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Seminar on

**"The budget of the Constitutional Court: a determining
factor of its independence"**

Sarajevo, 14-15 October 2004

**The Constitutional Court budget as one
of the guarantees of the independence
of constitutional justice**

Report

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A) The Financing (the Budget) of the Constitutional Court as the Basis of its Independence

Most constitutional/judicial review bodies have an independent budget¹ separate from the whole State budget, and they are fully independent concerning its control. In addition, the financing of some newly introduced Constitutional Courts (*e.g.* in the Russian Federation, Lithuania, Belarus) is regulated in greater detail than other formerly established Courts, *e.g.*:

Bulgaria: The Constitutional Court shall have an independent budget (Article 3 of the *Constitutional Court Act* of 30 July 1991).

Spain: Under the "second additional" Article of the *Constitutional Court Act No. 2/1979 of 3 October 1979*, the Constitutional Court proposes the budget, which is managed as a part of the whole State budget. The Secretary General of the Constitutional Court prepares the budget with the help of the Court administration; in addition, he implements the budget and prepares the closing balance.

Portugal: Under Article 5 of the *Organization, Activity and Proceedings of the Constitutional Court Act No. 28/82 of 15 November 1982*, the Constitutional Court disposes of its budget; which is adopted within the scope of "the general expenses" of the State budget.

Germany: Under Article 1 of the *Constitutional Court Act (of 12 March 1951 with amendments)*, the Constitutional Court has a more independent and autonomous position in comparison with other constitutional bodies. Therefore the Constitutional Court as a constitutional body is not financially subordinated to any ministry, but it is an autonomously managed and budgeted independent body. The Court budget may be adopted only as a particular autonomous plan to be included in the whole State budget. The Court may manage the budgetary funds independently. The budget is discussed and adopted by a plenary Court session (Article 1.2 of the *Rules of procedure of the Constitutional Court of 2 September 1975, amended on 5 December 1978*). Consequently, a Plenum of the Court forms a special Budgetary Council (Article 3.1.c of the *Rules of Procedure of the Constitutional Court*).

Hungary: The Constitutional Court draws up its own budget and submits it, as part of the State Budget, for approval to the Parliament (Article 2 of *Act No. XXXII of 1989 on the Constitutional Court*).

Austria: The Court budget is not regulated either by a statute or by rules of procedure or any other internal regulation of the Constitutional Court. However, the Court has its own budget in practice, as per agreement with the Ministry of Justice. The Court may manage its budget as a part of the whole State budget, adopted by the Parliament. The Court budget constitutes a special section of the State budget, similar to budgets of other State bodies.

Italy: Under Article 14.2.1. of the *Organization and Proceedings of the Constitutional Court Act No. 87/1953 of 11 March 1953*, the Constitutional Court may autonomously manage its expenditures within the scope of funding adopted by statute.

France: The funds required for the activity of the Constitutional Council are determined within the scope of the whole general State budget. The President of the Constitutional Council is empowered to provide budgetary expenses. (Article 16 of the *Decree on the Constitutional Council No. 58/1067 of 7 November 1958 with amendments*).

Belgium: The funds necessary for the functioning of the Court of Arbitration is allocated under the allocations budget (Article 123.1 of the *Special Law of 6 January 1989 on the Court of Arbitration*).

The Russian Federation: Under Article 124 of the *Constitution*, the courts are financed only from the Federal budget, thus providing for the complete and independent administration of justice in accordance with Federal Law. In addition, the *Federal Constitutional Law on the Constitutional Court of the Russian Federation of 24 June 1994* contains exhaustive provisions guaranteeing the activities

¹ Or not explicitly declared as an independent budget, but a part of the whole State budget, *e.g.* Article 30 of the *Constitutional Court of the Republic of Uzbekistan Act of 30 August 1995*, Article 11.1 of the *Constitutional Court of the Republic of Kyrgyzstan Act of 18 December 1993*; Article 39.1 of the *Constitutional Court of the Republic of Yakutia/The Russian Federation Act of 6 February 1992*.

of the Constitutional Court (Article 7 of the *Law*): the Federal Constitutional Court is independent of any other body in organisational, financial, and material and technical terms. Court funding is provided for in the federal budget and ensures the independent and comprehensive performance of constitutional judicial proceedings. The federal budget annually allocates the separate funding needed to ensure the activities of the Constitutional Court of the Russian Federation, and which is managed by the Court autonomously. Spending estimates of the Court may not be reduced as compared to a preceding financial year.² The Court autonomously and independently arranges information and personnel support for its activity. The property required by the Court to perform its activities and managed by it is federal property. The Court may vest the right to manage the mentioned property in the structural units comprising its staff. No restrictions of legal, organisational, financial, information, material, technical or other conditions on the activities of the Court, as prescribed by the present *Constitution*, are permitted.

Lithuania: The freedom and independence of the Constitutional Court from other institutions is ensured by financial, material, technical as well as organisational guarantees secured by law (Article 5-1.1 of the *Constitutional Court Act No. I-67 of 3 February 1993, as amended by Act No. I-1475 of 11 July 1996*). The Constitutional Court is financed from the State budget by ensuring the Constitutional Court the ability to independently and properly perform the functions of constitutional review. The estimate of expenditures must be approved by the Constitutional Court, which also independently disposes of the funds that are allocated to it (Article 5-1.2 of the *Constitutional Court Act*). The buildings and other possessions which are used by the Constitutional Court are State property transferred into the possession, use and disposal of the Constitutional Court on trust. These possessions may not be seized or transferred to other subjects without the consent of the Constitutional Court (Article 5-1.3 of the *Constitutional Court Act*). Restrictions of legal, organisational, financial, information, material, technical and other conditions of Court activities provided by the *Constitutional Court Act* are prohibited (Article 5-1.5 of the *Constitutional Court Act*).

