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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Memorandum on possible improvements
to the Documentation Centre on Constitutional Case-Law**

*based on a paper submitted by
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as part of her research on information and documentation*

TABLE OF CONTENTS

PART ONE

ANALYSIS OF THE SITUATION.....	3
1. BACKGROUND	3
2. AREA TO BE COVERED	4
3. CONSTRAINTS	4

PART TWO

ANALYSIS OF THE FINDINGS OF THE SURVEY ON NEEDS, AND CONSIDERATION OF ORGANISATIONAL AND OPERATIONAL SOLUTIONS FOR THE DOCUMENTATION CENTRE ON CONSTITUTIONAL CASE-LAW	6
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A. ANALYSIS OF THE SURVEY ON NEEDS	6
1. THE SURVEY ON NEEDS	6
2. USERS	6
3. SUMMARY OF USER NEEDS.....	8
4. GOALS	8
B. PROPOSALS RELATING TO THE GENERAL POLICY, ORGANISATION AND OPERATION OF THE DOCUMENTATION CENTRE ON CONSTITUTIONAL CASE-LAW.....	9
1. THE FUNCTIONS OF THE DOCUMENTATION CENTRE ON CONSTITUTIONAL CASE-LAW	9
2. RECOMMENDATION	10

ANNEXE

Table of States participating in the work of
the European Commission for Democracy through Law

PART ONE

ANALYSIS OF THE SITUATION

1. BACKGROUND

The idea of a Documentation Centre on Constitutional Case-law was first mooted at the time of the establishment of the Venice Commission. According to Jacques Robert, right from the outset the Commission was very much aware of the importance that the organisation and operation of such a centre could have not only for most Member States but also, and above all, for the countries of Central and Eastern Europe in the initial stages of the operation of their newly established democratic institutions.¹

As early as September 1991, at the meeting of the Working Group on Constitutional Justice, it was decided to establish a Documentation Centre to collect and disseminate constitutional case-law. Rick Ryckeboer and Pierre Vandernoot, *Référendaires* at the Arbitration Court of Belgium, conducted an initial study in late 1991 on "the establishment of a Documentation Centre on Constitutional Case-law" (CDL (92) 2) to make such case-law as widely available as possible. They were already talking about the creation of a database. The documentation was to be made up of the decisions of the courts and summaries of those decisions, a systematic thesaurus and an alphabetical index and explanatory notes on the constitutional system of each member state of the Venice Commission. They also recommended co-operation with the European Commission and Court of Human Rights, the Court of Justice of the European Communities, the United States Supreme Court and case-law research centres, but they left it to the Venice Commission to deal with questions concerning the human-resources and technical aspects of establishing such a Documentation Centre.

The Venice Commission then decided that the Centre should collect all court decisions in the original language along with summaries in English or in French, that it would be computerised, and that it would work together with the Max Planck Institute of comparative public law and international law in Heidelberg, the French study and research group on constitutional justice in Aix-en-Provence, and the documentation centres of the Court of Justice of the European Communities in Luxembourg and the European Commission and Court of Human Rights in Strasbourg.

Against this background, the Venice Commission started the publication in January 1993 of the *Bulletin on Constitutional Case-law*, reproducing summaries of decisions and providing information on the constitutional courts. The contributions are prepared by the liaison officers of the constitutional courts and other equivalent bodies in Europe, the United States and Canada, as well as the European Court of Human Rights and, henceforth, the Court of Justice of the European Communities. As pointed out in the 1994 activities report of the Venice Commission, "the *Bulletin on Constitutional Case-law* represents an important step towards the goal of a fully functioning Documentation Centre on constitutional case-law, which will collect the most important judgments of Constitutional Courts

¹ Jacques ROBERT, *La Commission européenne pour la démocratie par le droit, dite Commission de Venise*, in: *La CSCE: dimension humaine et règlement des différends*, Paris: Montchrestien, 1993, p. 255 (264).

and other equivalent bodies and make them easily accessible to any interested party. The Commission is firmly convinced that constitutional jurisdictions have a primary role to play in the consolidation of the rule of law and that it is of vital importance for democracies both old and new to exchange information and ideas in the field of judge made law. The *Bulletin's* aim is to foster such exchanges and to assist national judges in solving critical questions of law which often arise simultaneously in different countries".

