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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

MEETING OF THE WORKING PARTY ON CONSTITUTIONAL JUSTICE WITH THE LIAISON OFFICERS OF CONSTITUTIONAL COURTS AND EQUIVALENT BODIES (Venice, 6 February 1992)

DRAFT MEETING REPORT

The Working Party held its 2nd meeting with the liaison officers of Constitutional Courts and Equivalent bodies in Venice on 6 February 1992.

A list of participants will be found in Appendix I.

General

The Working Party had before it document CDL (92)2.

General comments were received on the idea of the establishment of a documentation centre on constitutional case law. These were uniformly positive. It was emphasised that in order to stabilise democracy the rule of law must be protected and promulgated; the documentation centre would be a very useful mechanism for this.

In most of Europe only during the last 50 years have constitutional decisions assumed importance. Stock must be taken of all of this now that new constitutional law develops, in order to draw on all the experience acquired in this field. The centre will be of immediate value and is a very timely idea.

A list should be drawn up of all that exists in the field of classifying and computerising information on constitutional law decisions both in the public and the private sphere.

The discussion of Documents CDL (92)2 followed the six major questions that formed the outline of the study.

Content of the Data Bank

A. Decisions

Several delegates questioned whether all decisions should be sent by a Constitutional court to the documentation Centre. They said that several thousand decisions may be given by a court in a five year period but only 40% of these may be important.

Nevertheless, it was decided that constitutional courts or courts of comparable jurisdiction should submit all decisions and interim decisions to the centre, since it is important to collect together all constitutional decisions in one centre. It was argued in fact that, should a court be invited to make a selection, it might underestimate the importance its decisions may have to a researcher in comparative constitutional law or to an interested court in another jurisdiction.

While Constitutional Courts would be requested to send in all their decisions, courts that have other competences (eg. Supreme Courts) would be requested to send in only decisions having constitutional relevance, even if they are formally based on statutory law.

Decisions should be sent in their original language. Courts should begin by sending their most recent decisions first and progressively work backwards in their case law. Courts should also send interim decisions.

B. Summaries

After a thorough discussion on the practical implications involved, the following conclusions were reached:

- The courts should accompany what they consider to be their important decisions with summaries containing key words.
- Courts having the resources to do so should be encouraged to forward their summaries in English or French; the Secretariat at the Centre would translate them into the other language.
- Courts lacking such resources should send their summaries in their official languages; translation into English or French would be undertaken by the Secretariat at the Centre.

II Selection of Summary Data

An attempt should be made to develop objective criteria by which courts could base their choice of which decisions they should accompany with a summary. It was also pointed out that many courts already make summaries of their decisions as a matter of course, but they differ from the model given as an example in Doc. CDL (92) 2 page 22. This problem can be overcome by making sure that the abstract that is written up contains common key words.

III The Systematic Thesaurus

A group of experts chosen among lawyers having specific experience in the field should be convened to draw up a thesaurus of key words which would take into account the different national constitutional systems.

A problem exists in the fact that there is not a common legal culture that would make legal terminology and concepts easily translatable.

IV Co-operation with Existing Centres

Existing research centres that could be helpful to the documentation Centre and could be interested in co-operating with it, such as the Max Planck Institute, the French Groupe d'Etudes et de Recherches sur la Justice Constitutionnelle and the documentation centres of the Luxembourg and Strasbourg Institutions should be identified. Co-operation agreements could be established with such centres; they would for instance disseminate information on the Documentation Centre, which in turn would relay information on their works of doctrine, bibliography, etc.

V Computerisation of the Centre

Efficiency and economy dictate that the Centre should be computerised from the very beginning.

VI Organisational structure of the centre and relations with the courts

The general outline presented in the document was endorsed in principle. However, it was recommended that the Commission should convene as soon as possible a meeting of the Presidents of the Constitutional Courts to obtain their consent to participate in the project and their undertaking to contribute the necessary resources.

