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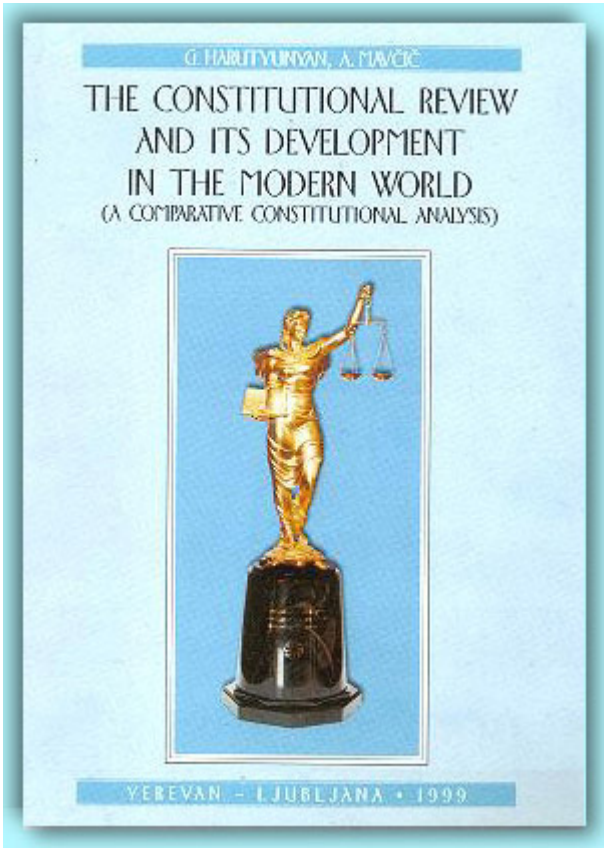
THE CONSTITUTIONAL REVIEW AND ITS DEVELOPMENT IN THE MODERN WORLD (A COMPARATIVE CONSTITUTIONAL ANALYSIS)



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The study presents a new concept of developing the system of constitutional review on the eve of the third millennium. The constitutional review is regarded as a fundamentally significant link in consolidating the immune system of a civil society and the state governed by the Rule of Law, as a necessary guarantor lending the social development the sustainability and dynamic features. Novel methodological approaches are suggested to evaluate the position and role of constitutional review in the mechanism of state authority.

A multidimensional time-space analysis has been performed on the establishment and operation of different systems of constitutional review based upon generalising the activities of over a hundred institutes of judicial and/or constitutional review, moreover, a comparative constitutional analysis of the system of constitutional review in more than 150 countries of the world has been carried out.

Lawyers, political scientists, economists, philosophers, wide-range specialists, theoretical and practical, will find in this work many interesting generalisations and new solutions to issues of social development.

Dear colleague and friend,

Please find enclosed our research devoted to some basic theoretical and practical problems of constitutional review.
We have attempted, on the basis of comparative analysis, to generalize the historical road of the formation and development of the system of constitutional review, as well as to present a view of the main issues that are important at the turn of the millenium.
It is our firmly held belief that constitutional review, as a comprehensive system, has a particularly important role in the sustainable and dynamic development of any society. It can be undoubtedly characterized as a pivotal link of immune system of the state and the social organism.
The study of the rich experience of various countries, in our opinion, has provided an opportunity to make certain generalizations worthy of attention.
It is with pleasure that we present this work to you and we hope that it will be useful for our cooperation with an aim to resolving of significant questions.
We would greatly appreciate your opinion and comments on the research and approaches therein.

Sincerely, 

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INTRODUCTION

Constitutional review has been in existence in some form throughout the history of mankind. One of the most impressive features of the 20th century has been the emergence of specialized institutes for judicial/constitutional review in more than one hundred-fifty countries. The exclusive and increasing role of constitutional review has resulted in a persistent demand for a scientific generalization of the problems of genesis of the new constitutional review systems, as well as their operation and development.

A major aim among the vital theoretical and practical problems of constitutional review is the definition of the position and role of the Constitutional Court within the system of state authority, as well as the establishment of the separation of powers between the legislative, executive and judicial branches.

It is common knowledge that polarized opinions exist on these issues not only in theory but also in the practice of constitutional review. Moreover, the lack of clarity and determinacy can impede the deployment of an efficient system of judicial constitutional review aimed at making social development sustainable and dynamic. This is rather characteristic of the newly emerging democracies, with the constitutional regulation of public relations having an incomplete character. In situations of this type, it is of crucial importance to clarify the role and position of constitutional justice within the system of state authority, as well as to provide the necessary and sufficient stipulations for their adequate operation.

Furthermore, the world community has currently embarked upon a new stage of development with interlinks and mutual effects becoming dominant, and general needs and approaches being formulated with regard to the newly instituted democratic values. That is why the system of constitutional review of each country has to meet certain general criteria. It is a persistent imperative to identify these criteria, so as to produce the theoretical analysis and formulation of a continuously operating system of constitutional review.

The constitutional review has acquired a particular importance as one of the pivotal links of the social organism's immune system[1]. The authors' approaches and suggestions along these lines provide new methodological capabilities for resolving many relevant issues with regard to the integral continuity of the state authority and the system of constitutional review.

It is also to be noted that constitutional review is a result of developing the theoretical thought in the twentieth century, many issues of theory and practice in this domain being evidently related not only to discrete, but also to systemic analysis and generalizations.

A major objective of this study is to facilitate the formation of a system of state authority that would securely provide the resolutions of the issues of supremacy of the Constitution, protection of the fundamental human rights and freedoms, establishment of the necessary provisions for the sustainable and dynamic development of society, with suppressed revolutionary factors and the processes of advance accumulation of negative social energy.

The authors' objective is to uncover the circumstances, premises and factors necessitating the establishment of an efficient system of constitutional review, which in turn will require a systemic approach in evaluating the achievements of constitutional review in the international practice, in identifying the unresolved issues and bottlenecks. The authors uncover the social, historical and

national features in individual countries to propose specific approaches, to establish an independent and efficient body of constitutional review.

On the basis of comparative evaluation and systemic approach, general regulations and basic rules, prevailing trends and the logic of developing the systems of constitutional review not only in developed countries, but also in countries of emerging democracy are revealed. The position and role of the bodies of constitutional review within the system of state authority have been uncovered.

Considerable effort has been focused upon a multifactorial evaluation of social experience, specific and relevant characteristics of constitutional review as well as communications between different bodies of state authority at differing stages of development with regard to state and society. The emergencies triggered by the transitional period will not only generate the social strains requiring special techniques for their neutralization but also will prompt original approaches to retaining the dynamic equilibrium with the society and securing the supremacy of the Constitution. Under these conditions, the constitutional review has to shape itself with regard to the specific features of the current situation and become operational as a crucial component of the society's immune system. The latter, in turn, has become the subject of multi-dimensional analysis in this work.

The authors are concerned with uncovering the internal logic of formation and functioning of the judicial constitutional review as a system. Examination has been done on basic disputable issues of constitutional review, with specific propositions advanced to improve the systems of constitutional review, particularly in the countries of emerging democracy.

A new concept of formation and development of a complete system of constitutional review on the turn of the 21st century has been substantiated based upon studying of many years' experience of the judicial constitutional review, many available models, identifying the features of transitional period, as well as a suggested technique of comparative constitutional analysis.

A classification of the basic forms of constitutional review has been developed, a complex analysis has been done of the features of preventive, ex post facto, concrete, abstract, selective, mandatory judicial constitutional review, a thesis has been substantiated on the optimal combination of the mentioned forms.

Comparative analysis of the experience gained by scores of the world's states helped to identify the basic regularities, prevailing tendencies and the logic of development of the system of constitutional review, as well as to suggest formulations for scientifically substantiated inferences involving the development of this institute. Also effected was classification and typological listing, uncovering the judicial systems of European countries, with regard to the relationship between the ordinary courts and the constitutional court. A thesis is advanced and substantiated that the Constitutional Court is the one of the few bodies of state authority having a direct responsibility of subordinating the policies to law, and the political actions and resolutions to the constitutional legal forms and requirements.

A new methodological approach is substantiated to the evaluation of the position and role of the bodies of constitutional review within the system of state authority based upon a multifactorial analysis of the legal nature and substance of the institute of constitutional review, its historical stipulations, evolution and dynamics as a universal factor of democratizing the society and state, the said bodies being regarded as the pivotal link of the immune system of a civil society and a state governed by the Rule of Law.

Substantiation is provided of basic principles and criterial elements for the formation of a valid system of constitutional review on the eve of the third millennium. Constitutional review is

examined not only from the viewpoint of exercising the judicial function, but also from the position of the public and state administration, as well as of the nation-implemented right to a direct discharge of state authority. A novel treatment is given to the inner logic of formation and development of the European system of constitutional review. Moreover, a new methodological approach is being suggested to the evaluation and analysis of stability in social development and in uncovering the position and role of constitutional review in this regard.

Many recommendations dealing with the functional relationship of individual branches of power, with the position and role of constitutional deterrents and counterbalances, can exert a substantial influence upon improving the institutional system of the bodies of state authority in the countries of emerging democracy and become useful in implementing the constitutional reforms.

Specialists of wide-ranging profiles, civil servants, lawyers, political scientists, economists and members of legislative bodies can gain knowledge in both general fundamentals as well as in organization and functioning of constitutional courts, their jurisdiction, operational modes and techniques, association with other institutes of state authority in different countries, make use of the authors' guidelines as well as of the suggested methods of comparative constitutional analysis in their work.

The authors would like to express their appreciation to Professors G. Schwarz, M. Baglai, G. Maltsev, and the Members of the Center for Constitutional Rights of the Republic of Armenia for useful consulting and discussion of the relevant issues.

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Chapter I. The Legal Nature, Stages of Development and Functional Characteristics of the Major Models of Constitutional Review

An Introduction to the Nature of the Origin and Function of Systems of Constitutional Review

One source of constitutionality is the tendency to limit the absolute powers of monarchs. This entails the process of establishing material constitutionality, which is older than the formal legal meaning of constitutionality. Under the influence of the philosophy of natural law, the definition of material constitutionality was developed, which states that the basis for any political system must be the recognition of basic human rights, and above all personal freedom and private property. Under this theory these rights are older than the State and have to be protected even against the State itself. Therefore power must be limited by legal regulation. In addition, the ability to appropriately implement such power is fixed in such a way that basic human rights are guaranteed. The principle of material constitutionality has to be realised on the basis of a written constitution which must include the mentioned basic elements, i.e. the limitation of power - it should be limited by an objectively determined legal system - and the recognition of basic human rights as well as sources of powers within the public sovereignty. If the written constitution does not have such elements, such a system can be treated as merely formal legal constitutionality.

Constitutionality is a political principle which partly finds expression in the normative function of law, partly in real social existence. It entails a mechanism of political relations and powers as well as legal counterweights and guarantees by which the self-interest of power has to be limited. Constitutionality should not be treated statically, because it can change. Therefore we can speak about constitutionality and the constitution as a unique principle which finds complete expression in

the written constitution. Material constitutionality is the structural essence of each democratic political system.

The introduction of constitutionality was based on the appropriate level of maturity of sociopolitical circumstances, which finds expression in the consideration of the following principles: the basic rights of humans and citizens, the principle of national sovereignty and the principle of the separation of powers. The principle of constitutionality involves a democratic source of power (the general voting right), the recognition of basic human rights, as well as the organization of the highest State bodies.

The written constitution is, in principle, the most important legal and political remedy for the implementation of constitutionality. Therefore it is necessary for the functioning of each democratic political system that a constitution is implemented. Only in a definitely democratic political system can the implementation of constitutionality and legality be provided. There is no constitutionality without democracy and vice versa.

The objective of extraordinary significance for a harmonic development of society is an operational system of state authority, a prerequisite of mutually agreed activities of the legislative, executive and judiciary authorities, a distinct constitutional delimitation of their authority and review of their administration.

A fundamental value of the society is unquestionably the supremacy of law, ideas and principles of which are targeted against an autocratic rule. The attributes inherent to a state governed by the Rule of Law, i.e. the primacy of law, separation of powers, respect for human rights, accountability of power, democratic rule, et al., date back to classical antiquity.

In a democratic society, the purpose of making laws is to guarantee and implement the human rights and freedoms, with reasonable restrictions on the use of authority, as well as to establish a contingency of challenging the laws at the level of the Constitution, to verify their constitutionality, i.e. their conformity with the law.

Separation of powers, indispensable for a civil society and a democratic state, will in the meantime put forward an objective to retain the constitutionally instilled balance of relationships among different authorities by triggering the relevant mechanisms of deterrents and counterbalances, to provide the dynamism and a sustained social development. This objective is feasible only with an operational full-scale system of constitutional review. Made sure on that point long ago were many countries having a developed statehood as well as the newly emerging democracies.

As underscored by G. Ellinek, to be regarded as legal is only a state where **a legislator is subject to law like any other citizen** (italics by the authors). S. Kotliarevsky, a renowned Russian jurist, assigned a special role to the establishment of an independent, politically uncommitted court[2].

The top principle of existence and functioning of the democratic society and a state governed by the Rule of Law is the supremacy of the Constitution, which is at the same time the principal concept of constitutional review.

Supremacy is an attribute implanted into the Constitution of the topmost common priority of its validity instituting the legal acts hierarchy, which identifies the Constitution as the basis of law making and binding the law-enforcement body.

The basis for this is the nature of the Constitution as a legal act of constituent effect having a common priority in excess of the legal effect of any other prescriptions issued by public authority, inasmuch as this authority is constituted by the Constitution itself.

In order to fulfill this role, the Constitution itself should not be in contravention to the highest principles of Law; it has to incorporate them into itself[3]. Constitution is the law of justice, rather than a mechanical linkage of accepted statements.

The Constitution is a fundamental legal substance, intended not only to establish the institutes of authority, to ascertain their competence and order of relationships, but rather also to secure the restrictions on the excessive use of power, to envisage such limitations for the state authority that generate a close connection, copartnership and mutual responsibility of the state and person for the administration of society, while mostly taking their origin from everyone's freedom and the aggregated volition of all. The Constitution determines a correlation of powers and the basics of their interrelations aimed at providing a permanent dynamic development of society. The correlation of powers has a discrete nature, while its forms and limits are envisaged by the Constitution, the only manner of its legitimization being the free will of the electorate.

The Constitution is intended to outline the boundaries of law and to provide it with an inherent determinacy. That will in turn advance a contingency to produce a functional institutional system of intra-constitutional auto-protection.

The ultimate will of the union of citizens is configured within the relevant supreme law of the state, binding at the same time, using a legal effect, not only the state being constituted, but also the society constituting the state. This is what amounts to the manifestation of the institutionalizing character of the popular sovereignty, its legal indication being the constitutive will of the citizens providing the inherent legal bond between the social environment and the state, since the latter will never be able to become part of that environment.