From 6 to 13 July 1993, Ryckeboer and Vandernoot conducted a second study entitled "Study on the possibilities for improving and developing the *Bulletin on Constitutional Case-law* and on establishing a computerised database on this case-law" (CDL-JU (94) 2). In their view, today's jurist - and more generally anybody interested in knowing the sources of the law - is assailed by a mass of data which he has to manage as best he can. On top of the need for immediate information there is that for research assistance based on reliable documentation. They proposed the creation and dissemination of a computerised database on the basis of the information published in the *Bulletin on Constitutional Case-law*.

In their study, Ryckeboer and Vandernoot also touched on a new aspect of the documentation to be collected. As they saw it, the courts might be invited to communicate all their decisions on a regular basis to the Secretariat of the Venice Commission in Strasbourg, where they would be archived according to a simple system based on a chronological classification by country. The most practical solution, they suggested, would be for the official law reports to be sent to the Secretariat of the Venice Commission in Strasbourg as soon as they were published. As an interim measure the reports for previous years could be sent in the near future. If there was a long delay between the adoption of decisions and their official publication, the courts could send typed copies of their decisions in the meantime.

2. AREA TO BE COVERED

The activities of the Venice Commission fit in with the three basic principles of the Council of Europe: democracy, human rights and the rule of law. The Venice Commission focuses on questions relating to constitutions, legislation on constitutional courts and other related legislation (for example, legislation relating to citizenship, elections and national minorities).

The Documentation Centre's main area of work would be the case-law of the constitutional courts and other equivalent European and non-European bodies, the European Court of Human Rights and the Court of Justice of the European Communities.

3. CONSTRAINTS

Constraints may be linguistic, budgetary, computer-related or space-related.

a. LINGUISTIC CONSTRAINTS

To begin with, it is worth emphasising the international dimension of the project: the Venice Commission has thirty-two full members, five associate members and six observers. The decisions summarised in the *Bulletin* were originally published in more than 25 different languages. Very few

participating courts systematically have their decisions translated (usually into English).²

The Venice Commission conducts its work in English and in French. The *Bulletin* and the database of constitutional case-law (CODICES) are bilingual. Contributions to the *Bulletin* arrive in Strasbourg translated into English or French. They sometimes need to be adapted prior to being sent for translation, with all that implies in terms of delays and waiting periods while documents are checked.

b. BUDGETARY CONSTRAINTS

Article 6 of the Venice Commission's statute stipulates that expenditure relating to the implementation of the programme of activities and common Secretariat expenditure shall be covered by a partial agreement budget funded by the member states of the partial agreement.

The overall budget of the Venice Commission for 1995 stands at 8,626,000 FF. For 1996, it will probably be of similar proportions. At present, there is no entry for the Documentation Centre, except for the *Bulletin on Constitutional Case-law*.

c. COMPUTER-RELATED CONSTRAINTS

The Council of Europe is equipped with networked PCs. The word-processing software used is Wordperfect for Windows 5.2. In 1995, the Venice Commission acquired the MS-Access 2.0 and Folio Views 3.1 software, which will not be installed on the network until early 1996.

d. SPACE-RELATED CONSTRAINTS

At the present time, all the offices set aside for the Secretariat of the Venice Commission are in use. Only one office is set aside for the Documentation Centre.

² For example the Constitutional Courts of Slovenia, Croatia and Lithuania.

PART TWO

A. ANALYSIS OF THE SURVEY ON NEEDS

1. THE SURVEY ON NEEDS

The survey on needs was conducted through interviews (above all of in-house users at the Council of Europe) and questionnaires. The latter contained questions on the types of information and documents requested from the Venice Commission, the frequency of such requests, whether users are satisfied with the documents supplied and the services provided, any difficulties experienced in obtaining documents, deficiencies observed, changes in documentation requirements, other sources of information, familiarity with the resources and role of the Documentation Centre and services expected.

In all, 125 questionnaires were distributed (to liaison officers at the meeting of the Sub-Commission on Constitutional Justice in Lausanne, early July 1995) or sent to the following countries: France, Poland, Italy, Austria, Belarus, Belgium, Bulgaria, Canada, Luxembourg, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, the Netherlands, Norway, Portugal, Russia, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Great Britain, United States, Tunisia, Japan and South Africa.

2. USERS

The potential users of the *Bulletin* can be broken down into five categories:

- in-house users at the Council of Europe;
- legal practitioners (judges, lawyers etc.);
- law teachers and researchers;
- university librarians;
- liaison officers.