Belarus: Guarantees of the activity of the Constitutional Court: Funding for the Constitutional Court is drawn from the budget of the Republic and guarantees the complete independence of legal proceedings before the Court. A separate item in the annual budget of the Republic provides for the funds required to guarantee the work of the Constitutional Court, and the Court is free to use those funds as it sees fit (Article 24.1 of *Constitutional Court Act No. 2914/XII of 30 March 1994*).

The premises required by the Constitutional Court to carry out its duties are the property of the Republic; the Court is responsible for their day-to-day management (Article 24.2 of the *Constitutional Court Act*).

Latvia: The Constitutional Court is financed from the State budget (Article 37 of the *Constitutional Court Act of 5 June 1996*).

Georgia: Under Article 4.2 of the *Constitutional Court Act of 31 January 1996*, expenses connected with the organization and activities of the Constitutional Court are determined by a separate section of the State budget. The President of the Constitutional Court submits a draft of expenses connected with the activities of the Constitutional Court by a proceedings determined by law.

Romania: Under Article 50 of the *Organization and Activity of the Constitutional Court Act No.47/1992*, the Court has its own budget as a part of the whole State budget. A draft budget must be approved by the judges of the Constitutional Court by a majority of votes and proposed for adoption to the Government and included in the whole State budget.

Croatia: Under the *Constitutional Court Act (Narodne novine, No. 13/1991, with amendments)*, the Constitutional Court has its own budget which is adopted as a special part of the State budget by the representative chamber of the Parliament on the proposal of the Constitutional Court.

Slovakia: The Constitutional Court has a separate section in the State budget (Article 77 of the *Act on the Organization of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the Status of Judges, of 20 January 1993*).

² See also a similar provision in Article 93 of the *Constitutional Court of the Republic of Azerbaijan Act*.

Turkey: The Constitutional Court, within the framework of the general budget, administers its own budget (Article 56 of the *Law of the Organization and Trial Proceedings of the Constitutional Court No. 2949 of 12 November 1983*). In the first instance, the President is responsible for covering expenses out of the budget. In the second instance, responsibility for expenses is assigned to the Secretary-General. Accounting is managed by the department of Accounts established within the Constitutional Court. The payment of expenses is administered by the Directorate of the Financial Department of the Court. The Minister of Justice, or by consent, the Secretary General of the Court participates in discussions relating to the budget and conducted before the Parliamentary Assembly. The President and members of the Court may not, however, be summoned to present oral explanations.

Ukraine: Financing the Constitutional Court is regulated by the State budget in a separate item (Article 31.1 of the *Constitutional Court Act*). Proposals as to the size of the budget of the Court as well as the draft of the respective estimate are submitted by the President of the Court to the Cabinet of Ministers of the State and the Parliament during the formulation of the proposed State budget for each following year (Article 31.2 of the *Constitutional Court Act*).

Slovenia:

The Slovenian system has the following general features:

- The special character of the *Budget Act*: The Slovenian system in force (under the *Referendum and Public initiative Act*) excludes from the referendum decision-making process all laws passed by the accelerated legal procedure, as well as laws implementing the adopted State budget (Article 10 of the *Referendum and Public Initiative Act*). As a representative body, the National Assembly also adopts the State budget (Article 148 of the *Constitution*; Articles 155 to 168 of the *Rules of Procedure of the National Assembly*).
- The Basic Principles of the State Budget: concerning the Principle of the Annuality of the State Budget, the Budget is adopted for one year and is valid for the year which it concerns (Article 2.8 of the *Public Finances Act*).
- The Principle of the Legality of the State Budget: Each year the National Assembly approves the budget as well as the budget account (Article 2.8 of the *Public Finances Act*).
- The Principle of the Universality of the Budget: All revenues raised and all monies expended for public purposes by the State must be accounted for in their respective budgets (Article 148.1 of the *Constitution*; Article 2.4 of the *Public Finances Act*). Where the budget of the State has not been officially adopted as and when due, the expenditures of the State are temporarily financed in accordance with the terms of the last preceding budget of the State (Article 148.2 of the *Constitution*; Articles 32 and 33 of the *Public Finances Act*).
- The Principle of Specialisation: A payment may only be made for the purpose the Budget Law has authorised such expenditure for (Article 2.6 of the *Public Finances Act*).
- The Public Nature of the Budget and the Accounts: For the budget and the accounts of the State to be approved by law, they must go through all stages of the legislative procedure, including publication in the Official Gazette RS (Article 154 of the *Constitution*).
- The Procedure for the Adoption of the State Budget and the Closing Balance in Slovenia: The *Rules of Procedure of the National Assembly* specify a special procedure concerning the adoption of the State Budget and the Closing Balance (Articles 155 to 168 of the *Rules of Procedure of the National Assembly*).³
- The general State Budget for the next year is proposed to the National Assembly by the Government at latest by 1 October of the then current year in the form of a proposal accompanied by a final report of the Court of Audit (Article 167 of the *Rules of Procedure of the National Assembly*). Amendments can be added to the proposed budget (Articles 157 to 161 of the *Rules of Procedure of the National Assembly*). After voting on the particular parts of the budget,

³ The budget does not determine the rights and responsibilities of citizens and other persons, so it is not in conflict with Article 87 of the *Constitution* if it is not determined in the Standing Orders of the National Assembly that the National Assembly must adopt it as statute (Constitutional Court of the Republic of Slovenia, Decision No. U-I-40/96, 3 April 1997, Official Gazette RS No. 24/97; *OdlUS VI*, 46).

depending on the situation, any necessary reconciliation takes place. In addition, the National Assembly votes on the State Budget as a whole (Article 162 of the *Rules of Procedure of the National Assembly*). During the year the Government may propose a Budget Adjustment which is adopted by the accelerated legislative procedure (Article 166 of the *Rules of Procedure of the National Assembly*).