The supreme law of a Rule of Law state, having a constitutive force and thus placed above the state itself, as well as the legal basis for the formation and exercise of public authority and state empowerment, by virtue of possessing the attributes of this level of generality and abstraction, that would provide the means, given the absence of protecting devices, to transfer the gravity center of public authority to the legislator, thus replacing law with statute, this supreme law presumes the function of preserving the Constitution as the state governed by the Rule of Law's supreme function having a reviewing character. In actual practice, the social organism will acquire a sort of an immune system of self-protection that will dynamically provide a functional equilibrium of the society. The constitutional review is actually becoming the core of the immune system of the social structure.

The contents and forms of constitutional review are not identical in different legal systems. The constitutional review, a specific function supporting the supremacy of the Constitution, cannot be the main function of the bodies empowered to adopt legal acts, which in turn can become the objects of constitutional review. Therefore, the power to ensure the constitutionality of regulatory acts cannot be entrusted to the parliament. In countries with the constitutional status of the head of state integrated with that of the chief executive, the function of upholding the constitutionality can be charged to this official, however only within the supervision of administrative acts. Thus, the constitutional review can be enforced only by the bodies that, by virtue of their independence from the public authorities can resolve the legal conflicts in the most unbiased way.

This power cannot be enjoyed by the institutes of social structure having legislative or executive functions. Constitutional review is featured within the framework of deterrents and counterbalances,

its main purpose being the disclosure, assessment and rehabilitation of the disrupted balance. Constitutional review admits no irrational reproduction of functional violations or accumulation of negative social energy, which by gathering the critical momentum can produce a new quality by explosive means. In actual practice, that amounts to an option between the dynamic, evolutionary or revolutionary development. The constitutional review is called upon to exclude the revolutionary features or social emergencies.

The history of constitutional review counts many centuries. Its character, implementation philosophy, forms and methods, organizational systems have undergone serious changes and are currently in the stage of active improvement. The main idea is that the insurance of harmonic activity of the bodies of state authority is not something invariable, but rather requires continuous review of the system stability. Therefore, the role of constitutional review can be compared with the role of the immune system in the human body. In the social organism, likewise, an emerging immune deficiency may trigger a system collapse from any draught.

The bodies of constitutional review perform this type of role primarily by securing the supremacy of the Constitution, resolving the litigations arising in the system of state authority in respect of jurisdictional disputes, and, not the least important, by establishing guarantees of legal regulation of political conflicts emerging within the society.

In other words, constitutional review is a means and a contingency to ensure the stability of society by consecutive and continuous character of its development. This role is implemented by examining, uncovering, stating and removing the discrepancies with the regulatory acts of the Constitution, in the course of which the bodies of constitutional review are empowered to cancel the uncovered divergences, the determining link among those bodies being the institute of the judicial constitutional review[4].

Constitutional review is also an incentive to continuous improvement of the system of state authority and harmonizing coordination of the continuously varying public relations.

Constitutional review generates a taste for state-oriented thinking as well as a needed quality of social consciousness. It plays a serious preventive role, when acting in a distinctly recognized way, it stimulates both the bodies of state authority as well as each individual member of society to the legally and constitutionally acceptable way of life.

The concept of constitutional review is directly associated with the availability of the Constitution, retaining the constitutionally established forms and principles securing the instituted balance of empowerment by different entities of authority, as well as with the assignment of securing the constitutional guarantees of protecting the human and social rights and freedoms. Thus, the principal mission of the constitutional review is to secure the supremacy and stability of the Constitution, to retain the constitutional separation of powers and to guarantee the protection of the constitutionally established human rights and freedoms.

A question will arise: what kind of review of the basic rules of social behavior was there at the time when there was no constitution? Often the example of England is cited where formally there is no institutional system of constitutional review. Does it then mean that the review as a way of retaining the balance defining the public relations is nonexistent? To provide answers to those questions, it is necessary first of all to separate the review, which is in some way formalized and arranged, from the non-systemic or so-called "legally, functionally unregulated review". There is a rightful opinion that in early Christianity the supervision of the authorities was the duty of the Church, it was most probably a moral review over the rulers. A long period of reformation in Western Europe resulted in

an understanding that something else is needed rather than moral review. A lengthy search produced a technique of legal review over the authorities[5].

The situation radically changed when the laws of social behavior found a constitutional formulation. The logic of development of social life prompted a constitutional and legislative adjustment of state administration, separation of powers and harmonic shaping of their activities, introduction of new system of values to the relationships between the society and personality.

Under this situation, the retention of an adequate system of review over the basic rules of social life necessitates constitutional review as a pledge of a sound and sustainable development of society.

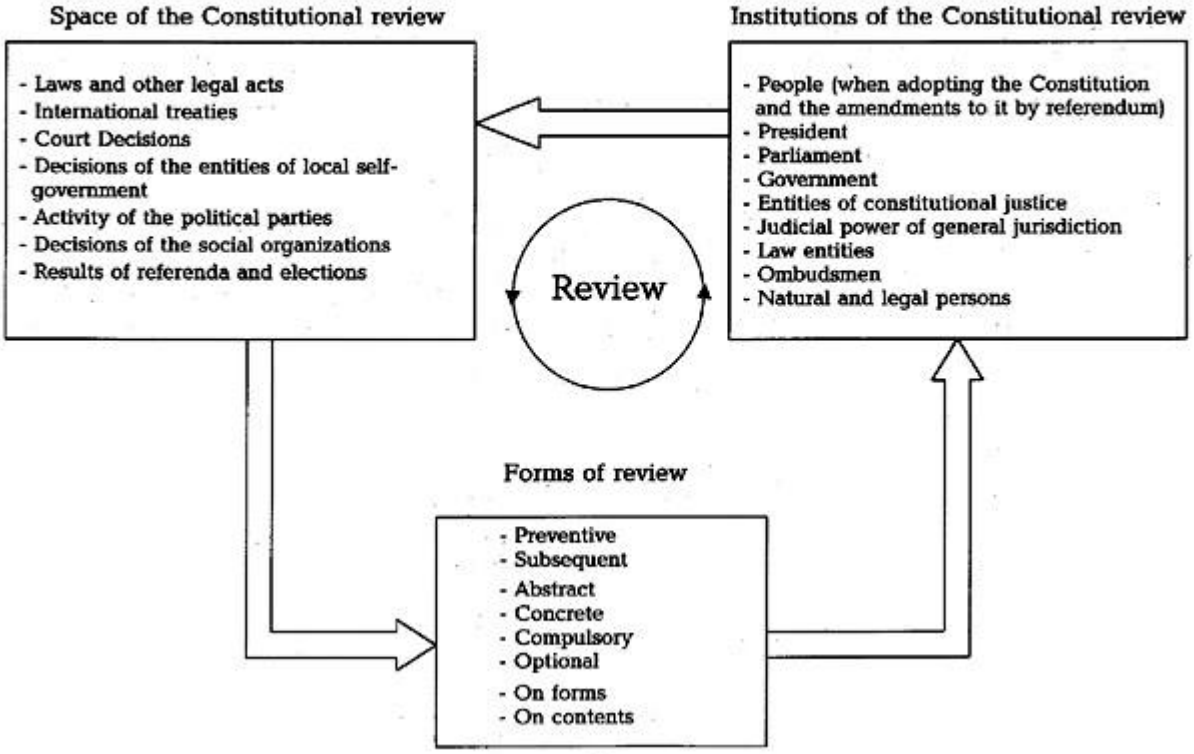
What is then the constitutional review as a system? More often than not many authors circumvent this issue by silence or by identifying it with the judiciary system of judicial review. We shall return to diverse aspects of this issue further on. Two significant points need to be noted here. First of all, the constitutional review is not restricted only by the framework of judicial review. What also needs to be considered is the functional role of the legislative and executive authorities, and the order and traditions of retaining the moral, national and spiritual values. Secondly, the constitutional review, taken as a system, as a totality of complex and harmonically interacting bodies having differing powers, can exist and efficiently function only with certain preconditions. Those having prominence include: the constitutional adjustment of public relations, the establishment of democratic principles of the development of society (this type of system is meaningless at the time of revolutions or dictatorships), independence of review, its universal character, accessibility to the members of the society, openness of the constitutional review, etc. (see Diagram 1).

Of fundamental importance is the condition of the system integrity, explicit functional interconnection between its major components, rational interaction supporting the system dynamic balance, as well as the institutional balance of the system of constitutional review. The study of international experience in the formation and operation of the system of constitutional review in the 20th century, as well as the situations developing in the countries of emerging democracy clearly show that many problems of constitutional review are unfortunately being considered and resolved in a discrete way which does not always produce desirable results. With regard to the particular significance of an efficient system of constitutional review, the following chapters consider this issue from a variety of points.

The development of different systems of constitutional review can be divided into two major stages. First: prior to the constitutional regulation of public relations, when the retention of the rules of social life was not so much an objective of the legal sphere but rather a problem of ethics, morals, spiritual development and tradition. Second: within the last two centuries, when the developing public relations prompted the need to bring the life of the people and the state to a more orderly condition, when adoption of the Constitution, recognition of its supremacy and its protection became a fundamental exigency. That was the way of building a civil society demanding not only a social accord with regard to the rules of social behavior but an operational system of protection and review as well.

Diagram 1

CONSTITUTIONAL REVIEW: THE SYSTEM AND DEVELOPMENTS



Historical Stages in the Development of Systems of Constitutional Review and Particularities of Their Basic Models

A. History

The establishment of supreme judicial bodies for the protection of constitutionality and legality is not an invention of contemporary legal systems, but is rather related to the development of constitutionality, in particular on the European continent. Constitutional/judicial review has passed through several characteristic development stage[6]:

The Development up to World War I

Ancient Athenian law distinguished between a *nomoi* (which might in a certain sense be compared to contemporary constitutional laws), and a *psephisma*, which in present times might be called a decree[7]. The fundamental principle was introduced that the decree (a *psephisma*), whatever its contents, could not conflict with the *nomo* in either form or substance. Two consequences attended the enactment of an unconstitutional *psephisma*. First, the member of the legislature who had proposed the illegal decree incurred criminal liability, which gave rise to a public right of action. Second, *psephismata* that were in conflict with the *nomoi* were considered void. The Athenian judges, although in principle obliged to decide cases on the basis of both the laws and the decrees, were bound by the latter only in so far as they were consistent with the former.

Certain elements of constitutional review go back as far as the year 1180, i. e. to the old German Reich. At first the corresponding judicial bodies dealt primarily with jurisdictional disputes between individual rulers and partly even with infringements of rights. Certain elements of constitutional review kept emerging under different forms throughout German legal history, until it was introduced in the present sense of the word with the *Weimar Constitution*. Preliminary forms of constitutional review existed in France by the middle of the 13th century. Portugal introduced its constitutional review in Philips Code in the 17th century. More serious projects of

constitutional/judicial review appeared in the *Constitutions* of Norway, Denmark and Greece in the 19th century.

In 1867 the Austrian Federal Court acquired the jurisdiction to deal with jurisdictional disputes concerning the protection of individual political rights *vis-a-vis* administration; the State Court, on the other hand, made decisions on constitutional complaints (*Staatliche Verfassungs-beschwerde*).

Although some initial elements of constitutional review can be seen already in the *Federal Constitution of Switzerland* (1848), the Swiss Federal Court acquired broader powers only with the modification of the *Constitution* in 1874.

In Norway constitutional review originates in jurisprudence dating from 1890. Romania introduced constitutional review before World War I following the American model.

While the modern English legal system knows no constitutional review, English legal history does include some of its elements, i.e. the principle of the supremacy of the *Constitution* dates back to 1610 and is of essential significance for the development of constitutional review in England. Another example of an English contribution to this development is the impeachment originating in the late Middle Ages. Ideas about the supremacy of the *Constitution* and the right to judicial review spread from England over to the United States. There, already at the end of the 18th century, the Court proclaimed individual English Acts null and void on the territory of the North American States. However, according to the 1789 *Constitution* the Supreme Court as the highest Federal Court did not have any express constitutional powers. The decisive impact on the development of constitutional review was exerted by the famous *Marbury* v. *Madison* Case (1803), in which the Supreme Court arrogated the power of judicial review concerned with the conformity of statutes with the *Constitution*. This gave a basis for the enforcement of the power of the American Supreme Court to carry out the judicial review of statutes. Although the next similar case appeared in this Court only in 1857, the way to the constitutional review of regulatory measures had already been paved[8]. This enabled the power of the American Supreme Court to be applied for a judicial review of a law. This decision actually recognized as unconstitutional the part of procedural law adopted by the Congress in 1789 that referred to the powers of the Supreme Court (paragraph 13)[9]. Chief Justice John Marshall produced a classical formulation by asserting that "the judiciary logically and of necessity had the power to make final and binding interpretations of the law.. The Law that is incompatible with the Constitution is invalid"[10].

The American Supreme Court created the grounds for the new institution in practice, i.e. the judicial protection of constitutionality. Such an American system of constitutional review was adopted primarily in some particular South American countries. Some of them explicitly determined the matter by their constitution. In Europe, except in some Scandinavian countries, such a system of (indirect) judicial review of constitutionality could not be introduced because of the too high reputation of the legislative bodies.

Exclusive from the point of view of the history of constitutionalism and particularly of historical development of constitutional review is the *Constitution* written by Hakob and Shahamir Shahamirians under the title of *"The Trap of Vanity"* in 1773-1788. This work containing 521 Articles and presented following the theory of natural law is essentially, the first Constitution harboring an idea of a particular specialized court, "the High Court", that would have a mission, in a contemporary meaning, of implementing a judicial constitutional review.

The French, on the other hand, have clung tenaciously to the idea that no judicial body should be given the power to review the conformity statutes with a supposed higher law. The legislature, therefore, as the voice of popular sovereignty, was seen as the best guarantor of fundamental rights.

From the standpoint of the development of constitutional review in continental Europe, France has always been against the notion that the acts of superior bodies and especially of parliamentary assemblies, as representatives of national sovereignty might be subjected to review by the judiciary[11].

The Development between the Two Wars

The development between the two Wars is referred to as **"the Austrian period"**. The *Constitution* of 1920 marks the foundation of the Austrian Constitutional Court with the exclusive power to review the constitutionality of statutes (at first, however, only of a preventative nature), following the work of the Austrian legal theorists Adolf Merkl and Hans Kelsen.

Following the example of the Austrian model, before World War II constitutional review was introduced in the following countries: Czechoslovakia (1920), Liechtenstein (*Staatsgerichtshof*, 1925), Greece (1927), Egypt (1941), Spain (1931) and Ireland (1937). The trend to broader enforcement of constitutional review was interrupted by the War and the already founded institutions failed to become active in practice (e.g. from 1933 through 1945 Austria was without constitutional review, after 1938 Czechoslovakia was without constitutional review).