In-house users at the Council of Europe can obtain constitutions and the *Bulletin on Constitutional Case-law* at the Documentation Centre. The documentary holdings represented by the full texts of the decisions published in summarised form in the *Bulletins* and the collections of constitutional case-law of certain courts are not sufficiently well-known, notably in the Council of Europe's libraries. The libraries, for their part, are in favour of closer co-operation and would like more information on the Documentation Centre's holdings.

Questioned first about the ongoing computerisation of the *Bulletin on Constitutional Case-law*, the **teachers and practitioners of law** all consider it to be very useful and necessary, especially for facilitating and promoting research on constitutional law. But they are not all aware of this development. Many of them call for dissemination of the database on the Internet, stressing the ease of updating (teachers in the United States but also in Great Britain, France, Austria, the Netherlands and Belgium). As for CD-ROM, law teachers regard it as reliable, easy to use, rapid and more in demand than the dissemination of databases on diskette. But it must be borne in mind that some people have neither a CD-ROM drive nor access to the Internet.

Law teachers consult legal databases (LEXIS, Celex, RIS), obtaining documentation for France from, for example, the library of the National Assembly, the Constitutional Council or the GERJC (University of Aix-Marseille III), on the Internet or through informal networks of colleagues; they have difficulty obtaining foreign decisions, judgments and constitutional texts "for other than the major countries", and difficulty obtaining legal norms of Eastern European countries in translation.

The **university librarians** questioned considered the ongoing computerisation of the *Bulletin on Constitutional Case-law* to be very useful, but not all were aware of this development. Some (in Italy and Germany) favoured dissemination of the databases on the Internet and stressed the ease of updating.

The **liaison officers** all considered the ongoing computerisation of the *Bulletin on Constitutional Case-law* very useful and essential "for helping jurists concerned with constitutional questions". Like the database, the *Bulletin* is considered a unique source of information of its kind. As the Canadian liaison officer put it, "the electronic publication of the *Bulletin* would allow for better dissemination not only of the decisions themselves but also of constitutional texts in force in various member states. Moreover, it would enable the full text of the decision to be published at no additional cost. With the help of the automatic thesaurus and the usual computer search facilities, electronic publishing should also greatly facilitate consultation of the *Bulletin* and eliminate the systematic use of a pre-established detailed thesaurus." Some liaison officers favour dissemination of the database on the Internet and stress the ease of updating, (Canadian, French, Estonian, German, Russian and Slovenian liaison officers). The French liaison officer also proposed a question-and-answer forum on the Internet.

Liaison officers seek information on constitutional case-law at the Cujas library (Paris University I), Poitiers University (Juriscope), from the GERJC, at Montpellier University, from the Max Planck Institute and on the Internet. They consult the following legal databases: Judit (Belgium), Justel and Celex (European Communities), Juris (Germany), Lovdata (Norway), RIS/RDB (Austria), Italgire (Italy), Quicklaw, Westlaw, Nexis/Lexis, Infomart, Juridial, carl.org.database, Cornell University, Etalon and Garant (Russia), Bradoc and Swisslex (Switzerland).

As for the future structure of the Documentation Centre, most of those questioned were of the opinion that:

- it will be very useful, because it will be the only Europe-wide centre specialising in constitutional case-law. Demand for comparative constitutional law continues to grow, and constitutional case-law is difficult to obtain;
- the information will be centralised at a sole location, and this will simplify information requests and searches, as no other parties will be involved;
- access to information will be facilitated if the Centre is computerised and on the network;
- available documentation should be exhaustive and comprise more decisions than those published in the *Bulletin on Constitutional Case-law*; it should include the case-law of the Court of Justice of the European Communities in Luxembourg.

3. **SUMMARY OF USER NEEDS**

The survey on the documentation needs of users of the Documentation Centre shows that, on the whole, the various user categories have similar needs:

- the collection, filing, storing and dissemination of the full text of decisions of constitutional courts (full text computerised and available on the network);
- the creation of indexes;
- the collection, filing, storing and dissemination of the text of constitutions;
- the translation into English and French of foreign case-law;
- replies to specific questions;
- replies in real time to topical questions;
- a list of the names and addresses of persons specialising in constitutional case-law, by country;
- the creation of files;
- a documentation collection, also containing books and periodicals on constitutional case-law;
- user-friendliness, good telephone service, professional documentalists.