- The Closing Balance concerning the previous year is proposed by the Government at latest by the session of the National Assembly at latest by 1 October of the then current year (Article 167 of the *Rules of Procedure of the National Assembly*). The National Assembly votes on the Closing Balance as a whole (Article 168 of the *Rules of Procedure of the National Assembly*).
- Techniques of Financial Supervision in Slovenia: This traditional method is exercised by means of approving the budget and the accounts of the State (Article 148 of the *Constitution*). The Court of Audit is the highest body for supervising state accounts, the state budget and all public spending (Article 150 of the *Constitution*).

The Budget of the Slovenian Constitutional Court: The material basis of the real autonomy and independence of the Constitutional Court also depends on autonomy as regards management of the budgetary funds. Therefore statute declares that the funds for the work of the Constitutional Court are determined by the National Assembly following the proposal of the Constitutional Court, and constitute a part of the Republic of Slovenia Budget (Article 8.1 of the *Constitutional Court Act*). The Constitutional Court is not dependent on the Government in proposing the budget, which otherwise proposes the State budget. The Constitutional Court decides on the use of the mentioned funds (Article 8.2 of the *Constitutional Court Act*). The Director of the Administrative and Financial Affairs Department has the right to issue orders for the implementation of the budget concerning the incomes and the outgoings of the Constitutional Court (Article 21 of the *Rules of Procedure of the Constitutional Court*).

Control of the use of these funds is performed by the Court of Auditors (Article 8.3. of the *Constitutional Court Act*), which is the body with the ultimate responsibility for auditing State finances, the State budget and monies expended for public purposes (Article 150.1 of the *Constitution*).

B) Other Guarantees

B.1 The Payment of Fees in Constitutional Proceedings as a Source of Constitutional Court Funding

Some constitutional court systems have introduced as an additional financial source fees payable when filing for proceedings before the Constitutional Court. However, the Court may exempt a citizen from paying such fees or reduce the fees depending on financial status (e.g. Article 39 of the *Federal Constitutional Law on the Constitutional Court of the Russian Federation of 24 June 1994*). Sometimes the fee may be explicitly excluded or the petitioners may be exempt from taxes, fees, and other such financial impositions (e.g. Turkey - Article 52 of the *Law of the Organization and Trial Procedures of the Constitutional Court No. 2940 of 12 November 1983*). The majority of systems have not introduced such fees on principle. On the other hand, prescribing a fee deters the abuse of petitioning or a payment of the costs of proceedings is explicitly foreseen in cases of frivolous applications (e.g. Austria, Georgia, Germany, Malta, Portugal, Spain, Switzerland).

Ukraine: The costs incurred by parties in constitutional examinations are compensated by budgetary funds as decided by the Constitutional Court of Ukraine (Article 59 of the *Constitutional Court Act*).

Slovenia: In proceedings before the Slovenian Constitutional Court each participant bears his own costs, unless the Court decides otherwise (Article 34.1 of the *Constitutional Court Act*). If a party fails to provide the necessary information for the Court due to unexcused absence, lack of preparedness or some other reason and, as a result, the hearing must be postponed, the Court may decide that the postponement of the hearing shall be at the expense of this party (Article 34.2 of the *Constitutional Court Act*). Petitioners pay court fees in accordance with a special statute (Article 34.3 of the *Constitutional Court Act*). Such a statute has not been passed to date.

B.2 The Powers of Constitutional Courts as Proof of their Independence

The extent of the powers of constitutional/judicial review bodies is as follows: in the traditional approach constitutional review bodies have no positive power in relation to the legislature. They may only be a negative legislature, whereas the role of a positive legislature is reserved for the Parliament. However, the negative powers of constitutional courts in relation to the legislature are also subject to certain limits, whereby the function of cassation of constitutional justice is limited by certain rights reserved for the legislative and the executive branch (*e.g.* the principle of judicial self-restraint, the *political question doctrine*).

Today, however, constitutional review decisions are no longer limited to the mere function of cassation, and the so-called positive decisions issued by constitutional courts are gradually gaining importance:

- One of these forms involves appellate decisions (Germany, USA), in which the Constitutional Court instructs the legislature (explicitly or implicitly, with or without a time limit) to adopt certain regulations in a particular domain. Recently certain countries have even imposed special provisions regarding the right of constitutional/judicial review bodies to instruct the legislature. Such a "positive" authorization of constitutional justice in a rather narrow form exists in the German, Austrian and Polish systems, and even more intensely in the Italian, Portuguese, Hungarian and Brazilian systems of constitutional/judicial review. The Portuguese Constitutional Court is provided with the express constitutional authorization to identify the existence of unconstitutionality due to an omission. This does not involve the fact that the proceedings of an abstract review of rules might reveal legislative omissions due to the insufficient or incorrect solution to a specific issue, but aims at direct and independent evaluation and identification of omissions caused by the legislature. The nature of the *Portuguese Constitution*, which imposes upon the legislature the obligation of legislative activity, has influenced the fact that the Portuguese Constitutional Court actually acquired such power. Considering the sensitive nature of this power, the Constitutional Court can only be active in the particular domain on the basis of the role of a narrow circle of legitimate petitioners. The Hungarian Constitutional Court, too, has jurisdiction to eliminate an unconstitutional situation that has developed due to some omission of a government body; proceedings can be initiated by the Constitutional Court alone or on the proposal of any government body or aggrieved person. The Brazilian constitutional/judicial review system features a special abstract complaint due to omission whereby government bodies, political parties represented in the Parliament and political organisations act as the main legitimate petitioners of the proceedings. At the same time, this system has a special individual complaint against an omission caused by the legislature (*mandado de injuncao*). The Italian constitutional review system is, above all, characterized by so-called creative decisions with which the Constitutional Court may even change or add wording to the regulation in question.
- Another factor of the decision-making process are the guidelines issued following a constitutional/judicial review; such guidelines for the future action of the legislature, the government and the administration may include appellate decisions, and partly also other decisions (decisions of abrogation, decisions of annulment, possibly also declaratory decisions relating to conformity with the *Constitution*). Sometimes such decisions already clearly indicate the essential point of the legal regulation, so that the legislature has only to elaborate the details and to provide for official adoption of the statute. This phenomenon is sometimes referred to as the negative legislative activity of constitutional courts or as the paralegislative or superlegislative activity of modern constitutional courts. Nevertheless, from a global point of view, positive decisions of constitutional justice are of a substitutional character. The extent of this function is proportional to the intensity with which constitutional rights are affected.
- The court may issue decisions on unconstitutionality with reservation or with interpretations created by the Constitutional Court itself (the interpretative decisions). In these decisions the Constitutional Court insures with its own interpretation that in the future the implementation of the statute complies with the *Constitution*.

One specific feature of the Slovenian system is the use of the so-called appellate judgment issued by the Constitutional Court, and of content-related guidelines. The novelty of the *Constitutional Court Act* is that it allows for the possibility of the Constitutional Court assessing whether the Legislature has

omitted a necessary legal regulation arising out of the *Constitution*. If the Constitutional Court determines that a statute, a regulation or a general act for exercising public powers is unconstitutional or illegal because a certain matter which it should regulate is not regulated or is regulated in a manner which makes it impossible to be abrogated either retroactively or prospectively, a declaratory judgment is adopted. The Legislature or the body that issued such an unconstitutional or illegal general act must abolish the ascertained unconstitutionality or illegality within a period set by the Constitutional Court (Article 48 of the *Constitutional Court Act*). In this way the *Constitutional Court Act* offers new possibilities (techniques, modes) of Constitutional Court decision-making, among which the Constitutional Court is free to choose when looking for an adequate form for its decision. Thus, for example, interpretative decisions are necessary and reasonable whenever in practice a disputed provision is understood and applied in several ways whereof certain ones are constitutionally acceptable and others are not. In such a case abrogation of the provision would not be reasonable because it would also affect those who have already applied the provision in conformity with the *Constitution*; accordingly, it is necessary to use the interpretative decision, through which the Constitutional Court preserves the disputed provision in the legal system in its undisputed extent or its meaning that conforms with the *Constitution*, at the same time indirectly eliminating from the legal system the use of the disputed provision if it is inconsistent with the *Constitution* (through the duty of all government bodies to act in compliance with any decision issued by the Constitutional Court).⁴

Irrespective of the above, the Constitutional Court in its relation to the Legislature usually follows the principle of self-restraint: the interpretation of the provision does not exceed its limits, *i.e.* there is no direct amendment or modification of the provision by the Constitutional Court.

B.3 Immunities, Incompatibilities, Material Independence, and Protocol Rank

Most systems recognise the immunity of constitutional court judges and certain systems recognise explicit parliamentary immunity (*e.g.* Bulgaria, the Czech Republic, Italy, Slovenia, Spain). The independent position of constitutional court judges also implies the recognition of the corresponding material independence, as well as the adequate protocol rank. The respective matter is regulated mainly by the *Constitutional Court Acts* (passed by the Parliament), and sometimes by special parliamentary regulations or by internal regulations adopted by the Constitutional Court.

A special feature of the office of constitutional court judge is its incompatibility with certain activities. In almost all systems the office of constitutional court judge is compatible with scientific and artistic activities, but incompatible with political and commercial activities. With reference to political activities there may be various grades of restrictions, ranging from the absolute prohibition of membership in a political party (*e.g.* the Czech Republic) to the prohibition of membership for a certain period prior to election (*e.g.* Austria) or to the prohibition of membership in the bodies of a political party (*e.g.* Slovenia). The prevailing opinion regarding the activities of constitutional court judges in public is that they cannot be exclusively closed within the circle of their institution and that their activities in public contribute to the transparency of the Constitutional Court as well as to the pluralism of opinions.