The Development after World War II

Constitutional review in the proper sense of the word, taken from the theoretical point of view, was able to develop only when instead of the principle of the sovereignty of the Parliament[12] there prevailed the idea of the supremacy of the *Constitution*[13] and where constitutional review is performed by a special body, independent of the legislative and executive power[14]. Such approaches were characteristic of **the development after World War II**. On the other hand, constitutional review also involves the principle of the vertical separation of powers. It emerged in federal states, whereby constitutional review was supposed to exert supervision over the federal Legislature in relation to member states. This was also due to historical reasons: the painful experiences of the past War and Fascism as a counterweight gave birth to the idea that constitutional review was characteristic of democracy. There were also institutional and political reasons: constitutional review should also represent efficient protection *vis-a-vis* legislative and executive power. The final step was to provide a means for guaranteeing government's obedience to the constitution, separate it from the legislative power itself and embody it in the active work of judges or, in some systems, of a special constitutional court[15]. This active work of the judiciary makes the necessarily vague terms of constitutional provisions more concrete and gives them practical application. Through this work the static terms of the constitution come alive, adapting themselves to the conditions of everyday life. It is in this way that the values embodied in the Higher Law become practical realities. As such this framework of modern constitutions and judicial review synthesizes the ineffective and abstract ideals of natural law with the concrete provisions of positive law. Through modern constitutionalism, in short, natural law, put on a historical and realistic footing, has found a new place in legal thought .

Therefore, most countries introduced constitutional review directly after World War II (previously this had been a speciality of American law), including Brazil (again in 1946), Japan (1947), Birma/Myanmar (1947), Italy (1948), Thailand (1949), Germany (1949), India (1949), France (1958), Luxembourg, Syria (1950) and Uruguay (1952). In addition, constitutional review spread with different practical efficiency in Asia, Central and South America and Africa.

A New Period of Development in the Seventies

This period was marked with political changes in certain South European countries which introduced constitutional review upon the abolition of dictatorships: Greece (1968), Spain (1978), and Portugal (1976). In this period constitutional review was also introduced in the following

countries: Cyprus (1960), Turkey (1961), Algeria (1963), former Yugoslavia (1963), as well as in Slovenia and other federal units of the former Yugoslavia (1963). In the meantime, certain existing systems of constitutional review introduced systemic revisions (Austria, Germany, Sweden, France and Belgium). As a result of the political and social changes in the eighties, constitutional review started to change also in many countries in Central and South America. In that part of the world a special position was accorded to Argentina, where the process of democratic transformation in a federal state first developed in its units, marked by the gradually increasing introduction of the elements of constitutional review of different intensity by the individual provinces.

The Introduction of Constitutional Review in the Countries of New Democracy

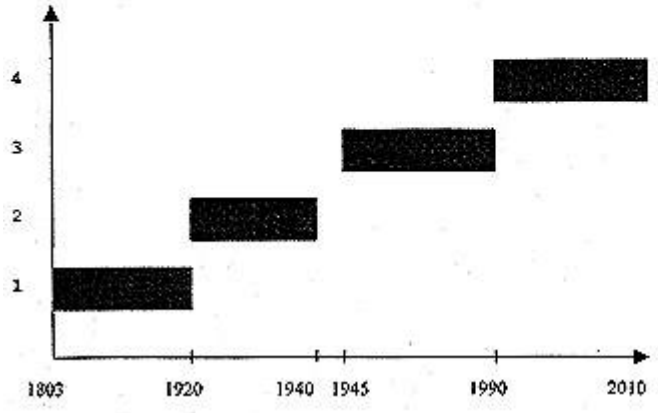
Subsequent development involves the **introduction of constitutional review in the Central and Eastern European countries and in the Commonwealth of Independent States (hereafter CIS)**[16]. The introduction of constitutional review entails the dissolution of the former principle of the unity of powers, in view of which the socialist systems as a rule did not have any constitutional review. In the past, the only exceptions were the former Yugoslavia, which in 1963 introduced constitutional review following the Austrian or German model, and Czechoslovakia, where constitutional review was introduced in 1968, but did not become active in practice.

The development of judicial constitutional review in the last two centuries diagramatically may be introduced in the following stages (Diagram 2):

1. 1803-1920
2. 1920-1940
3. 1945-1990
4. Following 1990.

Diagram 2

STAGES OF CONVERSION AND DEVELOPMENT OF THE SYSTEMS OF CONSTITUTIONAL REVIEW



An increasingly great number of countries are adopting the European model of constitutional review, which is stipulated by the need to establish reliable guarantees of stability of social development (Diagram 3).

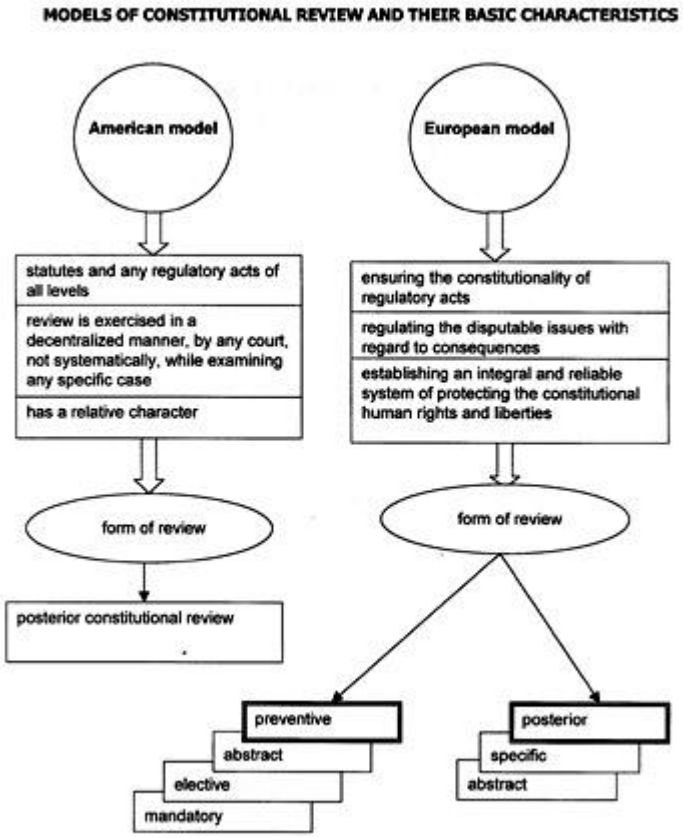
Operational within the last century throughout the world and currently in many countries, the American model of constitutional review is distinguished by the following basic features:

- universal character, embracing not only the laws but also any regulatory acts of all levels;

- decentralized review, by any court, non-systematically, when hearing any specific case, if the law or regulation is concerned with the specific interests of the plaintiff;

- relative character, since the court decision is mandatory only for the two parties without being extended to the whole field of law enforcement.

Diagram 3



B. Models of Constitutional/Judicial Review

The Constitutional Court is a special body that as the bearer of the protection of constitutionality holds a certain legal superiority in relation to other branches of power. Its review covers all legislative acts that are the highest legal instruments of a specific legal and political system. The status of a true institution with the power to provide constitutional review should only be held by the institution that in the specific system of the separation of powers holds such a limiting relation to the legislative power (the Parliament) that it may annul statutes adopted by the legislative body. It is a judicial institution established in view of special and exclusive decision-making powers on constitutional matters. This institution is located outside the ordinary court system and is fully independent of other branches of public authorities.

Any particular system can be classified on the basis of a common model of constitutional court structures considering some essential components.

From the organizational point of view, it is possible to distinguish the following models of constitutional/judicial review:

- The "American" - Judicial Review Model (based on the *Marbury Case (1803),* dealt with by the Supreme Court of the United States, and on John Marshall's doctrine), whereunder constitutional matters are dealt with by all ordinary courts (a decentralized or diffuse or dispersed review) under ordinary court proceedings *(incidenter).* It is a specific and a posteriors review, whereby the Supreme (high) Court in the system provides for the uniformity of jurisdiction. In the diffuse system, the decisions as a rule take effect only inter partes (except for the principle *stare decisis*, whereunder the courts in the future abide by the ruling). In principle the decision concerning the unconstitutionality of a statute is declaratory and retrospective, *i.e. ex tunc* (with *pro praeterito* consequences). This system was adopted by the following countries:

IN EUROPE: Denmark, Estonia, Ireland, Norway, Sweden;

IN AFRICA: Botswana, Gambia, Ghana, Guinea, Kenya, Malawi, Namibia, Nigeria, the Seychelles, Sierra Leone, Tanzania;

IN THE MIDDLE EAST: Iran, Israel;

IN ASIA: Bangladesh, Fiji, Hong Kong (until 1 July 1997), India, Japan, Kiribati, Malaysia, the Federal States of Micronesia, Nauru, Nepal, New Zealand, Palau, Papua New Guinea, Singapore, Tibet[17], Tonga, Tuvalu, Vanuatu, Western Samoa;

IN NORTH AMERICA: Canada, the USA;

IN CENTRAL AND SOUTH AMERICA: Argentina, Bahamas, Barbados, Bolivia, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Mexico, St. Christopher/Nevis, Trinidad and Tobago.

- The New (British) Commonwealth Model (Mauritius) cannot be classified either under the American or the European model. It is characterized by a concentrated constitutional review under the jurisdiction of the Supreme Court consisting of ordinary judges without political nomination; as a rule, it involves preventative (*a priori*) review and the consulting function of the Supreme Court, although repressive (*a posteriori*), review is also possible; decisions take an erga omnes effect.

- The "Austrian" (Continental - Constitutional Review) Model (based on Kelsen's Model of 1920, involving the interconnection of the principle of the supremacy of the *Constitution* and the principle of the supremacy of the Parliament), whereunder constitutional matters are dealt with by specialized Constitutional Courts with specially qualified judges or by ordinary Supreme Courts or high courts or their special chambers (concentrated constitutional review) in special proceedings (*principaliter*). As a rule it is an abstract review, although a concrete review is also possible. In addition to the *aposteriori* review, *a priori* review is also foreseen. The decisions have an *erga omnes* effect with reference to the absolute authority of the institution by which they are taken. Bodies exercising constitutional review may be:

a) Constitutional Courts

IN EUROPE: Albania, Andorra, Armenia, Azerbaijan, Austria, Belarus, the Federation of Bosnia and Herzegovina (with the Constitutional Courts of the federal entities Bosnia and Herzegovina and the Serbian Republic of Bosnia), Bulgary, Croatia, the Czech Republic, the FRY(with the Constitutional Courts of constituent republics Serbia and Montenegro), Georgia, Germany (with the regional Constitutional Courts: Baden-Wuerttemberg, Bavaria, Brandenburg, Bremen, Hamburg, Hessen, Niedersachsen, Nordrhein-Westfalen, Rheinland Pfalz, Saarland, Sachsen, Sachsen-Anhalt), Hungary, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Poland, Romania, the Russian Federation (with the federal unit Constitutional Courts: Adigea, Altai, Bashkiria, Buryatia, Chechnia, Chuvashia, Dagestan, lngushia, lrkutskaya Oblast, the Kabardino-Balkar Republic, Khakassia, the Karachaewo-Cherkez Republic, Karelia, Kalmikia, Komy, Marii-El, Northern Ossetia, Tatarstan, Tuva, Udmurtia, Yakutia/Sakha), Slovakia, Slovenia, Spain, Turkey, Ukraine;

IN AFRICA: Angola, Benin, the Central African Republic, Egypt, Equatorial Guinea, Gabon, Madagascar, Mali, Rwanda, South Africa, Togo;

IN THE MIDDLE EAST: Cyprus, former Iraq, Palestine, Syria;

IN ASIA: Kyrgyzstan, Mongolia, South Korea, Sri Lanka, Tajikistan, Thailand, Uzbekistan (with the regional Constitutional Committee of the Republic of Karakalpakstan);

IN CENTRAL AND SOUTH AMERICA: Chile, Surinam, Tucuman Province (Argentina) with the *Constitution of Tucuman* of 28 April 1990;

b) High Courts or their special chambers

IN EUROPE: Belgium (the Arbitration Court), Iceland, Liechtenstein, Monaco;

IN THE MIDDLE EAST: Yemen;

IN AFRICA: Burkina Faso, Burundi, Cameroon, Chad, Eritrea, Niger, Sudan, Uganda (1995), Zaire, Zambia;

IN ASIA: the Philippines;

IN CENTRAL AND SOUTH AMERICA: Costa Rica, Nicaragua, Panama, Paraguay, Uruguay;

c) The Constitutional Council

IN THE MIDDLE EAST: Lebanon;

IN AFRICA: Mauritania, Senegal;

IN ASIA: Cambodia, Kazakhstan.

Institutions based on the European model of constitutional review share the following common characteristics:

- constitutional review is introduced under different circumstances, depending on the particular national system;
- institutionally independent structures of constitutional review located outside the judicial branch;
- in the proceedings following a constitutional complaint problems are created by the separation of constitutional review from the ordinary courts;
- constitutional status (administrative and financial autonomy) is a prerequisite for the independence of the Court;
- a monopoly of constitutional review (specialisation in constitutional review), the concentration of power in one institution, most often with the power to abrogate statutes adopted by the Parliament;
- constitutional court judges are appointed by bodies of political power;
- the special nature of the jurisdiction: decisions are of a legal and political nature although they may also have a purely consultatory function;
- the prevailing constitutional review of statutes;
- generally such constitutional review is repressive, although to a minor extent constitutional review is of a preventative nature.

- The Mixed (American Continental) Model with the elements of both a diffuse and concentrated system; despite the constitutional review power of the central Constitutional or Supreme Court (or its special chambers), all ordinary courts in a particular country are not entitled to apply laws deemed as not in conformity with the Constitution:

a) Constitutional Courts

IN EUROPE: Portugal;
IN CENTRAL AND SOUTH AMERICA: Colombia, Ecuador, Guatemala, Peru;
b) High Courts or their special departments
IN EUROPE: Greece, Switzerland (in view of the fact that in the Swiss system - a system of limited constitutional review - the Swiss Federal Court cannot evaluate federal statutes, generally binding resolutions and ratified international treaties: the principle of supremacy exists on the federal level);

IN ASIA: Indonesia, Taiwan;

IN AFRICA: Cape Verde;

IN CENTRAL AND SOUTH AMERICA: Brazil, El Salvador, Honduras, Venezuela.

- The "French" (Continental) Model (based on the model of the French Constitutional Council - *Conseil Constitutionnel* - of 1958), where constitutional matters are subject to review by special bodies of constitutional review (most often the Constitutional Council) or by special chambers of ordinary Supreme Courts (concentrated constitutional review) in special proceedings (*principaliter*), provided that constitutional review is mainly of a preventative (consultative) character (although these systems also have a repressive form of constitutional review, in particular with reference to electoral matters):
IN EUROPE: France;
IN AFRICA: Algeria, Comoros, Djibouti, Ivory Coast, Morocco, Mozambique.
- Other Bodies with the Power of Constitutional/Judicial Review (the National Council, Parliament or specialized parliamentary bodies, etc.):
IN EUROPE: Finland;

IN THE MIDDLE EAST: Bahrain, Kuwait, Oman;

IN AFRICA: Congo, Ethiopia, Guinea-Bissau, Sao Tome and Principe, Tunisia, Zimbabwe;

IN ASIA: Afghanistan, Brunei, Burma/Myanmar, China (as well as Hong Kong after 1 July, 1997), Laos, North Korea, Pakistan, Turkmenistan, Vietnam;

IN AUSTRALIA;

IN CENTRAL AMERICA: Cuba.

