania. We usually prepare presentations and discuss jointly selected issues, we also discuss the cases examined in the previous year and the relevant issues of law.

[17.5.2] Latvia – other countries.

In July of the current year the Constitutional Court signed a memorandum of cooperation with the Constitutional Court of Ukraine. Currently the main task of this cooperation is to provide support to the Ukrainian Court, i.e., to provide intellectual support for increasing the capacity of the Court and its authority.

We also have a bilateral cooperation with the Constitutional Court of Armenia.

Next year we plan to renew our cooperation with the Federal Constitutional Court of Germany, which provided enormous support to the Constitutional Court when it just started its work.

In this respect, traditions play a very important role. Ukraine is the only state, with which an agreement of cooperation has been concluded. Cooperation with other countries is based upon traditions.

4. International informal cooperation

[18] As regards the Constitutional Court, the following types of international informal cooperation can be identified:

- 1) cooperation during international events;
- 2) hosting guests at the Constitutional Court;
- 3) training.

Delegation of the Jordan Constitutional Court in the IIIrd Confress (Seoul):

Judge Ahmad TBAISHAT,

Director of Public Relation and International Cooperation Nizar ALKHARABSHEH

Answers to the questionnaire of the IIIrd Confress:

http://www.venice.coe.int/WCCJ/Seoul/docs/WCCJ_Questionnaire-replies-e.htm

Topic of the IIIrd Congress: "Constitutional Justice and Social Integration"

Topic of the IIrd Congress: "Separation of Powers and Independence of Constitutional Courts and Equivalent Bodies"

Topic of the Ist Congress: "The influence of constitutional justice on society" and "The development of a global human rights jurisprudence"

¹⁰ Since 1996, the Venice Commission has established co-operation with a number of regional or language based groups of constitutional courts,

[18.1] Cooperation during international events.

This kind of cooperation, similarly to any other unofficial cooperation, to a large extent depends upon personalities, personal contacts and the ability to use opportunities and possibilities.

Sometimes during informal discussions solutions are found even with regard to particular cases examined by the concrete court.

The attitude taken by other colleagues towards a court and sometimes even the opinion about a concrete state to a large extent depends upon the ability or inability of particular persons to create [an appropriate] impression. Respect, regard, recognisability to a large extent depend upon personal contacts and informal relationships.

[18.2] Hosting guests at the Constitutional Court

By hosting guests I mean events outside the framework of conferences and bilateral cooperation.

The guests are not only representatives of Constitutional Courts. They are:

- 1) ambassadors of foreign countries, interested in the work of the Constitutional Court and cooperation between the states on the level of courts;
- 2) representatives of various international institutions and organisations, who are interested in issues, which are linked with the competence of the particular organisation (for example, human rights issues);
- 3) officials of other states;
- 4) lawyers, etc. from other states.

[18.3] Training.

This year we successfully implemented a training seminar lasting two full days for the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic. 16 employees of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, as well as representatives from UNDP visited the Constitutional Court.

During the seminar the colleagues from Kyrgyz Republic were informed about the jurisdiction and practice of the Constitutional Court, focusing in particular to the issues of fundamental rights protection and procedural issues.

The employees of the Constitutional Court also analysed the case law of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic and provided recommendations on improving the reasoning of rulings. The members of the delegation were given detailed information on the system of document flow in the Constitutional Court and the system for recording court sittings.

During the seminar the delegation of the Kyrgyz Republic was also given an insight into the experience of the Constitutional Court in dealing with administrative issues.