⁴ An indirect form of such power of the Constitutional Court was recognised by the *Constitution of 1974* in Articles 410 and 417. Nevertheless, in relation to the Legislature, the former system did not allow the abrogation of statutes or more severe forms of the relationship between the Constitutional Court and the legislature. Under Article 410 of the *Constitution of 1974* the Constitutional Court, however, had a certain "preventive function" of integrating current processes of coordination, complementing the further development of the legal system (along with consideration of the principle of the self-restraint of the Constitutional Court), hence the right and obligation to pursue the phenomena important for the implementation of constitutionality and legality, as well as to inform the Parliament of the situation and the problems in the respective domain and to provide it with the opinions and proposals for issuing, modifying or amending of statutes, as well as with other measures granting constitutionality and legality. It referred to the phenomena encountered by the Constitutional Court in the cases in which it had already adopted a specific decision, but thereby discovered that in practice the interpretation of the *Constitution*, the existing statutory regulations or the implementation of the *Constitution* or statute may involve certain ambiguities or gaps for which the statute or other legal measures should be modified or amended or replaced by an adequate measure. Under Article 417 of the *Constitution of 1974*, this applied also to the cases when the Constitutional Court discovered that the competent body had not issued a rule for the implementation of provisions of the *Constitution*, statute or other rule, although it had been obliged to do so.

Some significant systems in force are, as follows:

Georgia: Under Article 4.3 of the *Constitutional Court Act of 31 January 1996* the State is obliged to guarantee to a member of the Constitutional Court appropriate conditions for their work and life to ensure their independence. The State guarantees the security of members of the Constitutional Court and their family (Article 4.4 of the *Constitutional Court Act*). The social guarantees to the members of the Constitutional Court are regulated by special *Act No. 293-11G of 25 June 1996*.

Belarus: Guarantees of the independence of the Constitutional Court: The independence of Constitutional Court judges is guaranteed by their permanence of office, their immunity, their equal rights as judges, the procedure for the suspension and termination of the appointment of judges established by this Law, the right to a pension, the obligatory nature of the established procedure for constitutional legal proceedings, the prohibition of any form of interference in court activities, the guarantee of judges' material and social circumstances, and guarantees of security corresponding to their elevated status (Article 25.1 of the *Constitutional Court Act*).

The salaries of the President, Vice-President and judges of the Constitutional Court are determined on the same scale as that governing the salaries of the Chairman, First Vice-Chairman and Vice-Chairmen of the Supreme Council respectively (Article 25.2 of the *Constitutional Court Act*).

Constitutional Court judges not possessing living space, or who have flats with several tenants or need better accommodation for other reasons are to be granted comfortable, accommodation in the city of Minsk at the expense of the budget of the Republic, no later than six months after their election to the post of judge or the advent of the reasons mentioned hereinabove (Article 25.3 of the *Constitutional Court Act*).

If a Constitutional Court judge's term of office ceases before they reach retirement age or in the particular cases provided for in the *Constitutional Court Act*, they may, at their request, return to their former post or be offered equivalent work if the post is not available (Article 25.4 of the *Constitutional Court Act*).

The employment positions offered to former constitutional court judges is the responsibility of the Supreme Council of the Republic of Belarus. In this connection, the length of judges' service in the Constitutional Court is counted as part of the period of service completed in their previous work (Article 25.5 of the *Constitutional Court Act*).

Constitutional Court judges, including those who have resigned or retired, enjoy the guarantees provided for in legislation on the status of judges in ordinary courts. In the event of other legislative acts affording Constitutional Court judges greater guarantees of independence than provided for in this Law, the provisions of those acts shall apply (Article 25.6 of the *Constitutional Court Act*).

Ukraine: The Constitutional Court is the sole body exercising constitutional review in Ukraine (Article 1.1 of the *Constitutional Court Act of 16 October 1996*). Guarantees for the activity of judges of the Constitutional Court of Ukraine are as follows: the Independence of Judges (Article 27 of the *Constitutional Court Act*), the immunity of judges (Article 28 of the *Constitutional Court Act*), and the social and material provisioning of judges (Article 29 of the *Constitutional Court Act*).

Slovenia: The Position of the Constitutional Court in the National Hierarchy of the Courts: The Constitutional Court is the highest body of judicial power for the protection of constitutionality, legality, human rights and basic freedoms (Article 1.1 of the *Constitutional Court Act*).

Present Situation/Standard Legal Reference: The *Constitution of the Republic of Slovenia of 1991* again brought about changes in the position and powers of the Constitutional Court (Official Gazette RS, No. 33/91). The *Constitutional Court Act* (Official Gazette RS, No. 15/94) specified in detail the provisions of the powers and proceedings. A new *Rules of Procedure* were adopted last year (Official Gazette RS, No. 93/03).

Incompatibilities and Immunities: The following activities are incompatible with judicial function (Article 166 of the *Constitution* and Article 16 of the *Constitutional Court Act*):

- Holding office in government bodies;
- Holding office in local government;
- Holding office in political parties;

- Holding other offices and activities deemed incompatible with the office of a judge of the Constitutional Court, in accordance with the *Constitutional Court Act*.

As regards immunities, members of the Constitutional Court enjoy the same immunities as members of the National Assembly (Article 167 of the *Constitution*).

A judge of the Constitutional Court may not be held legally responsible for an opinion or a vote expressed at a public hearing or session. They may not be detained, nor may criminal proceedings be instituted against them without the permission of the National Assembly, unless the judge commits a crime for which a sentence of over five years is prescribed (Article 18 of the *Constitutional Court Act*).

Working Conditions of Constitutional Court Judges

a) Salary and allowances

The President of the Constitutional Court is entitled to a salary and additional payment based on his office equal to the amount determined for the President of the National Assembly. Judges of the Constitutional Court are entitled to a salary and an additional payment based on their office equal to the amount determined for the Vice-President of the National Assembly. The Constitutional Court determines the salary of the Secretary of the Constitutional Court. It is determined proportional to the salary of a judge of the Constitutional Court (Article 71 of the *Constitutional Court Act*).