- Systems without Constitutional/Judicial Review

IN EUROPE: Great Britain[18], the Netherlands[19];

IN AFRICA: Lesotho, Liberia, Libya[20].

- International Judicial Institutions with Certain Functions of Constitutional Review
- the European Court of Human Rights in Strasbourg (for European complaint);
- the Court of Justice of the European Community in Luxembourg (for legal action leading to annulment; legal action against the omission of action by the Council of Ministers or the Commission of the Community; the solution of previous issues as a concrete review upon the demand of a member state court);
- the Court of EFTA Geneve (for the settlement of disputes between EFTA member states, a concrete review requested by the court of a member state of EFTA);
- *Comision y la Corte Interamericanas de los Derechos Humanos;*
- Tribunal de Justicia del Acuerdo de Cartagena;
- the project of the foundation of La Corte Centroamericana de Justicia como Tribunal Constftucional de Centroamerica.

With reference to such international institutions, there often arises the question of their role and the role of national institutions of constitutional/judicial review concerning the relation of supranational law (e.g. European Community Law) vis-d-vis the national legal systems, based either on the dualist tradition[21] or on a monist tradition[22].

Particularities of the Constitutional Review in Some Countries

Specific systems of Constitutional/Judicial Review Classified by Certain Main Regions (Middle/Eastern Europe and the CIS, the Arab World, Africa, Asia, Central & South America)

In some regions systems of constitutional/judicial review show certain features; such regions primarily include the former socialist countries of Middle and Eastern Europe and the CIS, the Arab World, Africa, Asia and the countries of Central and South America.

Constitutional Review in the New Democracies

1.1. Development in the so-called New Democracy countries has involved the introduction of constitutional review in the so-called New Democracy countries[23]. The introduction of constitutional review has meant a break-up of the former Principle of the Unity of Powers, in view of which socialist systems, as a rule, did not have any constitutional review. The only real exception was the former Yugoslav Federation, which in spite of the Principle of the Unity of Powers, introduced a constitutional review system in 1963 on the federal level as well as on the level of

member republics, following the European (Austrian/German) Model. However, it is necessary to mention the Romanian experiment that introduced the constitutional review before World War I. In addition, in Czechoslovakia the respective institution was first introduced in 1920. The trend to broader enforcement of the constitutional review in Czechoslovakia was interrupted by World War II and the already founded institutions failed to become active in practice. Subsequently the constitutional review in Czechoslovakia was newly introduced in 1968, but did not become active in practice.

1.2. The development of constitutional review in the countries of the former socialist regimes is characterized by the following:

- Except in the former Yugoslav Federation and some attempts in Romania and Czechoslovakia, constitutional review has no tradition.

- Even after World War II constitutional review (contrary to its affirmation in West European countries) was not instituted due to the fundamental incompatibility with the existing national political systems. These systems adopted the principle according to which the legislative branch is held responsible for the constitutionality of regulations and according to which constitutional review cannot be practiced by an extra-parliamentary body. Therefore, the power of constitutional review was in principle reserved for the legislative bodies[24].

- The introduction of constitutional review systems following the European Model is of more recent date, arising in general at the end of the eighties and continuing in the nineties, along with the development of the democratic process in the above mentioned countries. Accordingly, the introduction of constitutional review brought about a significant change in the above countries where previously such a system had been completely unknown.

1.3. The generally adopted constitutional review model in these countries has been the so-called European (Austrian/German, Continental, Concentrated) Model[25]. Bodies exercising constitutional review include the following:

a) Constitutional Courts: Albania, Armenia, Azerbaijan, Belarus, the Federation of Bosnia and Herzegovina, the International Constitutional Court of the Republic of Bosnia and Herzegovina, Bulgary, Chechnia, Croatia, the Czech Republic, the FRY, Georgia, Hungary, Latvia, Lithuania, Moldova, Mongolia, Montenegro/the FRY, the FYROM, Kazakhstan, Kyrgyzstan, Poland, Romania, the Russian Federation (with the Constitutional Courts of the federal entities of Adigea, Altai, Bashkiria, Buryatia, Chuvashia, Dagestan, lngushia, lrkutskaya Oblast, the Kabardino-Balkar Republic, Khakassia, the Karachaewo-Cherkez Republic, Karelia, Kalmikia, Komy, Marii-El, Northern Ossetia, Tatarstan, Tuva, Udmurtia, Yakutia/Sakha), Serbia/the FRY, the Serbian Republic of Bosnia and Herzegovina, Slovakia, Slovenia, Tajikistan, Ukraine, Uzbekistan (with the Constitutional Committee of the Autonomous Republic of Karakalpakstan);

b) (Concentrated or specific) constitutional review performed by the highest ordina[y court in the country: Estonia;

c) Other forms of the constitutional review based to a large degree on the principle of self-review inside the parliamentary system: Turkmenistan.

1.4. Institutions based on the European constitutional review model share the following characteristics:
- in comparison with the more consistent systems of constitutional review of Western Europe, the constitutional review systems introduced in the New Democracies have been exercised with a

higher or lower intensity, depending on the particular national system;
- a monopoly of constitutional review (specialisation in constitutional review) concentrated in one institution. In some systems this is combined with the power of cessation of statutes adopted by the Parliament;
- not all the systems ensure individuals' access to the Constitutional Court;
- in the proceedings following a constitutional complaint problems occur due to the separation of constitutional review from the ordinary courts;
- constitutional court judges are elected or appointed mainly by bodies of political power (the legislature, the executive);
- the decisions of the constitutional courts are of a legal as well as of a political nature, although they may also have a purely consultatory function;
- as a rule the constitutional review is repressive, although to a minor extent constitutional review is of a preventative nature;
- the object of such a preventative review of acts are primarily international treaties[26];
- administrative and financial autonomy is a prerequisite for the independence of the Court.

1.5. Essential Elements of the Constitutional Review:
- the timing of reviews: preventative/*a priori*[27] or repressive/*a posteriori*[28];
- the nature of review: abstract reviews, concrete reviews (requested by ordinary courts), reviews based on an individual's petition;
- the object of reviews: positive acts, omissions[29], jurisdictional disputes[30], political parties[31], referendum[32], elections[33], constitutional complaints[34], capacity for offices[35], impeachment proceedings[36], powers of a special character[37], other tasks[38];

Concerning the intensity of the role of the Constitutional Court and tradition, systems (i.e. Hungary, Slovenia, Poland, the Czech Republic, Slovakia) most similar to the German Constitutional Court Model have strong constitutional courts, whereas certain systems keep the powers of the Constitutional Court within certain limits to prevent it from assuming the role of a "negative Legislature"[39].

1.6. Some other specific features of particular New Democracy countries are as follows:
- in comparison with other "traditional" systems, the Constitutional Court's interventions on its own initiative (ex officio) are more present in some New Democracy systems[40];
- the explicit review of the omission of statutorial regulation (Hungary);
- special constitutional complaints filed by municipalities, similar to the German constitutional review system (the Czech Republic);
- the constitutional review of the implementation of the decisions of International Courts (the Czech Republic);
- the jurisdiction of the Constitutional Courts over the interpretation of legal rules, mostly on the constitutional level[41], or even of statutes[42];
- in some systems the status of legitimate petitioner (standing) is awarded exclusively to government bodies[43], elsewhere, however, the individual citizen may also have access to the Constitutional Court[44];
- despite the final and binding effect of decisions issued by Constitutional Courts, some systems have been trying to explicitly assure the implementation of constitutional court decisions by the subjects involved (e.g. Georgia, by special provision of the *Constitutional Court Act).*

1.7. Different national systems specify different terms of office[45]. The term of office of a member of the Serbian/FRY Constitutional Court and of the Constitutional Court of the Republic of Armenia, as well as of the Constitutional Court of Tatarstan/Russia is life. A term of office that is too long may be dangerous for the evolution of the legal process, whereas too short a term of office could be detrimental for the continuity and the authority of the institution, as well as for the balance of the

constitutional court case-law. To strengthen the principle of the independence of constitutional court judges, most systems forbid their re-election[46]. The reappointment of Constitutional Courts and the appointment of constitutional court judges do not always coincide; in some countries the term of office of Constitutional Court Judges expires successively, which results in the successive (re)appointment of a portion of the Constitutional Court[47]. Some systems specify the minimum age required for appointment as a Constitutional Court Judge[48], while some systems specify the maximum age acceptable for appointment[49].

1.8. As was mentioned above in general, in the New Democracy countries the influence of government bodies upon the appointment or elections of constitutional court judges differs from system to system. The varieties applicable to elections or appointments of constitutional court judges are as follows:

1.8.1. Appointment Based Systems (without the Participation of a Representative Body): Slovakia, Burundi, where constitutional court judges are exclusively appointed by the Head of State.

1.8.2. Election Based Systems: As a rule Parliaments exercise greater influence on the elections of constitutional court judges as compared to the elections of judges of ordinary courts[50].

1.8.3. Mixed Systems (Appointment and Election) are systems where one part of constitutional court judges are elected by the Parliament or are appointed by the Head of State or by the President of the Parliament, and the rest by the executive branch[51].

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 the constitutional court judges themselves[52], otherwise, the President is appointed by a qualified body outside the Constitutional Court[53].

1.9. 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. Some systems regulate the rules of ethical conduct compulsory for judges of the Constitutional Court by a special Code[54].

Most systems recognize the immunity of Constitutional Court Judges and certain systems recognise explicit parliamentary immunity[55]. The independent position of Constitutional Court Judges also implies recognition of the corresponding material independence, i.e. sufficient resources, funding and remuneration.

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 activity, but incompatible with political and commercial activity. With reference to political activity, there may be various grades of restriction, ranging from the absolute prohibition of membership in political parties[56] to the explicit prohibition of membership in the bodies (only) of political parties (Siovenia).

1.10. The decision-making process may be organised in different ways:
- on the level of a plenary court;
- on the level of a plenary court and chambers[57], where deciding in chambers involves mostly constitutional complaints; however, in these systems, too, important decisions are made by the plenary principle.

The dissenting/concurring opinion has also become gradually accepted in the New Democracy countries[58].

Most constitutional/judicial review systems allow for the organisational autonomy of the institution. This means they authorize the respective constitutional/judicial review bodies to follow their own rules regarding their internal organisation. Most constitutional/judicial review bodies also have an independent budget as a separate part of the whole State budget, and they are fully independent in its control. Professional services of the Constitutional Courts are organised in a similar way: they consist of clerks and clerical staff, whereby the head of the professional services generally holds the status of secretary general.

The Arab Countries

The Arab countries have introduced some forms of constitutional/judicial review, primarily following the concentrated model (Egypt, former Iraq, Lebanon[59], Syria[60], Yemen[61]), the French model (Algeria, Morocco) or particular forms (Tunisia, Kuwait[62], Oman[63], Bahrain).

Africa

African constitutionalism shows certain specific features. Some countries declared a new constitutional system on gaining independence, others started their independent development without any (written) Constitution and they adopted one subsequently. The political development of constitutionality in Africa often proves to be less stable, mostly due to the influence of many coups d'état and the decisions of the supreme political and military bodies. Sometimes the decisions by these bodies have brought about the suspension of the constitutional system or at least a disrespect for the *Constitution* in practice. Accordingly, many African constitutional systems include the following characteristics: the relatively short duration of the *Constitution* and its temporary nature; frequent and material changes in the constitution; the temporary suspension of normal constitutional institutions, and, in turn, of human rights in view of declarations of martial law, which is in many cases anticipated by the *Constitutions* themselves; and a disparity between the constitutional text and actual legal and constitutional practice. Modern African legal theory states that in comparison with civil constitutional systems, in practice, military regimes are often more intolerant of the judicial protection of constitutional rights.

From the constitutional review point of view, Africa is interesting because of the large **variety of systems**.

With reference to the influences of foreign legal systems, African constitutional review systems can be classified as follows:

a) FRANCOPHONE AFRICA

In this area constitutional review was most often introduced under the influence of the French model of 1958 (*Conseil Constitutionnel* - Constitutional Council). In accordance with the French legal tradition, constitutional review is under the jurisdiction of special Constitutional chambers (of the Supreme Court) - *Chambres Constitutionnelles*. On the other hand, a certain number of systems were developed under the influence of the so-called European model (the Austrian Constitutional Court of 1919 and the German Constitutional Court of 1951).

A few countries established their first constitutional review systems immediately after achieving independence in 1959[64]. Many countries assumed (or introduced anew) the same or similar systems into their recent *Constitutions*[65]. Cameroon formerly entrusted the implementation of the protection of constitutionality to the Constitutional Council. These countries were followed by Morocco,

which, with the *Constitution* of 7 March, 1962, introduced the Constitutional Chamber of the Supreme Court, while the then Tunisian and Algerian *Constitutions* did not feature any constitutional review.

Numerous Francophone countries developed their constitutional review in a concentrated form, and assigned this function to a single body (although in certain cases at the beginning of the independent development of the relevant legal system this review did not exist).

In certain Francophone countries constitutional review was practiced by the ordinary courts as one of their specialized jurisdictions, or by the Supreme Court as an integral institution, or through a special chamber, or through a Constitutional Department of the Supreme Court, or through a Constitutional Council after the European model. In individual cases this function was performed jointly by the united supreme instance of ordinary justice - by the Supreme Court and the Court of Appeals. Some of these countries initially introduced autonomous and special institutions for constitutional review; subsequently this was replaced by a corresponding new power exercised of the highest ordinary court in the State.

Another group of Francophone African countries covers jurisdictions where constitutional review has always been institutionally separated from ordinary justice and fails accordingly under the power of the Constitutional Court as an independent institution (e.g. Madagascar).

b) ANGLOPHONE AFRICA

It is characteristic of Anglophone African countries that they have not adopted the British system with no written Constitution and without constitutional review, but rather followed the American system of judicial review. As a matter of fact, upon independence, many Anglophone countries adopted written Constitutions[66].

Some of these countries, e.g. Zambia[67] and Malawi, have adopted the American system of judicial review (the so-called system of diffuse review), which means that review fails under the jurisdiction of each judge and each court - and it is only in the hierarchy of adjudicating that a uniform interpretation of the *Constitution* is secured by the authority of the national Supreme Court.