Law teachers also recommended that the Documentation Centre publish information notes on colloquies, seminars and conferences on constitutional case-law, that the Centre be connected to the Internet, that it issue a periodical information paper on "current holdings" and on activities undertaken, that provision be made for scanning the documents so as to dispense with paper copies and that the Centre be open to researchers (teachers, students).

University librarians want the Documentation Centre to make all decisions of European constitutional courts accessible, and they are also in favour of its being connected to the Internet. The questionnaires showed that university librarians consult legal databases like Lexis and that they have difficulty obtaining translations into a western language of the most recent decisions and case-law of Eastern European countries.

4. GOALS

In the light of user needs, the goals to be achieved are as follows:

- complete the database on constitutional case-law (CODICES) and disseminate it on the Internet, CD-ROM and diskette;
- connect the Documentation Centre to the Internet network;
- complete the existing documentation collection (decisions, constitutions); and

- set up an operational documentation centre to act as a question-and-answer service, provide translations and documents upon request, issue certain documents, such as an information bulletin on constitutional case-law and a list of addresses of specialists in this field, create files, be accessible to researchers and co-operate with other institutions specialising in the same field. The Documentation Centre would be a place where research could be done on comparative constitutional law using primary sources.

B. PROPOSALS RELATING TO THE GENERAL POLICY, ORGANISATION AND OPERATION OF THE DOCUMENTATION CENTRE ON CONSTITUTIONAL CASE-LAW

1. THE FUNCTIONS OF THE DOCUMENTATION CENTRE ON CONSTITUTIONAL CASE-LAW

There are two conceivable scenarios for its organisation and operation:

- 1) *The Documentation Centre operates independently*
- 2) *The Documentation Centre operates in partnership with the Council of Europe libraries*

Whatever the scenario, however, it will be necessary to employ professional documentalists, preferably with legal training. Before examining the various scenarios, it is essential to define the Documentation Centre's functions.

The Documentation Centre on constitutional case-law must have a paper copy of the full text of all the constitutions of the Venice Commission's full members, associate members and observers and of the other countries of Eastern Europe, and all the decisions published in the *Bulletin on Constitutional Case-law*. These documents will be provided to users upon request. At first, the CODICES constitutional case-law database might be forwarded on diskette and later disseminated on the Internet or on CD-ROM, depending on how the persons concerned are equipped. The database should also be made available to visitors of the Documentation Centre, along with instructions for use.

Connecting the Centre to the Internet as part of the COCONET network (cf. CDL-JU (95) 3) would enable a question-and-answer forum to be created, and the documentalist could conduct the information searches.

The documentalist could keep the list of addresses of constitutional case-law specialists up to date and produce a bulletin on conferences, seminars and colloquies held, and work carried out, in the field of constitutional case-law, which would be distributed with the *Bulletin on Constitutional Case-law*. He or she should be able to give assistance to researchers who make appointments to come and work at the Documentation Centre; the lack of space precludes opening the Centre to the public for the moment. The documentalist should also be able to operate a question-and-answer service by telephone. Of course, co-operation with the CSCEE in Chicago, the GERJC in Aix-en-Provence and the Max Planck Institute in Heidelberg would create a network of correspondents also including the liaison officers and universities. As for the problem of translating *in extenso* decisions of countries that do not submit an English or French version, the solution might be to call upon the services of the Council of Europe Translation Divisions as user needs arise. An information booklet describing the

Venice Commission's activities and giving details on the Centre, its documentation collection and its services should be produced and distributed not only at the Council of Europe but also among the universities and constitutional courts which are in contact with the Venice Commission.

SCENARIO 1

1) *Under this scenario, the Documentation Centre operates independently*

The Documentation Centre, operating independently, should first complete its existing documentation collection. To do so, it should gradually acquire the compilations of constitutional case-law of the Venice Commission's full members, associate members and observers, but it is quite possible that this will quickly pose a storage problem.

SCENARIO 2

2) *Under this scenario, the Documentation Centre operates in partnership with the Council of Europe libraries*

The partnership with the Council of Europe's human rights and main libraries would enable the Documentation Centre to operate more efficiently. The main library is computerised (CERES database), and it has periodicals, books on constitutional law and official gazettes. The Venice Commission's documentalist should have access to the CERES database and be able to consult it for users and to catalogue and index documents. The human rights library, also computerised, has periodicals and books on constitutional law, collections of constitutional case-law or their equivalent (Belgium, France, Germany, Italy, Portugal, Spain, Switzerland, European Commission and Court of Human Rights). The Venice Commission's Documentation Centre, working closely with the human rights library, could use the latter's collections of decisions while focusing on gathering collections of the decisions of the constitutional courts of Central and Eastern Europe that are more difficult to find. The documentalist could also create files on the basis of periodicals to which both libraries subscribe. Legal databases might be consulted through the intermediary of the main library, which has subscriptions with several different servers.