Judges of the Constitutional Court are entitled to compensation equal to their proportional salary for the period of their annual leave and for the first 30 days of absence from work due to illness or injury (Article 72 of the *Constitutional Court Act*).

b) Employment period and social insurance

The time during which judges of the Constitutional Court perform their office is counted as part of their employment period. During the performance of their office as judge of the Constitutional Court, judges enjoy social insurance in accordance with the social insurance regulations for persons in permanent employment (Article 73 of the *Constitutional Court Act*).

c) Other personal incomes and reimbursements

Judges of the Constitutional Court are entitled to:

- Reimbursement of travel expenses to and from work,
- Reimbursement of expenses for business trips (a travel allowance, daily allowance, hotel expenses),
- An allowance for meals during work,
- An annual leave allowance,
- A displacement allowance,
- Reimbursement for costs incurred for travelling from the place of their business residence to the place of permanent residence and back,
- Reimbursement of expenses for moving from their permanent residence to their business residence and back,
- Reimbursement of training costs,
- A long-service bonus,
- A retirement bonus (Article 74.1 of the *Constitutional Court Act*).

Conditions for and the amount of allowances and reimbursements are determined by the Constitutional Court (Article 74.2 of the *Constitutional Court Act*).

d) Annual leave and other days off

Judges of the Constitutional Court are entitled to annual leave of 40 days (Article 75.1 of the *Constitutional Court Act*). Judges of the Constitutional Court are entitled to extraordinary paid leave not exceeding 7 days each year for personal reasons (Article 75.2 of the *Constitutional Court Act*). In exceptional cases Judges of the Constitutional Court may be allowed to take extraordinary leave not exceeding 30 days each year (Article 75.3 of the *Constitutional Court Act*). The conditions and examples mentioned in the preceding paragraphs are determined by the Constitutional Court (Article 75.4 of the *Constitutional Court Act*).

e) The rights of judges of the Constitutional Court after the expiration of their term of office

Judges of the Constitutional Court who, until their election as judge of the Constitutional Court, performed the office of court judge or some other permanent office in a State body, have the right, after the expiration of their office, to return to their previous office, if they fulfil all conditions for performing such office and if, within three months after the expiration of the said office, they notify the competent body of their wish to return to their previous function office (Article 76 of the *Constitutional Court Act*).

Judges of the Constitutional Court who, until their election as judge of the Constitutional Court, were employed in a State body, public company or public institution, have the right to return to their job within three months after the expiration of their office, or to another job corresponding to their education and their level of professional skill (Article 77 of the *Constitutional Court Act*).

Judges of the Constitutional Court whose office has expired and who, for objective reasons, are unable to perform their previous office, or who cannot find other suitable employment, and have not yet reached the age of retirement according to general regulations, have the right to compensation in the amount of the salary they received as a judge until such time as they find new employment or fulfil the conditions for retirement according to general regulations, but for no longer than one year after the termination of their office (Article 78.1 of the *Constitutional Court Act*).

The right to compensation under the preceding paragraph may be prolonged until the conditions for retirement are fulfilled according to general regulations, but for a period of no more than one further year (Article 78.2 of the *Constitutional Court Act*).

The period from the two preceding paragraphs is included in the employment period of judges of the Constitutional Court whose office has expired. During this period judges enjoy social insurance in accordance with the social insurance regulations for persons in permanent employment. If judges are entitled to annual leave during this period, they also are entitled to an annual leave allowance. They are entitled to a retirement bonus upon retiring (Article 78.3 of the *Constitutional Court Act*).

f) Wages, allowances, other incomes and reimbursements of other personnel of the Constitutional Court

The regulations which regulate the rights of officials in State bodies are applied *mutatis mutandis* when determining the rights of the Secretary of the Constitutional Court to receive wages, allowances, other incomes, reimbursements and other rights (Article 79 of the *Constitutional Court Act*).

The regulations which regulate the rights of officials in State bodies are applied *mutatis mutandis* when determining the rights of a director of a special service of the Constitutional Court or an adviser of the Constitutional Court to receive a salary, allowances, other incomes, reimbursements and other rights (Article 79.2 of the *Constitutional Court Act*).

The provisions of regulations concerning employees in State bodies are applied *mutatis mutandis* when determining the rights of other employees of the Constitutional Court to receive salaries, allowances, other incomes, reimbursements and other rights (Article 79.3 of the *Constitutional Court Act*).

B. 4 The Appointment/Election of Judges to the Constitutional Court

The influence of constitutional bodies upon the appointment or election of members of the Constitutional Court differs from system to system. The varieties applicable to elections or appointment of constitutional court judges are as follows:

1. APPOINTMENT BASED SYSTEMS (Without the Participation of a Representative Body).
2. ELECTION BASED SYSTEMS: As a rule Parliaments exercise greater influence upon the election of constitutional court judges as compared to the election of judges of ordinary courts.
3. MIXED SYSTEMS (Appointment and Election): With mixed systems, too, the role of the Parliament is prevalent and the role of the executive power is sometimes limited to a mere recruitment of the candidates.

4. **PREDETERMINED COMPOSITION FROM HIGH JUDICIAL OFFICIALS:** Because the body competent for constitutional/judicial review consists of representatives of the highest national courts neither the Parliament nor the government exert direct influence on the appointment of constitutional court judges.