On the other hand, there are other countries which, in spite of the adopted tradition of the Common Law system, have authorized a single government body to carry out constitutional review (a concentrated system of constitutional review in agreement with the Common Law system). This seems to show that in principle the concentrated system of constitutional review (contrary to the American diffuse system) is not incompatible with the Common Law system. This is the state of affairs in Uganda, in which the 1966 *Constitution* gave the Supreme Court exclusive jurisdiction over constitutional matters[68].

Most of the above mentioned countries have also followed the American model and have adopted their Bills of Rights. In particular the former African countries of the British Commonwealth - Tanzania and Kenya have adopted the American system of constitutional review, with its special emphasis on the protection of constitutional rights and freedoms. They reduced the possibility of the abuse of human rights through appeals to the Supreme Court[69]. According to the data available, it is not possible to establish how this legal protection was enforced in practice, although the mere existence of this possibility represents an important fact, depending on the respect for the independence of the judiciary in the particular State, and the particular legal system to the extent of which it preserves the "Rule of Law."

It is less known that in these countries human rights' protection systems, resulting from the *European Convention for the Protection of Human Rights and Fundamental Freedoms* of 4 November, 1950, had been established prior to their independence. The provisions of the above Convention were in force in numerous African countries due to the fact that Great Britain decided to implement the Extension Clause of Article 63 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and since 23 October, 1953 have enforced the validity of the Convention including its first Protocol of 20 March 1953 also in the African territories under British sovereignty, among others, in particular in Tanganyika and Zanzibar. Upon acquiring independence some of these African countries included the list of rights from the *European Convention for the Protection of Human Rights andFundamental Freedoms* directly into their Constitutions, such as Nigeria with its *Constitutional Act on the Proclamation of Independence* (1 October, 1960).

A special phenomenon is evident in the constitutional review system in Mauritius. It is the so-called New (British) Commonwealth model (Mauritius) and it cannot be classified either under the American or under the European model. This model is characterized by concentrated constitutional review under the jurisdiction of the Supreme Court consisting of ordinary judges regularly appointed. The system of Mauritius mainly involves preventative review and the consultative function of the Supreme Court, although repressive review is also possible. Another special feature is that decisions have an *erga omnes* effect.

c) LUSOPHONE AFRICA

Upon acquiring independence, Mozambique and Angola did not introduce constitutional review after the Portuguese model (also due to the then socialist political system supposedly not compatible with the institution of constitutional review), although the then *Constitution* of Mozambique specified the Supreme Court as the guarantor of respect for the *Constitution*, statutes and other legislative acts. The new *Constitution of Mozambique* of 2 November, 1990, established an independent body for constitutional review, the Constitutional Council (Articles 180 through 184), with broad powers, whereby the circle of petitioners for constitutional review (standing) was limited to the highest government bodies only. Further, the new *Constitution of Angola* (draft of April 1990) anticipates the foundation of the Constitutional Court with jurisdiction to discuss and to assess the constitutionality and legality of statutes and other legal measures if they do not accord with constitutional principles (Para. 2 of Article 65).

The *Portuguese Constitution* of 2 April, 1976, only partly served as a model for the *Constitutions of Cape Verde, Guinea Bissao and Sao Tome and Principe*[70]. All three countries introduced a particular system similar to the constitutional review[71]. In principle the (ordinary) courts are empowered to not apply unconstitutional statutes. In addition, an ordinary court, the attorney general or some other government body is entitled to submit to the Parliament a request for the constitutional review of a particular law allegedly in violation of the *Constitution*; accordingly, constitutional review is performed by a political (legislative) body. The decisions of the Parliament have an *erga omnes* effect and are published in the official gazette. However, subsequently, in some countries of the respective group the Supreme Court of Justice became empowered to exercise constitutional review (e.g. the *Constitution* of the Republic of Cape Verde of 25 September, 1992).

d) HISPANOPHONE AFRICA

The *Constitution of Equatorial Guinea*, in force up to 1991, specified that the National Council as the supreme collective government body had jurisdiction to deal with constitutional matters, including: deciding on the constitutionality of statutes and measures taken for their implementation;

the authentic interpretation of respective laws; the review of presidential elections; and the review of the (in)capacity of the President of the Republic to perform their office.

The Fundamental Law of Equatorial Guinea of 16 November, 1991 introduced the Constitutional Court, which is created within the Supreme Court of Justice (Article 94).

e) SOME COUNTRIES WITH THE LONGEST STATE TRADITION

Although Liberia ranks among the oldest independent African countries, it has not introduced any constitutional review despite its State and constitutional tradition. The *Liberian Constitution of 26 July, 1847*, (with *Amendments of 1955*) does not anticipate any constitutional review of statutes. Neither did the *Ethiopian Constitution of 4 November, 1955*, feature any constitutional review, whereas the new *Constitution of 21 August, 1995* introduced the constitutional review, following a model of specialized State body, although in specific circumstances concerning the supremacy of the Parliament, the decisions by the Ethiopian Council of Constitutional Inquiry must be approved by the Parliament.

THE COMPOSITION OF BODIES EMPOWERED TO CARRY OUT CONSTITUTIONAL REVIEW

Particularly in systems where such bodies were established as independent and specialized, their composition has been highly influenced by the executive branch - primarily by the Head of State. The same branch has influenced the composition of such courts even in some countries where constitutional review is carried out by the Supreme Court. The constitutional chambers or departments of supreme courts are composed mainly of professional judges, but also in such cases the executive branch always assists in their appointment.

All the systems feature the principle of the independence of judges who exercise constitutional review. The incompatibility of the office of Constitutional Court Judge with particular activities is considered as well. At the same time, Constitutional Court Judges are entitled to some privileges, e.g. they are irremovable. During their term of office, their immunity is equal to representative immunity.

THE POWERS OF CONSTITUTIONAL REVIEW BODIES

1. General picture

These systems mostly adopted the constitutional review of statutes. Some systems also adopted the preventative review of statutes and/or the so-called consultative function of bodies exercising constitutional review concerning the drafting of statutes, executive regulations or presidential acts. Several systems introduced the constitutional review of presidential and representative elections.

The African systems primarily adopted two systems concerning the effects of Constitutional Court decisions: the Francophone systems feature *erga omnes* effects, while the Anglophone systems do not feature such effect. The exception is the American rule of *stare decisis*, which is not implemented often by the African Anglophone systems.

In only a few countries is the constitutional complaint guaranteed: e.g. Benin, Congo. In addition, constitutional courts are rarely empowered to exercise *ex officio* review (e.g. in Mali, under the Law of 1965).

Concerning the systems of concentrated constitutional review the powers are similar: review of the constitutionality of statutes, review of the constitutionality of international treaties (mostly preventative), review of elections *etc*. Often the role of the Head of State as a petitioner before the Constitutional Court is emphasised, especially concerning the preventative constitutional review of statutes and international treaties. Sometimes the Head of State is a favored petitioner together with the President of the Parliament. In some countries the government also has the status of legitimate petitioner. On the other hand, quite rarely a group of representatives has the status of legitimate petitioner.

2. Particular Systems of Constitutional Review

ALGERIA:

Algeria introduced the constitutional review by the Constitution of 10 September, 1963. Under Article 64 of the Constitution, the Constitutional Council (*conseil constitutionnel)* was empowered to review the constitutionality of statutes passed by the National Assembly as well as the constitutionality of regulations having the force of statute issued by the Head of State (decrees having the force of statute).

By the constitutional reform of 28 February, 1989, the Constitutional Council as an independent body was established. Its activities are regulated by the *President's Decree of 7 August, 1989* concerning its internal organisation (*Decret presidential et reglement interieur*) as well as the presidential decree of 4 April, 1989 concerning the appointment and the composition of the Constitutional Council (*Decret presidential relatif a la publication de la composition des membres du Conseil constitutionnel)*. The Council is composed of 7 members. 3 members are appointed by the President of the Republic, 2 are appointed by the Parliament, 2 are appointed by the Supreme Court from among its members (Article 145 of the *Constitution*). The President of the Council is appointed by the Head of State. The members of the Council (including the President) are appointed for six years. The Council is reappointed in three-year intervals. Under the *Decree on the Organisation*, new members of the Council have to be appointed within 15 days from when the term of office of previous members has expired. In accordance with the President's directions, the administration is managed by a Secretary General with two assistant-directors for research matters. The budget of the Council is a part of the general State budget.

The office of a member of the Constitutional Council is incompatible with all other offices; the only exceptions are artistic and scientific activities (Article 154). Members of the Constitutional Council are not allowed to hold any other public office; in case of violation, the Council decides on the termination of office of the offender. The decisions of the Constitutional Council are passed by a majority of its members. In case of a deadlock, the president's vote is decisive. A quorum consists of at least 5 members of the Council.

The Council has the following powers:

- the abstract review of acts issued by the President of the Republic or by the Parliament, which entails constitutional review a posteriors with *ex nunc* effect. The decisions are binding;
- the preventative review (a priori) of acts of the President of the Republic and the Parliament;
- impeachment (Article 84 of the *Constitution*);
- the review of parliamentary and presidential elections;

- the review of the capacity of the President to perform the office of the President;
- the review of the results of referenda:
- the preventative review (a priori) of international treaties before their ratification;
- on the proposal of the President of the Republic, a consultative function concerning urgent measures, a State of Emergency (Articles 85, 86 and 87 of the *Constitution*), amnesty (Article 90 of the Constitution), as well as in cases of constitutional amendments.

The case-law of the Algerian Constitutional Council is characterised by the great influence of the French Constitutional Council. The decisions of the Algerian Council are published in the Official Gazette. They are signed by the President and Vice-President of the Council. The reporting judge remains anonymous. The decisions are passed by anonymous voting.

The *Constitution* of 28 November, 1996, reintroduced the Constitutional Council. The Council is established to guard the respect for the *Constitution* (Article 163). The Council monitors, among other matters, the regularity of referendum operations, the election of the President of the Republic and legislative actions. It announces the result of its operations. The Council consists of nine members (Article 164). Three are appointed by the President of the Republic, two are elected by the National People's Assembly, two are elected by the Council of the Nation, one is elected by the Supreme Court, and one is elected by the Council of State. As soon as they are elected or designated, the members of the Council cease any other mandate, function charge or mission. The President of the Republic designates the President of the Constitutional Council for a single six-year term. The other members of the Constitutional Council serve a single term of six years and one half are appointed every three years. In addition, the Council rules on the constitutionality of treaties, laws and negotiations, either by an opinion, if these are not rendered executory, or by a decision, otherwise (Article 165). The Council when called upon by the President of the Republic issues an obligatory opinion on the constitutionality of organic laws after their adoption by the Parliament (Article 165). It also rules on the conformity with the *Constitution* of the internal regulation of each of the two chambers of Parliament. When the Council rules that a treaty, accord or convention is unconstitutional, its ratification cannot take place (Article 168). When it rules that a legislative or regulatory provision is unconstitutional, it loses all effect from the day of the decision of the Council (Article 169).

ANGOLA

The new draft Constitution of Angola of April 1990 adopted the principles of the supremacy of the *Constitution* and the independence of the judiciary.

Under Para. 2 of Article 65 the establishment of the Constitutional Court is foreseen, which is empowered to decide on the unconstitutionality and illegality of provisions of statutes and other regulations that violate the principles determined by the *Constitution* of the State.

BENIN (the former Republic of Dahomey)

The Constitutional Chamber of the State (Supreme) Court is empowered to carry out constitutional review, and was introduced by Article 47 of the *Constitution* of 14 February, 1959. Such regulation was reintroduced by Article 58 of the *Constitution* of 26 November, 1960.

The *Constitution* of 8 April, 1968 in the latest Subpara. of Article 62 as well as in Subpara. 1 of Article 85, introduced the constitutional review of basic statutes. Under Article 43 of the same *Constitution*, the Supreme Court of the State was empowered to exercise such powers.

Under Article 44 of the *Constitution*, the composition, the organization and activities of the Court are to be regulated by special statute.

The *Constitution* of the Republic of Dahomey of 11 April, 1978, (Article 3) introduced the popular complaint before the Supreme Court containing a request for the constitutional review of all statutes.

The new Constitution of the Republic of Benin, adopted in December 1990, introduced the Constitutional Court as an independent body of constitutional review, which was then established on 7 June, 1993. The Constitutional Court assumed the powers of the now superseded Supreme Court. It is composed of seven members. Four are appointed by a special Council of the Parliament, three are appointed by the Head of State. It is empowered to review the constitutionality of statutes as well as to protect constitutional rights and freedoms. There is no remedy against the decisions of the Constitutional Court, which are binding on all State bodies.

BOTSWANA

The Constitution of 30 September, 1966, amended of 1987 specifies that where any question as to the interpretation of the Constitution arises in any proceedings in a subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court (Article 105). The High Court issues its decision on the question and refers it to the subordinate court, which disposes of the case in accordance with that decision.

BURKINA FASO

The Constitutional Chamber and/or the Constitutional Council of the Supreme Court of the Republic of Burkina Faso (until 1984 the Republic of Upper Volta) was empowered to carry out constitutional review under Article 66 of the Constitution of 15 March, 1959, as well as under Article 57 of the Constitution of 30 November, 1960.

The *Constitution* of 14 June, 1970 newly empowered the Constitutional Council of the Supreme Court (Subpara. 3 of Article 3 and Article 88).

It has the following powers:

- the preventative constitutional review of statutes (Article 87);
- the preventative review of the constitutionality of international treaties (Article 102);
- the constitutional review of the results of referenda (Article 4);
- the constitutional review of elections of the President of the Republic (Subpara. 7 of Article 25);
- the impeachment of the President of the Republic (Subpara. 2 of Article 28);
- the constitutional review of elections of representatives (Article 44).

The judges of the Supreme Court are appointed by the President of the Republic (Article 33).

The constitutional amendment of 1977 granted citizens the right to individual complaint, involving a request for the review of the constitutionality of statutes.

Under the new *Constitution* of 11 June, 1991 amended on 27 January, 1997, the constitutional review of statutes is exercised also by the Constitutional Chamber of the Supreme Court, which is

presided over by the President of the Supreme Court (Article 152). The Constitutional Chamber is composed of (Article 153): the President of the Supreme Court; three judges appointed by the Head of State, following the proposal of the Minister of Justice; three judges appointed directly by the Head of State; as well as three judges appointed by the President of the Parliament. The term of office of members of the Constitutional Chamber is 9 years. The Court is reappointed every three years in proceedings determined by statute. The office of Constitutional Court Judge is incompatible with the office of representative of the Parliament. Other cases of incompatibility are determined by a statute.