2. RECOMMENDATION

The two scenarios discussed here each have advantages and drawbacks. Under the first scenario, the Documentation Centre would not be able to benefit from the resources of its in-house environment at the Council of Europe. If it operates independently, it will have to acquire documents already found at the Council of Europe, which would be a waste of time and money and would detract from its operational efficiency.

The second scenario has a number of advantages: the Documentation Centre would be able to complete its documentation collection, it would benefit from the existence of in-house databases and subscriptions with servers for consulting outside databases, and it would use resources already present at the Council of Europe. After consideration of the improvements to the organisation and operation of the Venice Commission's Documentation Centre, it may be said that a partnership with the Council of Europe's human rights and main libraries would be the best solution.

As the resources of these two libraries form the Documentation Centre's in-house environment, they

constitute an essential addition to its own resources, thus helping to optimise its operations. The partnership between the Documentation Centre and the Council of Europe's libraries would also reduce operating costs. A survey on user satisfaction would need to be conducted after the new Documentation Centre has been in operation for one year.

Date : 01/08/08

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT**

Date of setting up/Date de création : 10/05/90

MEMBER STATES/ETATS MEMBRES	Date of accession Date d'adhésion
ALBANIA/ALBANIE (*)	
ANDORRA/ANDORRE	
AUSTRIA/AUTRICHE	10/05/90
BELGIUM/BELGIQUE	10/05/90
BULGARIA/BULGARIE	29/05/92
CYPRUS/CHYPRE	10/05/90
CZECH REPUBLIC/REPUBLIQUE TCHEQUE	01/11/94
DENMARK/DANEMARK	10/05/90
ESTONIA/ESTONIE	03/04/95
FINLAND/FINLAND	10/05/90
FRANCE	10/05/90
GERMANY/ALLEMAGNE	03/07/90
GREECE/GRECE	10/05/90
HUNGARY/HONGRIE	28/11/90
ICELAND/ISLANDE	05/07/93
IRELAND/IRLANDE	10/05/90
ITALY/ITALIE	10/05/90
LATVIA/LETTONIE	11/09/95
LIECHTENSTEIN	26/08/91
LITHUANIA/LITUANIE	27/04/94
LUXEMBOURG	10/05/90
MALTA/MALTE	10/05/90
MOLDOVA (*)	
NETHERLANDS/PAYS-BAS	01/08/92
NORWAY/NORVEGE	10/05/90
POLAND/POLOGNE	30/04/92
PORTUGAL	10/05/90
ROMANIA/ROUMANIE	24/05/94

(*) Membres associés jusqu'à leur adhésion au Conseil de l'Europe.

Date : 01/08/08

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT**

Date of setting up/Date de création : 10/05/90

MEMBER STATES/ETATS MEMBRES cont'd/suite	Date of accession Date d'adhésion
SAN MARINO/SAINT-MARIN	10/05/90
SLOVAKIA/SLOVAQUIE	08/07/93
SLOVENIA/SLOVENIE	02/03/94
SPAIN/ESPAGNE	10/05/90
SWEDEN/SUEDE	10/05/90
SWITZERLAND/SUISSE	10/05/90
TURKEY/TURQUIE	10/05/90
UNITED KINGDOM/ROYAUME-UNI	

NON-MEMBER STATES/ETATS NON MEMBRES	Associate Members Membres associés	Observers Observateurs
ARGENTINA/ARGENTINE		20/04/95
ARMENIA/ARMENIE	19/10/95	
BELARUS	24/11/94	
CANADA		23/05/91
CROATIA/CROATIE	11/12/92	
GEORGIA/GEORGIE	05/09/94	
HOLY SEE/SAINT SIEGE		13/01/92
JAPAN/JAPON		18/06/93
KYRGYZSTAN/KYRGHYZSTAN		20/01/93
RUSSIA/RUSSIE	10/10/91	
UKRAINE	14/01/94	
UNITED STATES/ETATS-UNIS		10/10/91
URUGUAY		19/10/95