The independent position of the Constitutional Court is further symbolized by the mode of appointment of the President of the Constitutional Court. Its independence is even greater if the President is appointed by his/her colleagues - constitutional court judges themselves (Italy, Belgium, Cambodia, the FRY, Slovenia, Spain, Tuba/Russia, Yakutia/Russia); otherwise, the President is appointed by a qualified body outside the Constitutional Court (Austria, Bashkiria/Russia, France, Germany, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Koma/Russia, Montenegro/the FRY, Northern Ossetia/Russia, Poland, Serbia/the FRY, the Serbian Republic of Bosnia, Tatarstan/Russia).

Nearly everywhere the qualifications and the required professional experience of constitutional court judges are subject to high standards: the candidates must not only have more than average legal expertise but also a high degree of sensibility for the political effects of their decisions. In practice constitutional court judges are selected exclusively from first-class lawyers with many years of experience, such as judges of ordinary courts, attorneys at law, senior government officials, professors of law, or politicians. Sometimes special qualifications are required (Belgium: command of the corresponding national language).

B. 5 Public Control/the Public Nature of the Activities of the Constitutional Court

The public nature of the activities of the Constitutional Court is declared by the *Constitution*, but mainly by the *Constitutional Court Act*. This principle may be realized in some different forms:

Public hearings;

Save where expressly provided by statute, all Court proceedings are conducted in public and all decisions are delivered in open Court (the public nature of court hearings; the public nature of delivering decisions). These public activities function as a control or supervision of the impartiality and legality of the decision making process. Beyond that, the *Constitution* sometimes provides for the so-called legal reservation: the exclusion of the public is reserved in order to protect the interests of a minor or public morality.

Slovenia: The activities of the Slovenian Constitutional Court are to be conducted in public in accordance with the *Constitutional Court Act* (Article 3 of the *Constitutional Court Act*). The principle of the public nature of the activities, declared by this provision, are of general importance concerning all kinds of proceedings; the purpose of the mentioned principle is to ensure a control on the activities of the Court to the parties of the proceedings and also other citizens (the unlimited circle of individuals). The respective function is ensured *e.g.* also by the statutory provision on public hearings before the Constitutional Court (Article 35 and 36 of the *Constitutional Court Act*). The constitutional Court may exclude the public from a hearing or part thereof on the grounds of protecting public morals, public order, national security, the right to privacy and personal rights (Articles 37 and 38 of the *Constitutional Court Act*). The public nature of the activities of the Slovenian Constitutional Court results also from some internal regulations or systems adopted by the Constitutional Court⁵ - the *Legal Information System of the Constitutional Court* introduced in 1987, the computerised database of

⁵ - Articles 4 and 39 of the *Rules of Procedure of the Constitutional Court* (Official Gazette SR, No. 10/74);
- Articles 39-41 of the *Regulation on Internal Office Administration* of 26 May and 7 July 1977 and of 16 January 1992;
- *Conclusions on the Assurance of the Public Nature of the Activities of the Constitutional Court Through the Public Media*
of 13 January 1983 and 24 December 1987;

Slovenian Constitutional Case-Law as a public database, in principle accessible to all users of legal information.

The publication of Court decisions in official gazettes, official digests, as well as in legal journals;

Slovenia: Providing information to the public concerning decisions of the Constitutional Court is, moreover, one of the functions, following the principle of the public nature of the activities of the Constitutional Court, set forth in laws and in other regulations⁶. The Constitutional Court applies this principle by publishing its decisions in official publications (Official Gazettes, *see* Article 42 of the *Constitutional Court Act* and Articles 68 and 72 of the *Rules of Procedure of the Constitutional Court*) and by allowing access to information on its decisions in its database.

Slovenian constitutional case-law has been published and offered to interested parties:

- in *Odločbe in sklepi Ustavnega sodišča* (the Official Digest of the Constitutional Court; Slovenian full text version, including dissenting/concurring opinions, and English abstracts) since 1992;
- in the *Pravna Praksa* (Legal Practice Journal; Slovenian abstracts, with the full-text version of the dissenting/concurring opinions);
- since 1 January 1987 via the on-line *STAIRS database* (Slovenian full text version; since 1963; English full-text version since 1992); for this purpose a special English-Slovenian glossary was created containing terms on constitutional law;
- the first original CD-ROM containing the Slovenian Constitutional Case-Law (in Slovenian) was issued in May 1998;
- since 1993 in the *Bulletin on Constitutional Case Law* of the Venice Commission of the Council of Europe (including English and French summaries of the most important current decisions), as well as in the *CODICES database* issued on CD-ROM (Slovenian and English full-text versions and summaries in English and French), <http://www.codices.coe.int>; <http://www.coe.fr/codices>;
- since August 1995 on the Internet (Slovenian constitutional case law since 1990 (full text in Slovenian as well as in English - <http://www.us-rs.si>);
- since 1998 on the homepage of the A.C.C.P.U.F. (the French Speaking Group of Constitutional Courts) (<http://www.accpuf.org>);
- since 2000 on the website of the Ius-Info database of constitutional case-law (abstracts and full texts of decisions) and literature (abstracts) in Slovenian since 1963 (<http://www.ius-software.si>);
- since 1995 some important cases in English full-text versions in the *East European Case Reporter* on Constitutional Law, published by BookWorld Publications, The Netherlands. The *East European Case Reporter* is available also on the Internet (<http://www.bwp-mediagroup.com/bookworld/eecrcl.htm>).

The circulation of information through several computerized information systems;

Legal information on constitutional review matters as supported by different means of communication or media, taking into consideration the principle of the public nature of the activities of any Constitutional Court, circulate from the Constitutional Court as a decision issuer, to the public, the potential petitioners before the Constitutional Court, who receive information which may motivate their new petitions. This stream of information constitutes a certain procedural circle due to the nature of proceedings before any Constitutional Court, which are in principle proposed proceedings (*jurisdiccio voluntaria*): only a permanent inflow of petitions to the Constitutional Court actually justifies the existence, function and activities of the Constitutional Court.