The Constitutional Chamber has the following powers: the review of Presidential elections, the review of parliamentary elections, the review of the results of referenda (Article 154); the preventative constitutional review of basic and other statutes before their promulgation (Article 155), the constitutional review of international treaties before their ratification (Articles 150 and 155); the review of the constitutionality of the activities of political parties (Article 156 in connection with Subpara. 5 of Article 13). The legitimate petitioners for (preventative) constitutional review are the President of the Republic, the Prime Minister, the presidents of both Chambers of the Parliament, and 1/5 of the representatives of the Parliament (Article 157). The decisions of the Constitutional Chamber are generally binding (Article 159). The organization and work of the Constitutional Chamber are determined by statute (Article 160 of the *Constitution*). The new Constitution does not contain an explicitly regulation concerning the popular complaint.

BURUNDI

The Constitution of the Kingdom of Burundi of 16 October, 1962 empowered the Constitutional Chamber of the Supreme Court to exercise constitutional review (Article 95). The next *Constitutions* of 11 July, 1974 and of 18 November, 1980, adopted the same institution, after the civil *Constitution* was suspended in 1981.

The new *Constitution* of the Republic of Burundi was adopted on 18 January, 1992. The jurisdiction of the Constitutional Court comprises actions of the State in constitutional matters. It judges the constitutionality of laws and interprets the *Constitution* (Article 149). The Court is composed of an odd number of at least five members appointed by the President of the Republic for a term of six years, with the possibility of reappointment (Article 150). Members of the Court must be jurists of high standing, having at least eight years of professional experience. They are chosen from among individuals recognized for their moral integrity, impartiality and independence. Half the members of the Constitutional Court are career magistrates.

The Constitutional Court is empowered to (Article 151):
- decide on the constitutionality of statutes and regulatory acts adopted in matters other than those related to the domain of the law at the request of the President of the Republic, the Prime Minister, the President of the National Assembly, one quarter of the Representatives, or any individual;
- interpret the *Constitution* at the request of the President of the Republic, the Prime Minister, the President of the National Assembly, or one quarter of the Representatives;
- decide on the propriety of presidential and legislative elections and referenda, and to proclaim their results;
- accept the oath of the President of the Republic marking his entry into office;
- verify the vacancy of the office of the President of the Republic.

Organic statutes before their promulgation and internal regulations of the National Assembly before their application, are necessarily subject to constitutional review (Para. 2 of Article 151).

The Constitutional Court is consulted concerning measures issued during the exercise of emergency powers (Para. 3 of Article 79). Any text of a legislative nature may be modified on entering into force by presidential decree or by legislative enactment upon the recommendation of the Constitutional Court (Articles 113 and 114). Unless unforeseeable circumstances intervene as verified by the Constitutional Court, the meetings of the National Assembly are not valid provided they are not held at the ordinary site of its sessions (Para. 1 of Article 122).

When the Constitutional Court, upon the request of the President of the Republic, the Prime Minister, the President of the National Assembly, or a quarter of the representatives, declares that an international obligation contravenes the *Constitution*, such accord may only be ratified after amendment of the *Constitution* (Article 176).

Every individual interested, as well as the Public Prosecutor, may request that the Constitutional Court rule on the constitutionality of statutes, either directly by means of an action or by exceptional proceedings for claiming unconstitutionality raised in a matter which concerns that person before an authority. Such authority suspends judgment until a decision is reached by the Constitutional Court, which must rule within thirty days (Para. 2 of Article 153).

An act declared unconstitutional may not be promulgated or applied (Article 154). The decisions of the Constitutional Court may not be appealed (Para. 2 of Article 154).

An organic statute determines the organisation and operation of the Constitutional Court, as well as the proceedings to be followed before it (Article 155).

The High Court of Justice composed of the Supreme Court and the Constitutional Court, jointly are empowered to hear cases involving the impeachment of the President of the Republic, the Prime Minister, or the President of the National Assembly (Article 157).

CAMEROON

The first *Constitution* of 1960 did not introduce any constitutional review. The later *Constitution of the Federal Republic of Cameroon* (after the union of its Francophone and Anglophone territories) of 1 September, 1961, established the Federal Court (Article 33), which was, as a protector of the constitutional order, empowered only to decide on jurisdictional disputes between State bodies, but not to decide cases concerning the constitutional review of statutes.

By the centralized *Constitution* of 20 May, 1972, the country reintroduced the Supreme Court (Articles 7, 10 and 27 of the *Constitution*). Its organization and work was regulated by the *Constitutional Act* of 9 May 1975. Despite further amendments of this Act (*Act No. 79-02 of 1979 Act No. 83-10 of 21 July, 1983, and Act No. 83-25 of 29 November, 1983*), these regulations did not reinforce the functions of the Supreme Court concerning constitutional review. This function was exercised by the Constitutional Chamber of the Supreme Court (Article 32 of the *Constitution* of 2 June,1972). The legitimate petitioners for the constitutional review of statutes were the President of the Republic or the President of the Parliament.

The new *Law No. 96-06 of 18 January, 1996, to Amend the Constitution of 2 June, 1972* introduced the Constitutional Council. The Council has jurisdiction in matters pertaining to the *Constitution*. It rules on the constitutionality of statutes (Article 46).

The Constitutional Council issues final rulings (Article 47) on:
- the constitutionality of statutes, treaties and international treaties;

- the constitutionality of rules of procedure of the National Assembly and the Senate prior to their implementation;
- conflicts of powers between State institutions, between the State and the Regions, and between the Regions.

Matters may be referred to the Council by the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National Assembly or one-third of the Senators (Para. 2 of Article 47). The presidents of regional executive branches may refer matters to the Constitutional Council whenever the interests of their Regions are at stake.

Statutes, as well as treaties and international treaties may, prior to their enactment, be referred to the Constitutional Council by the President of the Republic, the President of the National Assembly, the President of the Senate, one third of the members of the National Assembly, one third of the Senators, or the presidents of regional executive branches (Para. 3 of Article 47). Enactment deadlines cease to apply once the relevant matter has been referred to the Constitutional Council. The Constitutional Council advises in matters failing under its jurisdiction.

The Constitutional Council ensures the regularity of presidential elections, parliamentary elections and referenda. It proclaims the results thereof (Article 48).

In any case, the Council gives a ruling within a period of fifteen days, once a matter has been referred to it (Article 49). However, at the request of the President of the Republic, such a time-limit may be reduced to eight days.

Rulings of the Constitutional Council are not a subject to appeal. They are binding on all public, administrative, military and judicial authorities, as well as on all individuals and corporate bodies (Article 50). A provision that has been declared unconstitutional may not be enacted or implemented.

The Council is composed of eleven members appointed to a nonrenewable nine-year term of office (Article 51). These members are chosen from among individuals of established professional reputation. They must be of high moral integrity and proven competence. Members of the Council are appointed by the President of the Republic. They are appointed as follows:

- three, including the President of the Council, by the President of the Republic;

- three by the President of the National Assembly after consultation with the national *Bureau*;

- three by the President of the Senate after consultation with the national *Bureau;*

- two by the High Judicial Council.

Besides the eleven members, former presidents of the Republic are ex officio members of the Constitutional Council for life.

In case of a deadlock, the President of the Constitutional Council has the deciding vote.

In the event of the death or resignation or any other cause of incapacity or inability duly established by the competent bodies provided by law, a replacement shall be designated by the competent authority or body concerned and appointed to complete the term of office (Para. 3 of Article 51). Members of the Council take the oath of office as laid down by statute, before a Parliamentary session (Para. 4 of Article 51). The office of member of the Council is incompatible with that of member of the Government, member of Parliament, or of the Supreme Court. Other incompatibilities and matters relating to the status of members, namely obligations, immunities and privileges, are laid down by statute (Para. 5 of Article 51).

A statute regulates the organisation and functioning of the Constitutional Council, the conditions for referring matters to it, as well as the proceedings applicable before it (Article 52).

CAPE VERDE

By the *Constitution of 25 September,*1992, the Supreme Court of Justice became empowered to exercise constitutional review. Its powers are as follows (Articles 300 to 305):

- the preventive review of international treaties when requested by the President of the Republic;

- the abstract review of the constitutionality of any laws or resolutions of general or specific contents;

- the abstract review of the illegality of resolutions;

- the concrete review of constitutionality where unconstitutionality has been claimed in a trial;

- the deciding on individual appeals filed by any individual or the Public Prosecutor's Office after the exhaustion of the process established by law by which the original decision was issued.

In cases of the preventative review of international treaties, rulings of the Supreme Court of Justice have the form of an opinion (Para. 1 of Article 306). In other cases, decisions of the Supreme Court have the form of a ruling (Para. 2 of Article 306).

Decisions of the Supreme Court which deal with constitutionality or illegality are published in their entirety in the official journal (Para. 3 of Article 306). Rulings of the Supreme Court which deal with constitutionality or illegality, whatever the process by which they are issued, have general legal force (Article 307). A declaration of unconstitutionality or illegality with general legal force takes effect from the effective date of the law which has been judged unconstitutional or illegal and the removal of the laws which have been revoked (Article 308).

THE CENTRAL AFRICAN REPUBLIC

Constitutional review was exercised by the Constitutional Council as an independent and special body with such powers as were determined by the *Constitutional Act* No. 60-163 of 12 December, 1960 (Article 32). Such regulations were adopted by Basic Act No. 61-238 of 1961, as well as by the later *Constitution* of 26 November, 1964.

Under the *Constitution* of 4 December, 1976, the power of constitutional review was granted to the Constitutional Chamber of the Supreme Court.

After the period when the civil constitutional order was suspended, the Constitutional Council was newly introduced by the *Constitution* of 5 February, 1981. The Council was composed of 6 members, which were appointed by the President of the Republic and by the Presidency of the Parliament.

Under the *Constitution* of 21 November, 1986, constitutional review is exercised by the Constitutional Council. Its members are appointed by the President of the Republic. The Council is only partially empowered to evaluate the constitutionality of statutes, similar to the so-called French model as follows: the preventative review of statutes before they have been promulgated by the President of the Republic and/or the President of the Parliament.

Under the new *Constitution* of 28 December, 1994, the Constitutional Court was established. it is instituted and charged with (Article 70; Articles 24, 26, 27, 28, 29, 30, 31, 32, 61, 64, 68):

- striving for the regularity of presidential, legislative, regional, and municipal elections, and with examining and proclaiming the results of balloting;
- resolving any electoral disagreements;
- resolving conflicts of competence between the executive power, the legislative power, and the territorial authorities;
- exercising a consultative function concerning constitutional amendments;
- the preventative review of international treaties;
- exercising preventative review of statutes;
- exercising preventative review of ordinances;
- exercising preventative review of the rules of procedure of the National Assembly;
- deciding on disagreements concerning amendments during the course of the legislative procedure;
- exercising a consultative function in the circumstances of a State of Emergency;
- deciding on the definitive incapacity or illness of the President of the Republic.

Any person who considers himself wronged may request that the Constitutional Court rule on the constitutionality of statutes, either directly or by the proceedings on unconstitutionality brought before an authority in an affair which concerns them (Para. 3 of Article 70).

The Court is composed of 9 members who carry the title of counselors (Article 71). The non-renewable mandate is 9 years. The Court members are appointed as follows:

- 3 by the President of the Republic, of which at least two are jurists;
- 3 by the President of the National Assembly, of which at least two are jurists;
- 3 magistrates elected by their peers.

The Court members are chosen from among law professors, advocates and magistrates having at least 15 years of experience as well as qualifications honored by the State. The nine members of the Court are appointed concurrently. In addition, the former Presidents of the Republic are honorary members of the Constitutional Court with a consultative voice. The Court members are irremovable during the duration of their mandate. They may not be investigated nor arrested without the authorization of the Court. The functions of a Court member are incompatible with any political or administrative function, or any salaried employment (Article 72).

The Court decisions are not susceptible to any recourse. They impose themselves upon public powers, all administrative and judicial authorities, and all individuals (Article 74). Any text declared unconstitutional is null and of no effect; it may not be promulgated, nor applied (Article 71).

CHAD

The Constitutional Court as an independent body was established under Article 51 of the *Constitution* of 31 March, 1959. Under the constitutional amendments of 1960 and 1962, the function of constitutional review was granted to the Supreme Court in a plenary session (Article 64 of the *Constitution* of 16 April, 1962).

The *Constitution* (the "*National Charter*") dates from 20 December, 1989, and was amended on 28 February, 1991. It introduced the Supreme Court as the highest body of the judicial hierarchy, composed of the Constitutional Council, the Judicial Council, as well as the Administrative and Financial Council. Constitutional review is exercised by the Constitutional Council. The system of constitutional review was established under American and European influences, primarily under the influence of the model of the French Constitutional Council. The Supreme Court has 8 permanent members (Article 172), who are appointed by the President of the Republic upon his proposal and the proposal of the Parliament. They are appointed for 8 years (Article 173). The President of the Supreme Court is appointed by the Head of State; the President of the Supreme Court is at the same time the President of the Constitutional Council (Article 174). The powers of the Constitutional Council are (Article 175): the preventative review of the constitutionality of statutes, the constitutional review of international treaties (before the promulgation of statutes, before the promulgation of international treaties, as requested by the President of the Republic, the President of the Parliament or 1/4 of the members of the Parliament), and the review of the constitutionality of elections. The Constitutional Council may propose the issuance of new statutes or the amending of current statutes (Article 155).

The *Constitution of the Republic of Chad* of 14 April, 1996 introduced the Constitutional Council as a special independent State body (Article 164). The Council is composed of nine members including three magistrates and six jurists of a high level appointed in the following manner (Article 165):

- one magistrate and two jurists by the President of the Republic;
- one magistrate and two jurists by the President of the National Assembly;
- one magistrate and two jurists by the President of the Senate.

The mandate of the members of the Council is nine years and not renewable. One third of the Council is renewed every three years. The members are irremovable during their mandate. They must have recognized professional competence, good morals and high probity. The President of the Council is elected by his peers for a term of three years and is re-electable (Article 168).

The Council powers are as follows (Article 166):

- to judge the constitutionality of laws, treaties and international treaties;
- to review presidential, legislative and senatorial elections;
- to review the results of referenda;
- to exercise the preventative review of statutes;
- to exercise the preventative review of the rules of procedure of the Parliamentary chambers;
- to adjudicate jurisdictional disputes between State bodies.

The office of a member of the Council is incompatible with the office of a member of the Government, the exercise of any elective mandate, of any public function, and any other for-profit activity (Article 167).

Every citizen may request a review of the unconstitutionality of a matter before any jurisdiction regarding a matter that concerns them (Article 171). Council decisions are not susceptible to any

recourse (Article 174). They bind public powers, and all administrative, military and judicial authorities.

COMOROS

The Constitutional Council as a special body empowered to exercise constitutional review was established by the Constitution of 1 October, 1978 (Article 33). In practice the Constitutional Council is represented by the Supreme Court, which works as a constitutional council if appropriate regarding constitutional matters.

It has the following powers:

- the review of presidential and parliamentary elections;
- the repressive review of the constitutionality of statutes and executive regulations;
- the preventative review of the constitutionality of statutes and executive regulations;
- impeachment concerning the liability of the highest State officials.