Questionnaire (Annexe 5)

The following amendments were suggested:

- 1.a A distinction should be drawn between published and unpublished decisions.
- b The total number of decisions should refer to those given since 1945.
- c The question "how many characters per page?" should be added.

- 4.b The English wording should read "How is a decision generally cited in national legal theory?"

Replies were invited by mid-April 1992.

The Working Party asked its Chairman to report to the Commission on its conclusions and recommendations.

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS

**MEMBERS OF THE EUROPEAN COMMISSION FOR DEMOCRACY
THROUGH LAW**

**MEMBRES DE LA COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR
LE DROIT**

BELGIUM/BELGIQUE :

M. Jean-Claude SCHOLSEM, Professeur à l'Université de Liège

CYPRUS/CHYPRE :

Mr Michael TRIANTAFYLIDIS, Attorney General of the Republic

FINLAND/FINLANDE :

Mr Antti SUVIRANTA, President of the Supreme Administrative Court

FRANCE :

M. Jacques ROBERT, Membre du Conseil constitutionnel

GERMANY/ALLEMAGNE :

Mr. Helmut STEINBERGER, Director of the Max-Planck Institute,
Professor at the University of Heidelberg (Chairman)

ITALY/ITALIE :

Mr Antonio LA PERGOLA, President of the European Commission for Democracy through
Law, Member of the European Parliament

NORWAY/NORVEGE :

Mr Jan HELGESEN, Professor at the University of Oslo

ASSOCIATE MEMBERS/MEMBRES ASSOCIES

ROMANIA/ROUMANIE

M. Ioan LES, Membre du Parlement

OBSERVERS/OBSERVATEURS

U.S.A.

Mr Richard SCHIFTER, Assistant Secretary of State, Bureau of Human Rights and
Humanitarian Affairs

LIAISON OFFICERS/AGENTS DE LIAISON

AUSTRIA/AUTRICHE :

Mme Anneliese ELHENICKY, Conseillère à la Cour constitutionnelle,
Service de la documentation

BELGIUM/BELGIQUE :

M. Rik RYCKEBOER, Reférendaire à la Cour d'Arbitrage
M. Pierre VANDERNOOT, Reférendaire à la Cour d'Arbitrage

CYPRUS/CHYPRE :

Apologised/Excusé

FINLAND/FINLANDE :

Apologised/Excusé

GERMANY/ALLEMAGNE :

Mrs Sabine STUTH, Assistant to the President, Bundesverfassungsgericht

ICELAND/ISLANDE :

Apologised/Excusé

ITALY/ITALIE :

Apologised/Excusé

NETHERLANDS/PAYS-BAS :

Apologised/Excusé

POLAND/POLOGNE :

Mrs Halina PLAK, Head of the Library and Information Centre, Constitutional Court

PORTUGAL :

M. Miguel LOBO ANTUNES, Responsable du Service de Documentation, Tribunal
Constitutionnel

SPAIN/ESPAGNE :

M. Pedro BRAVO GALA, Directeur du Service de la Bibliothèque

SWEDEN/SUEDE :

Mr Johan MUNCK, Supreme Court Judge

SWITZERLAND/SUISSE :

Mr Paul TSCHÜMPERLIN, Director of Administration, Federal Court

TURKEY/TURQUIE :

Mr Mehmet TURHAN, Reporter, Constitutional Court

CANADA :

Apologised/Excusé

U.S.A. :

Apologised/Excusé

INVITED GUEST/INVITE D'HONNEUR

FRANCE :

M. L. FAVOREU, Président de l'Association française des constitutionnalistes, Directeur du
Groupe d'Etudes et de recherches sur la justice constitutionnelle de l'Université d'Aix-
Marseille

ITALY/ITALIE :

M. Elio ROGATI, Conseiller parlementaire, Chambre des Députés

SECRETARIAT

Giovanni BUQUICCHIO
Roberto LAMPONI
Madalen TEEPLE
Helen MONKS