⁶ Article 3 of the Constitutional Court Act; Article 5, Para 2 of Article 37, Articles 6, 66 and 67 of the Rules of Procedure of the Constitutional Court; Official Gazette RS, No. 49/98, Articles 4 through 39 of the Regulation on Internal Office Administration; Conclusions on the Assurance of the Public Nature of the Activities of the Constitutional Court through the Public Media, adopted on 13 January 1983 and 24 December 1987.

Slovenia: The initial purpose of the legal databases of the Slovenian Constitutional Court was to provide more flexible processing of legal information, primarily constitutional case-law, as a support to the Constitutional Court in its decision-making processes. The activities of the Constitutional Court are conducted in public (Article 3 of the *Constitutional Court Act*; Articles 23 to 31 of the *Rules of Procedure of the Constitutional Court*). Therefore the corresponding databases were not created for internal users only (judges and legal advisers of the Court); from the very beginning they were intended for external users of legal information concerned with practice and theory related to constitutional review.

B. 6 The Independence and the Autonomy of the Organization of the Constitutional Court

Most systems of constitutional/judicial review allow for the organizational autonomy of the empowered body on the basis of the *Constitution* or on the basis of the *Constitutional Court Act*. This means they authorize the respective constitutional/judicial review bodies to follow their own rules regarding their internal organization. Special services of the Constitutional Courts are organized in a similar way: they consist of clerks and clerical staff, whereby the head of special services generally holds the status of a secretary general.⁷

Unless constitutional court acts especially provide otherwise, general labour laws apply to employees of the Constitutional Court (e.g. the Czech Republic - Article 10 of the *Constitutional Court Act*, Latvia - Article 40 of the *Constitutional Court Act*). In addition, in some systems constitutional courts may autonomously regulate the salaries of clerks and clerical staff, while the position of judges is regulated by the *Constitution*, or by a *Constitutional Court Act* (e.g. Slovenia - Articles 71-79 of the *Constitutional Court Act*; Latvia - Articles 38-39 of the *Constitutional Court Act*); Japan - Articles 50-51 of the *Court Organization Act No. 59 of 16 April 1947*; Turkey - Article 59 of the *Law of the Organization and Trial Proceedings of the Constitutional Court No. 2949 of 12 November 1983*), or by one special act (e.g. the Slovak Republic - Article 17 of the *Act on the Organization of the Constitutional Court of the Slovak Republic, and on Proceedings before Constitutional Court and the Status of Judges, of 20 January 1993*) or by many special acts (e.g. Georgia, Uzbekistan) or by general provisions regulating the position of State officers.

Some significant systems in force are as follows:

Belarus: The Constitutional Court independently acquires the information facilities and personnel required for its activities (Article 24.3 of the *Constitutional Court Act*).

The physical and technical resources required for the activities of the Constitutional Court, including means of transport and communication, are provided by the appropriate State bodies in accordance with a procedure established by the President of the Republic of Belarus with the agreement of the Constitutional Court.

The existing level of physical and technical resources required for the activities of the Constitutional Court may be reduced only with the consent of the Supreme Council of the Republic of Belarus (Article 244 of the *Constitutional Court Act*).

Latvia: The Constitutional Court freely and independently carries out information and organizational facilities procurement for its activities (article 5-1.4 of the *Constitutional Court Act*).

Ukraine: The Constitutional Court adopts acts which regulate the organization of its internal work in conformity with the *Constitutional Court Act* (Article 3.2 of the *Constitutional Court Act*) taking into consideration statutory provisions on the Research consultants and assistants of judges of the Constitutional Court of Ukraine (Article 25 of the *Constitutional Court Act*), and the Organization and activities of the Constitutional Court of Ukraine (Articles 30-37 of the *Constitutional Court Act*), which involve: organization (Article 30), financing (Article 31), the Secretariat (Article 32), standing

⁷ Some Courts have also established additional special services supporting the activities of the Court, e.g. the Constitutional Court of the Republic of Uzbekistan under the *Provisions on the Expert Advice Council of the Constitutional Court of the Republic of Uzbekistan of 5 July 1996*.

commissions (Article 33), temporary commissions (Article 34), the archive (Article 35), the library (Article 36) and the bulletin (Article 37). The organization of the activities of the Court is determined by the *Constitution*, by the *Constitutional Court Act*, as well as by internal acts of the Court.

Slovenia: The Constitutional Court of the Republic of Slovenia regulates its organization and work with its rules of procedure and other general acts (Article 2.2. of the *Constitutional Court Act*). A new *Rules of Procedure* were adopted on 15 September 2003 (Official Gazette RS, No. 93/03).

The administrative services of the Slovenian Constitutional Court consist of: the secretary of the Constitutional Court (responsible for matters of organization and legal knowledge and the director/assistant secretary (responsible for financial organizational matters) (Article 7 of the *Constitutional Court Act*).

The special services of the Constitutional Court consist of: law clerk staff, the Analysis and International Cooperation Department, the Documentation and Information technology department, the office of the registrar and the General and Financial Affairs Department. The Constitutional Court appoints advisers to the Constitutional Court from among legal and other experts (Article 7.3 of the *Constitutional Court Act*). The Constitutional Court may employ probationers in accordance with statute (Article 7.4 of the *Constitutional Court Act*).

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