The *Constitution* of 30 October, 1996, introduced the High Council of the Republic, which among other matters also adjudicates constitutional matters (Article 49). It is composed of:

- four members appointed by the President of the Republic;
- three members elected by the Federal Assembly upon the proposal of the President of the Federal Assembly;
- one member elected by the council of each island, upon the proposal of the president of the council of the island.

The members are chosen by reason of their honor, and their judicial, financial and economic expertise. They are appointed for a seven year renewable mandate. Their office is incompatible with any other elected mandate, any political function and any private professional activity (Article 50). The President of the Council is elected by his peers for seven years (Article 51). The Council is empowered:

- to review the regularity of presidential and legislative elections;
- to review the regularity of the holding of referenda and proclaim the results;
- to exercise the preventative and repressive review of the constitutionality of laws, ordinances, treaties or international treaties, and any normative provision having the force of statute (Article 53).

The decisions of the Council are not susceptible to any recourse.

CONGO

Constitutional review was introduced by the establishment of the Constitutional Chamber of the Supreme court of Congo (Congo Brazaville) under Article 58 of the *Constitution* of 2 March, 1961.

The Constitution of 8 December, 1963, in Subpara. 3 of Article 72 and in Article 73 determined that the Constitutional Court is composed of all chambers of the Supreme Court. This Constitutional Court was empowered to exercise the, constitutional review of statutes and international treaties. Subsequently, by *the Reorganisation of the Judiciary Act* No. 83-53 of 21 April, 1983, this body was remodeled into only one Constitutional Chamber of the Supreme Court.

On the basis of the *Constitution* of 8 July, 1979 (Article 86 through 93) the Constitutional Council was established as a constitutional review body by *Ordinance No. 019184* of 23 August, 1984. Its activities were regulated in detail by Act No. 074-84 of 7 November, 1984, instituting the following powers: the preventative constitutional review of statutes and international treaties, the review of parliamentary elections, the review of the legality of referenda and the preventative constitutional review of internal acts of the Parliament. The President of the Republic appoints eight members of the Council, the other eight members are appointed by the Parliament. The President of the Republic also appoints the President and Vice-President of the Council. The office of a member of the Constitutional Council is incompatible with any other public office. The decisions of the Constitutional Council are indisputable and bind all State bodies.

It should be noted that the *Constitution of Congo* of 21 April, 1983, introduced the popular complaint (Article 69).

The *Constitution of the Republic of Congo* of 15 March, 1992, instituted the Constitutional Council (Article 138). The Council consists of nine members:

- two magistrates elected by the High Council of the Magistrate;
- two Law Professors from the University, elected by their peers,
- two Lawyers elected by their peers;
- three members, one each named by the President of the Republic, the President of the National Assembly, and the President of the Senate (Article 139). The members must have professional experience of at least 15 years. One third of the Council is renewed every two years. The President of the Council is elected by his peers for a duration of two years, and is re-electable (Article 40). The functions of a member of the Council are incompatible with those of a Minister or a Member of Parliament (Article 141). The Council is empowered:
- to exercise the preventative and repressive review of the constitutionality of laws, regulations and international treaties;
- to ensure the regularity of the election of the President of the Republic;
- to ensure the regularity of legislative elections;
- to ensure the regularity of referenda.

Any person can petition the Constitutional Council on the constitutionality of statutes, either directly, or in proceedings initiated before the proper body in a matter which concerns them (Article 148). The decisions of the Constitutional Council are not susceptible to any recourse and bind all public powers, public authorities, judiciaries and individuals (Article 149).

DJIBOUTI

The Constitutional Court (*Cour constitutionnelle*) was introduced by *Constitutional Act No*, L. R.177-002 of 27 June, 1977 (Article 2).

Under the *Constitution* of 1981, the empowered body exercising constitutional review is the Constitutional Council.

The *Constitution of the Republic of Djibouti* of 4 September, 1992, reintroduced the Constitutional Council as an independent body exercising constitutional review. It consists of six members, whose term of office lasts eight years and is not renewable. They are appointed as follows (Article 76):

- two by the President of the Republic;
- two by the President of the National Assembly;
- two by the High Council of the Judiciary.

One half of the membership of the Constitutional Council is renewed every four years. The President of the Council is appointed by the President of the Republic from among its members. Former Presidents of the Republic are *de jure* members of the Council. The members of the Council enjoy the immunity accorded to members of the National Assembly. Members of the Council must be at least thirty years of age and be selected primarily from among experienced jurists. The Council is empowered (Articles 77 to 80):

- to ensure the regularity of all election;
- to ensure the regularity of all referenda;
- to exercise the preventative review of statutes and the rules of procedure of the National Assembly.

Legislative provisions relating to the fundamental rights of any person as recognized under the *Constitution* may be referred to the Constitutional Council, by special proceedings, in connection with any proceedings that are under way before a court (Article 80). The claim of unconstitutionality may be entered by any plaintiff before any authority or court (Article 80). Decisions of the Constitutional Council have the authority of *res judicata.* They may not be appealed and must be recognized by all Governmental authorities, administrative and judicial authorities and by all individuals (Article 81).

EGYPT

The Supreme Constitutional Court of Egypt was empowered by the *Constitution* of 11 September, 1971 (Articies 174 to 178 of the *Constitution*), amended on 22 May, 1980, as well as by the *Supreme Constitutional Court Act* No. 4811979 of 29 August, 1979. The Court is composed of the President and an "appropriate number" of judges appointed by the President of the Republic. The Court decides in chambers. Each chamber is composed of 7 judges. The President of the Constitutional Court is appointed by the President of the Republic by a special decree. Candidates applying for the office of judge of the Constitutional Court must fulfil the conditions necessary for office within the judiciary. The minimum age is 45 years. Constitutional Court Judges are chosen from among members of the Supreme Court, State officers, State employees or former State employees who have carried out the function of adviser for at least five years, from among professors of law with at least eight years' experience, as well as from among lawyers with at least ten years' experience. The office of Constitutional Court Judge is incompatible with other offices; the exceptions are legal activities within international organisations, foreign countries, as well as scientific activity. Constitutional court judges are irremovable.

The Constitutional Court is exclusively empowered to:

- review the constitutionality of statutes and executive regulations;
- decide on jurisdictional disputes between judicial bodies;
- decide on disputes concerning the enforcement of judgments of judicial bodies or other authorities exercising judicial power;
- interpret statutes and decrees of the President of the Republic concerning the Constitution in case of a different interpretation when it is necessary to assure the unity of the Constitution.

In a plenary session the Court decides by an absolute majority of members present. The Court decisions are final and indisputable, and binding for all State bodies and for every individual. They are published in the Official Gazette 15 days after adoption. Unconstitutional statutes and other regulations may not be implemented from the day onwards when Court decisions are published. In

order to petition, a fee has to be paid. The Court has its own independent budget created following the model of the general State budget.

EQUATORIAL GUINEA

The *Constitution* of 15 August, 1982 established the State Council (Articles 99 to 103) as the highest State body specialized to review constitutional matters including the constitutionality of basic statutes as well as measures for their implementation. The State Council is also empowered to officially interpret such statutes, review presidential elections, as well as to determine the Presidents capacity to hold office. The Council is composed of 11 members' 8 are appointed by the President of the Republic, two (of three remaining) are members by means of their current office, i.e. the President of the Supreme Court and the Minister of National Defense (which are practically appointed by the President of the Republic). In addition, the President of the Republic also appoints the President of the State Council.

The system of Equatorial Guinea also features *habeas corpus* proceedings.

The *Fundamental Law of Equatorial Guinea* of 16 November, 1991, introduced the Constitutional Court, which is created within the Supreme Court of Justice (Article 94). The Constitutional Court is composed of the President of the Supreme Court of Justice, as president, and four members appointed by the President of the Republic, of which two are nominated by the Chamber of People's Representatives.

The Court members are elected for four years.

The Court has jurisdiction in the following matters:

- the constitutionality of laws;
- the determination of the respective limits of statutes and regulations;
- provisions and judicial acts which violate fundamental rights and liberties recognized in the Fundamental Law;
- other matters vested in it by the Organic statutes:
- the regularity of Presidential and legislative elections and referenda (Article 95).

Members of the Court may not be members of the Government, the Chamber of People's Representatives, nor hold the office of Attorney General, nor any elective office (Article 96).

ERITREA

The *Constitution* of 23 May, 1997, empowered the Supreme Court as the court of last resort to exercise:

- sole jurisdiction to interpret the *Constitution* and the constitutionality of any statute enacted or any measure undertaken by the Government;
- sole jurisdiction to try and adjudicate charges against a President who has been impeached by the National Assembly pursuant to the *Constitution.*

The organisation, operation and the tenure of justices of the Supreme Court are determined by statute.

ETHIOPIA

The *Constitution* of 21 August, 1995, established the Council of Constitutional Inquiry as a State body exercising constitutional review (Article 82). The Council has eleven members comprising:

- the President of the Federal Supreme Court, who serves as its
- President;
- the Vice-President of the Federal Supreme Court, who serves as its Vice-President;
- six legal experts, appointed by the President of the Republic on the recommendation of the Parliament, who have proven professional competence and high moral standing;
- three persons designated by the Parliament from among its members.

The Council establishes the organizational structure which ensures the expeditious execution of its responsibilities.

In principle, all constitutional disputes are decided by the Parliament (Article 83). The Parliament may, within thirty days of receipt, decide a constitutional dispute submitted to it by the Council.

The Council is empowered to investigate constitutional disputes (Article 84). Should the Council, upon consideration of the matter, find it necessary to interpret the *Constitution*, it shall submit its recommendations thereon to the Parliament. Where any federal or State statute is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council considers the matter and submits it to the Parliament for a final decision. When issues of constitutional interpretation arise in the courts, the Council:

- remands the case to the concerned court if it finds there is no need for constitutional interpretation; the interested party, if dissatisfied with the decision of the Council, may appeal to the Parliament;
- submits its recommendation to the Parliament for a final decision if it believes there is a need for constitutional interpretation.

The Council drafts its *Rules of Procedure* and submits them to the Parliament, as well as implements them upon approval (Article 84).

GABON

At first constitutional review was exercised by the Judicial Council (Article 37 of the *Constitution* of 19 February, 1959). Subsequently these functions were exercised by the Supreme Court in a plenary session (Article 66 of the *Constitution* of 14 November, 1960).

The *Constitution* of 21 February, 1961 (amended on 17 February, 1967, on 13 December, 1967, and on 29 May, 1968) determined in Article 59 that the Constitutional Chamber of the Supreme Court was empowered to exercise constitutional review.

The Constitutional Chamber was empowered to perform:

- the preventative review of draft statutes;
- the constitutional review of statutes;
- the preventative constitutional review of international treaties entered into by the State.

On the basis of Article 36 of the *Constitution*, the organisation of the Court was regulated by statute (the *Act of 20 November, 1962*, amended by *Act No. 41-70 of 5 August, 1970*). Subsequently such matters were similarly regulated by Act *No. 6-78 of 1 June, 1978*.

The Constitutional Chamber was composed of: the President of the Supreme Court, the President of the Judicial Chamber, the President of the Administrative Chamber and by the President of the Chamber of Auditors. The above mentioned members were appointed by the Head of State by a decree. Other members were also appointed by the Head of State, but only after previous consultation with political parties.

The new *Constitution* of 26 March, 1991 (*Constitutional Act No. 03/91*, amended by *Act No. 01/94* of 18 March, 1994, and *Act No. 001/97* of 22 April, 1997) established the Constitutional Court as a special and independent body of constitutional review (Chapter IV of the *Constitution*). It is a body exclusively empowered to exercise constitutional review (Article 83) with the following powers:

- the preventative review of the constitutionality of basic (on the request of the Prime Minister) and other statutes (on the request of the President of the Republic, the Prime Minister, the President of the Parliament, a group of representatives, the President of the Supreme Court, or any citizen or person affected by such a statute or act) before their promulgation;
- the preventative review of the constitutionality of other regulations of State bodies;
- the adjudication of jurisdictional disputes between State bodies;
- the review of the constitutionality or legality of all electoral procedures (on the request of any voter, candidate, or any political party);
- the review of referenda;
- the concrete review of norms on the request of a court, concerning a particular case (Article 86);
- the preventative review of the constitutionality of international treaties before their ratification (Article 87);
- the interpretation of the Constitution, on the request of the President of the Republic, the Prime Minister, the President of the Parliament or a group of representatives (Article 88).

The Constitutional Court is composed of 9 members, with a mandate of 7 years; one re-election is possible (Article 89). Three judges are appointed by the President of the Republic, three are appointed by the President of the Parliament, and three are appointed by the Judicial Council. The conditions that need to be met to be elected Constitutional Court Judge are as follows: one must be a professor of law; a member of a bar; have carried out activities in the legal field at least 15 years, and one must have the personal qualities necessary for the honorable performance of this office. The President of the Court is elected from among Constitutional Court Judges; in case of his absence, he is replaced by the eldest judge. The office of Constitutional Court Judge is incompatible with any other public office or any other private or professional activity (Article 90).

Each year the Constitutional Court (Article 91) reports on its activities to the President of the Republic, the President of the Parliament, as well as to the President of the Supreme Court.

There is no legal remedy against Constitutional Court decisions (Article 92). The decisions bind all State bodies and individuals.

The organisation and activities of the Constitutional Court are regulated by statute (Article 93).

GAMBIA

Under the *Constitution* of 1965 the Supreme Court was empowered to exercise constitutional review.

The regulation introduced by the *Constitution* of 24 April, 1970, as well as by the *Constitution* of 7 August, 1996, generally adopted the American system of a diffuse constitutional/judicial review.

GHANA

The first *Constitution* of 1957 (the Independence Constitution of 1957) determined under Para. 5 of Article 31 that the Supreme Court has original and explicit jurisdiction in all proceedings which concern the validity of a statute. A similar regulation was adopted by the next Constitution of 1960 (the *Republican Constitution* of 1960) in Para. 2 of Article 42.

The *Constitution* of 1969 (the *1969 Second Republican Constitution of Ghana*) determined in Para. 1 of Article 106 that the Supreme Court has original jurisdiction concerning:

- all cases which concern the validity or interpretation of the *Constitution*;
- the constitutional review of any regulations (issued by the Parliament or other State bodies);
- the concrete review of norms on the request of an ordinary court.

By Article 2 of the *Constitution* of 1969 Ghana introduced the popular complaint before the Supreme Court, including the request for a constitutional review.

The new *Constitution* of Ghana of 28 April, 1992, adopted the American system of judicial review, including human rights protection proceedings i.e.: *habeas corpus, certiorari, mandamus, prohibition* and *quo warranto.*

GUINEA

The *Fundamental Law of the Second Republic of Guinea* of 23 December, 1990, empowered the Supreme Court to exercise constitutional review. The Supreme Court has the authority to determine the constitutionality of laws and international treaties (Articles 64, 67, 78 and 83). It also has the authority to determine in first and last resort any recourse against the acts of the President of the Republic (Articles 38, 60, 74 and 83), as well as recourse against ordinances, before their ratification (Articles 66 and 83).

