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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**Second Congress of the Heads of Institutions
of the Association of Constitutional Courts using the French Language
(ACCPUF)**

Beirut, Lebanon, 10-13 September 1998

MEETING REPORT

Upon invitation by Mr Roland Dumas, President of the Association of Constitutional Courts using the French Language (ACCPUF) and President of the French Constitutional Council, Mr Schnutz Dürr represented the Venice Commission at the Second Congress of the Heads of Institutions of the ACCPUF in Beirut on 10-13 September 1998.

The ACCPUF counts 36 member institutions (Constitutional Councils, Constitutional Courts, Supreme Courts, and parliamentary bodies of constitutional control) which, at least to some degree, use the French language. During its meeting in Beirut, the general assembly of the Association admitted as full members, the Supreme Court of Cameroon and the Constitutional Courts of Rwanda and Slovenia. The Constitutional Tribunal of Poland and the Constitutional Court of Luxembourg, being observers, had not yet applied for full membership.

The main topics of the Conference were the presentation of a first draft of the Bulletin of the ACCPUF, the presentation of a draft Internet site of the Association and the choice of a topic for the 3rd Conference to take place in Gabon in June 2000. The topic chosen was « Access to the constitutional court: types of claim and pertaining procedure ».

The Internet site presented at the Congress is not yet operational. Funds for the establishment of a server are being sought from the *Agence de la Francophonie* and other sources. However, the data contained on the future site was distributed on CD-ROM. For the time being, the ACCPUF has not yet set up a database, which would feed the Internet site. In order to simplify the maintenance of the system, the Internet pages are edited manually.

Upon demand by the Secretary General of the Association, Ms Dominique Remy-Granger (CDL-JU (98) 18, 19), the 14th meeting of the Sub-Commission on Constitutional Justice with the liaison officers had agreed, subject to approval by the Plenary Commission, to permit the ACCPUF to use the Systematic Thesaurus and the structure of the *Bulletin on Constitutional Case-Law* of the Commission for its Bulletin and database/Internet site (CDL-JU (98) PV 14, Point 7 in Annex II)

In view of the upcoming Congress in September and a possible decision by the Plenary of the Commission only in October, the Secretariat of the Commission had agreed to the provisional use of the Systematic Thesaurus in the first draft of the Bulletin of the ACCPUF, under condition that the authorship of the Commission fully be made evident. Consequently, the logo of the Commission appears on the cover page of the draft Bulletin. The introduction to the Bulletin (Annex I) highlights the rights of ownership of the Venice Commission and acknowledges that the use of the Thesaurus depends on the approval of the Plenary Commission.

Participants underlined the high value of the co-operation of the Venice Commission with Constitutional Courts. It was pointed out that the advantages of using the Systematic Thesaurus and similar presentations in the Bulletins of both organisations are evident not only for the Courts participating in both bodies (Belgium, Bulgaria, Canada, France, Luxembourg, Moldova, Poland, Romania, Slovenia and Switzerland) but also to the researcher who would be able to use the same search strategies in both sources.

The Congress unanimously approved the use of the Systematic Thesaurus of the Venice Commission for the Bulletin and Internet site of the ACCPUF.

Several participants showed great interest in the publications of the Venice Commission and expressed the hope of being able to benefit from a systematic exchange of publications between the Venice Commission and the ACCPUF.

A N N E X I

INTRODUCTION

The Association of Constitutional Courts using the French Language (ACCPUF) was set up in April 1997, at the instigation of the French Constitutional Council and with the support of the French Language Office, with the aim of establishing a network of institutional co-operation and case-law information exchange between constitutional courts and other bodies responsible for reviewing the constitutionality of legal rules.

Among the means deployed to this end, it was decided to publish a yearly bulletin.

This is the first edition of the bulletin, prepared with the help of the French Language Office and the Ministry of Co-operation of the French Republic; we would also like to thank the staff of Juriscope in Poitiers who translated the judgments not originally published in French.

Our thanks also go to all those courts who sent in their contributions in good time. Those which could not be included in the present volume will be available as soon as possible on our Internet site.

A few introductory comments need to be made regarding this bulletin:

- Firstly, only the decisions in their original language versions may be considered as authentic documents. The translations printed below will have been approved by the courts but cannot be regarded as official texts.

- Regarding editorial choices:

Number of decisions published

Because the length of time since they set up a review of constitutionality varies so much between countries, some case-law files are much thicker than others and some countries are not covered in this bulletin for one of the following reasons:

- because their Court has not sent us any decisions relating to the principle of equality (the Supreme Court of Burkina Faso, the Supreme Court of Cape Verde, the High Council of the Republic of the Comoro Islands, the Constitutional Court of Djibouti, the Constitutional Court of Equatorial Guinea, the Constitutional Court of Mauritania);

- because their decisions arrived too late to be translated for this edition (Constitutional Court of Moldova);

- or because it was very difficult to establish contact, mainly because of unrest in the country concerned.

It has been decided to include all the decisions referred to in the reports of the delegations to the Congress, with the addition, wherever appropriate, of relevant decisions issued between the date of the Congress, i.e. April 1997, and April 1998.

However, in certain cases, the number of decisions quoted in the report was too great and a selection was made with the agreement of the Courts in question (Belgian Court of Arbitration, Supreme Court of Canada, Constitutional Court of the Ivory Coast, Supreme Constitutional Court of Egypt, French Constitutional Council, Romanian Constitutional Court, Swiss Federal Court).

However, all the decisions relating to the principle of equality can be found on the CD-ROM produced along with this bulletin.

Presentation of selected decisions

To make the text more readable and save paper, decisions have been reduced, wherever possible, to the essential passages relating to the principle of equality. This means that signatures, reasons given for other aspects of the decision and descriptions of the composition of the trial bench are all omitted.

Some courts sent in their own summaries of decisions dealing with the principle of equality. In this case it is their summary which is reproduced in the Bulletin.

However, in order to provide the reader with the necessary information to compare the editorial and procedural approaches of the different courts, the Bulletin does include the full text of one decision for each institution.

Sign-posting and codification of decisions

To help the reader find information in the paper version of the Bulletin or the accompanying CD-ROM and later on the Internet site data base, decisions are “sign-posted”, that is to say that they are given thematic or alphabetical descriptors which illustrate the content and the meaning of the decision.

These thematic descriptors are arranged in a hierarchical tree system, the thesaurus, while the descriptors in the alphabetical index list by default themes which are representative of the decision but do not appear in the thesaurus.

This sign-posting of decisions was based on the thesaurus devised by the Sub-Commission on Constitutional Justice of the Venice Commission. Formal approval of this re-use is currently being considered by the Commission.

It was decided to use the existing thesaurus for two main reasons:

The first is that ten or so of the member courts of ACCPUF take part in the Venice Commission and therefore already carry out these indexing procedures on their main decisions.

The second is that the codification proposed by the Venice Commission indirectly offers the member courts of ACCPUF a number of advantages.

Firstly, the standardisation of indexing methods means that members of ACCPUF can gain access using one and the same research tool to the case-law of the Courts of the member States of the Council of Europe and case-law of the European Court of Human Rights.

Secondly, this choice increases the potential for the case-law of the ACCPUF members to be accessible from now on to all the member countries of the Venice Commission as well as academics or professionals who use the Commission site.

Naturally, there is a price to pay for these advantages. The thematic management and development of the thesaurus is the sole responsibility of the Venice Commission which produces it (CODICES). Whenever courts (the Supreme Court of Canada, the Belgian Court of Arbitration, the Swiss Federal Court) have sent us documents classified according to other models, the CODICES classification has been added so that these search tools, which will be installed on the ACCPUF Internet, can be accessed using one and the same manipulation.

The long-term plan is for the courts themselves to sign-post their decisions and the Association would then simply collect them and put them on-line, translating the most important ones where necessary.

Content of Bulletin No.1

Bearing these details in mind, the framework proposed for Bulletin No.1 comprises two parts:

- firstly, relevant extracts from the thesaurus relating to the theme selected, the principle of equality: the headings taken from the documents are printed in bold type and accompanied by cross-references to related decisions in italics;

- the second part, which is by far the larger, contains the decisions, arranged by country in alphabetical order (the internationally recognised alphabetical order of the names of countries in their own languages) and in chronological order. Included are the relevant extracts from the decisions selected by the courts relating to the principle of equality and the full text of one decision illustrating the differences in the presentation of judgments from one constitutional review body to another.

Though it has benefited a great deal from the experience acquired by the Venice Commission, this is a first edition and a first attempt, which should be improved in future by taking account of the two conflicting aims which this exercise must reconcile as best it can:

- highlighting the diversity and wealth of approaches in case-law;
- providing people with easy and systematic access to them.

This paper version accompanies a version on CD-ROM which contains not only the content of the Bulletin but also the full text of all the decisions made available to us, in hypertext.

The database which can be consulted on the CD-ROM and on the Internet, includes the same type of information, but in all the areas with which the courts deal. There are also plans for major improvements to facilitate consultation of these services.

Finally, this entire effort of collecting, classifying and providing access to case-law will inevitably help to consolidate the network of co-operation and exchange between the constitutional courts of the French-speaking world which the Association aims to promote.

The Bulletin editorial team

Patricia HERDT
Dominique REMY-GRANGER

A N N E X II

7. Co-operation with the Association of Constitutional Courts using the French Language (ACCPUF)

Ms Dominique Remy-Granger, Secretary General of the ACCPUF presented the activities of the Association. The aim of ACCPUF is to exchange information between different Constitutional courts and similar bodies (Supreme Courts, Parliamentary bodies) using the French language. In order to facilitate this exchange, ACCPUF was willing to co-operate with the Venice Commission and wanted to use the structure of the Bulletin and the Systematic Thesaurus for its own bulletin and database.

Ms Dominique Remy-Granger considered that this co-operation could be of mutual benefit. The geographical area covered by the ACCPUF project included countries that normally do not have contacts with the Venice Commission. Through co-operation of the two bodies (ACCPUF and the Venice Commission) a wide exchange of information was possible.

The participants agreed that such co-operation was useful and should be encouraged. The values of democracy, human rights and the rule of law as reflected in the decisions of the participating courts could thus be made known in a larger geographical area. Mutual information of courts could only be beneficial. The rights of author of the Sub-Commission and the liaison officers had, however, to be safeguarded. The origin of the Bulletin and the Thesaurus had to be obvious to readers of the ACCPUF Bulletin and it had to be ensured that only the meetings of the Sub-Commission and the liaison officers had the right to make amendments to the Systematic Thesaurus.

Given the importance of the issue, Mr Tuori suggested submitting the issue of possible co-operation to the Plenary Commission for its approval.

The participants endorsed co-operation with ACCPUF. The structure of the Bulletin and the Systematic Thesaurus should be made available to the Association. The sole right of amendment had to remain with the Sub-Commission and the liaison officers. ACCPUF would be obliged to mention the origin of the structure and the Thesaurus as outlined in document CDL JU (98) 19.

The participants invited the Secretariat to start co-operation on an informal basis and to elaborate an agreement with ACCPUF. A final decision would remain with the Plenary Commission.