The Supreme Court also has the authority to determine in first and last resort any recourse against the elections to the National Assembly and to local assemblies.

IVORY COAST

The *Constitution* of 3 November, 1960 and *Constitutional Act No. 60-356* (amended on 11 January, 1963, 22 October, 1975, 1 September, 1980, 26 November, 1980, 12 October, 1985, 31 January, 1986, and 6 November, 1990, 2 July, 1998) introduced by Article 57 the Constitutional Chamber of the Supreme Court as the empowered constitutional review body. The activities of the Constitutional Chamber are regulated in detail by Act No. 61-201 of 2 June, 1961 (later amended by *Act No. 78-663* of 5 August, 1978).

The Constitutional Chamber is presided over by the President of the Supreme Court, In addition, it’s also composed of the Vice-President of the Supreme Court and four members appointed for five years. Two members are appointed by the President of the Republic, two by the President of the

National Assembly. Candidates for the Constitutional Chamber must be persons with high reputation and experience in the field of constitutional matters.

Generally speaking, the system was established following the French system and/or the model of the French Constitutional Council. The Council has the following powers:

- preventative constitutional review of international treaties (Article 55);
- preventative constitutional review of statutes (Article 23). A preventative review may be requested by the President of the Republic or by the President of the Parliament. The possibility of *ex officio* proceedings is excluded;
- review of presidential elections (Article 1 0);
- review of parliamentary elections (Article 29);
- review of referenda (Article 4);
- impeachment against the President of the Republic (Article 11).

The Constitutional Chamber also has a consultative function, i.e. optional (concerning draft statutes, ordinances and decrees) or obligatory (when a statute has to be amended by decree).

The decisions of the Constitutional Chamber are final.

MADAGASCAR

Madagascar is one of the African countries with the oldest and relatively continuously developed system of constitutional review.

Under the *Constitution* of 29 April, 1959 (amended on 1 July, 1969), the Supreme Council (*conseil superieur (supreme) des institutions*) was empowered to exercise constitutional review (Article 45) with the following powers:

- preventative and repressive review of statutes (Article 47);
- preventative and repressive constitutional review of ordinances (Article 45);
- preventative and repressive constitutional review of decrees Article 33);
- preventative constitutional review of international treaties (Subpara. 4 of Article 14 as well as Subpara. 1 and 3 of Article 48).

Under *Ordinance No. 73-041* of 7 August, 1973, adopted by the constitutional referendum of 7 November, 1972, this body was remodeled into the Supreme Constitutional Court.

The next *Constitution of Madagascar* of 31 December, 1975, reintroduced the Supreme Constitutional Court (*Haut Cour Constitutionnelle*) composed of seven members. Two of them were appointed by the President of the Republic, two by the Supreme Revolutionary Council, two by the National Assembly and one by the Government. As a body with some political characteristics (Article 88 of the *Constitution*), it was empowered to exercise: the repressive constitutional review of statutes, ordinances and autonomous charters, to adjudicate jurisdictional disputes between State bodies and decentralized institutions (Article 88), to review presidential elections, to appoint members of the Supreme Revolutionary Council, as well as to review representatives' elections (Article 91). In addition, the Court was empowered to exercise some kind of preventative constitutional review: the President of the Republic could consult the Constitutional Court concerning all draft statutes (bills) or draft decrees. The organisation and work of the Constitutional Court were regulated by executive statute.

Under the new *Constitution* of 18 September, 1992 (amended on 16 August, 1995), the Constitutional Court decides on the constitutionality of international treaties, statutes, ordinances and autonomous regulations, adjudicates jurisdictional disputes between State bodies as well as between central and decentralised collective bodies (Article 106). The Court reviews presidential and representatives' elections as well as the results of referenda (Article 109). It is empowered to exercise preventative constitutional review of statutes at the request of the President of the Republic (Articles 110, 111 and 112). The Constitutional Court also decides on impeachment motions against the President of the Republic resulting from alleged violations of the *Constitution* (Article 50). It is empowered to exercise the concrete review of norms at the request of an ordinary court concerning concrete proceedings (Article 113).

The Court is composed of nine members (Article 107) appointed for six years. Re-election is not allowed. Three members of the Court are appointed by the President of the Republic following the proposal of the Council of Ministers, two are appointed by the Parliament, one by the Senate, three by the Supreme Council of Magistrature. The President of the Court is elected by the members of the Court from among themselves; the election is confirmed by presidential decree. The office of Constitutional Court Judge is incompatible with the office of a member of the Government, the Parliament, with elected public office, with paid professional activity, as well as with membership in a political party or in trade union (Article 108).

MALI

In the former Federal Republic of Mali, the Constitutional Chamber of the Federal Court was empowered to carry out constitutional review (Article 48 of the *Constitution* of 17 January, 1959).

By the *Constitution* of 22 September, 1960, the Constitutional Chamber of the State Court became empowered to review the constitutionality of statutes (Article 42).

Instead of the Constitutional Chamber of the State Court, constitutional review was later carried out by the Constitutional Chamber of the Supreme Court (*Act No. 65-1 and No. 65-2/A.N.R.M.* of 13 March, 1965). It is characteristic of the regulation of this period that the Constitutional Chamber of the Supreme court was empowered to act *ex officio*. The institution of the Constitutional Chamber as a specialized chamber of the Supreme Court empowered to exercise constitutional review was also adopted by the subsequent *Ordinance No. 1/CM L.N.* of 28 November, 1968, as well as by the later *Constitution* of 2 June, 1974 (Article 66). The members of the Constitutional Chamber were appointed by the President of the Republic following the proposal of the Minister of Justice.

By the new *Constitution* of 25 February, 1992, the Constitutional Court was established as a completely independent body concerning its relationship to the legislative branch (Article 85). It has the following powers (Article 86):

- the preventative constitutional review of statutes (following the proposal of the President of the Republic, the Prime Minister, the President of the Parliament, 1/10 of the representatives, or some other of the highest State bodies);
- the preventative constitutional review of international treaties following the proposal of the above legitimate petitioners;
- the constitutional review of administrative acts which concern constitutional rights and freedoms;
- the preventative constitutional review of the internal rules (*i.e.* rules of procedure) of the Parliament and other highest State bodies;
- the adjudication of jurisdictional disputes between State bodies;
- the review of elections;

- the review of the legality of referenda.

The Constitutional Court is composed of nine members elected for seven years (Article 91). Three members are appointed by the President of the Republic (among them, at least two candidates must be lawyers), three are appointed by the President of the Parliament (among them, at least two candidates must be lawyers), three are appointed by the Judicial Council. The candidates are recruited from among professors of law, barristers or lawyers with at least 15 years' experience, as well as from among qualified civil servants. The president is elected from among the members of the Constitutional Court (Article 92). The office of Constitutional Court Judge is incompatible with any public, political or administrative office, or with any private or professional activity (Article 93).

The decisions of the Constitutional Court are indisputable and binding on all State bodies and individuals. The organisation, work and proceedings of the Constitutional Court are regulated by statute (Article 94).

MOROCCO

The *Constitution* of 1962 followed by the *Constitution* of 31 July, 1970 (amended in 1972) introduced the Constitutional Chamber of the Supreme Court as a constitutional review body (*Chambre Constitutionnelle de la Cour Supreme du Maroc*, Articles 93 and/or 96).

On the basis of Article 95 of the *Constitution*, the organisation and work of the Constitutional Chamber was regulated by the Act of 9 May, 1977. The Chamber was composed of six members empowered first of all to exercise the preventative constitutional review of statutes. Three members were appointed by the King, including the President and three members were appointed by the President of the Chamber following consultation with political parties.

By the *Constitution* of 7 October, 1996, the Constitutional Council was established. The Council comprises six members appointed by the King for a period of nine years and six members appointed for the same period, one-half by the President of the Chamber of Representatives, one-half by the President of the Chamber of Counselors, after consultation with political parties. Each category of membership is renewable by thirds every three years (Article 79). The President of the Council is chosen by the King from among the members he appoints. The term of the President and of the members of the Council is not renewable.

The Council has the following powers (Article 81):

- to review the legality'of parliamentary elections;
- to review the legality of referenda;
- to exercise the preventative review of statutes and the rules of each parliamentary chamber.

Council decisions are not susceptible to any appeal. They are binding on public powers and all administrative and jurisdictional authorities.

MAURITANIA

The *Constitution* of 22 March, 1959 (amended on 20 May, 1961, 24 April, 1964, 12 February, 1965, 12 July, 1966 and 4 March, 1968) introduced the Supreme Court as a constitutional review body (Article 41).

The Supreme Court was empowered to exercise:

- the preventative constitutional review of statutes (Article 45);
- the preventative constitutional review of international treaties (Article 45).
Such regulations were adopted also by the later *Constitutional Charter of* 1978.

The new *Constitution* of 12 July, 1991, introduced the Constitutional Council as the constitutional review body. The Council is composed of six members, whose mandate is nine years and is not renewable (Article 81). One third of the Council is chosen every three years. Three of the members are appointed by the President of the Republic, two by the President of the National Assembly and one by the President of the Senate. The members of the Council must be at least 35 years old. They may not belong to the leadership of any political party. They enjoy parliamentary immunity. The President of the Council is appointed by the President of the Republic from among the members whom he names. The office of a member of the Council is incompatible with that of a member of the Government or of the Parliament (Article 82).

The Council has the following powers (Articles 83 to 86):

- to evaluate the legality of presidential and parliamentary elections;
- to evaluate the legality of referenda;
- to exercise the preventative review of statutes and regulations.
Council decisions are not subject to appeal. They must be complied with by public authorities and by all administrative and jurisdictional authorities (Article 87).

MAURITIUS

The *Constitution* of 12 March, 1968 (amended in 1982, 1983, 1986, 1990, 1991, 1992, 1994, 1995, 1996, 1997) determines that the Supreme Court is empowered to decide on the complaints of individuals concerning violations of their constitutional rights (Article 17). The current constitutional review model, similar to the Indian system, is called the **New (British) Commonwealth Model**. It cannot be classified either under the American or the European model. It is characterized by a concentrated constitutional review under the jurisdiction of the Supreme Court consisting of ordinary judges without political nomination; it focuses on preventative (*a priori*) review and the consultative function of the Supreme Court, although repressive (*a posteriori*) review is also possible; decisions take an *erga omnes* effect (Articles 83 and 84).

MOZAMBIQUE

Under the *Constitution* of 2 November, 1990 the Constitutional Council as a constitutional review body is empowered to exercise the following powers (Articles 180 through 184):

- constitutional review of statutes and executive regulations of State bodies;
- adjudication of jurisdictional disputes between State bodies;
- review of the legality of referenda;
- review of electoral procedures;
- verification of statutorial conditions applying to candidates for the office of the President of the Republic.
The circle of legitimate petitioners is relatively limited: the President of the Republic, the President of the Parliament, the Prime Minister and the Public Prosecutor of the Republic.

The decisions of the Constitutional Council are indisputable and are published in the Official Gazette of the Republic.

The composition, organisation and work of the Constitutional Council and its proceedings are regulated by statute.

NAMIBIA

The *Constitution* of 9 February, 1990, introduced the American system of a diffuse constitutional review. Such review is exercised by all courts. Furthermore, the *Constitution* determines the principle of the independence of courts.

The Supreme Court is the highest constitutional review body (Article 79). It is composed of the President of the Court and by such number of judges as appointed by the President of the Republic following the recommendation of the Judicial Commission.

The Court is empowered to interpret the *Constitution,* to review the implementation of the *Constitution* and to protect basic rights and freedoms.

The decisions of the Supreme Court have an *erga omnes* effect (Article 81).

NIGER

The *Constitution* of 29 July and 3 November, 1991, adopted the elements of the former *Constitutions* of 18 December, 1958, 12 March, 1959 (i.e. the Constitutional Department of the State Court under Article 48 of the *Constitution*) and of 3 August, 1968.

Constitutional review is exercised by the Constitutional Chamber of the Supreme Court, which is composed of the Judicial Chamber, the Administrative Chamber, the Chamber of Auditors and the Budgetary Chamber (Para. 1 and 2 of Article 104).

The composition, organisation, proceedings and work of the Supreme Court are regulated by statute (Para. 3 of Article 104 of the *Constitution*). The Budget of the Supreme Court is a part of the State budget (Para. 2 of Article 97).

The powers of the Constitutional Chamber are as follows (Article 98):

- preventative constitutional review of statutes, on the request of the President of the Republic, the President of the Parliament, the Prime Minister or one tenth of the representatives (Para. 1 through 4 of Article 98, Para. 2 of Article 84, Para. 3 of Article 87, Article 92);
- popular complaint concerning the constitutional review of statutes (Para. 5 of Article 98);
- review of presidential elections (Para. 3 of Article 40);
- impeachment (Article 44):
- review of representatives' elections (Article 64).

Decisions have an *erga omnes* effect. Decisions on the determination of the unconstitutionality of a statute are published in the Official Gazette as soon as possible.

The new *Constitution* of 26 December, 1992, extensively amended on 22 May, 1996, adopted the former regulation and also introduced a special chamber of the Supreme Court empowered to exercise constitutional review. The Supreme Court has the following powers (Articles 94, 95, 102, 103):

- preventative constitutional review of organic statutes and internal regulations of the highest State bodies;
- concrete constitutional review of statutes;
- adjudication of jurisdictional disputes between State nstitutions;
- review of the legality of presidential, legislative and local elections;
- review of the legality of referenda;
- interpretation of the *Constitution*.

The decisions of the Supreme Court are not susceptible to any recourse. They bind all public powers and all administrative, civil, military and judicial authorities (Article 104).

NIGERIA

The *Constitution* (Decree of 3 May, 1989, enforced on 1 October, 1992) empowers the Supreme Court as a constitutional review body (Article 228). It is composed of its President and by such number of judges as determined by statute, but the number may not exceed 15 judges. The members of the Supreme Court are appointed by the Head of State (Article 229). The candidates should have at least 15 years of experience in the country.

The Supreme Court is empowered:

- to adjudicate jurisdictional disputes between the Federation and member states or between member states themselves (Article 230). In such proceedings the decision making process of the Court is exercised in a plenary session (Article 233);
- to review presidential and vice-presidential elections (Article 232).

The decisions of the Supreme Court are final. Otherwise, the Nigerian system of constitutional review has all the characteristics of the American diffuse system of judicial review (Article 6 of the *Constitution*), in which this function is exercised by all courts.

RWANDA

Initially, Rwanda introduced a constitutional review exercised by the Constitutional Chamber of the Supreme Court (Article 102 of the *Constitution* of 24 November, 1962).

By the *Constitution* of 20 November, 1978, the Constitutional Court was established as an independent body with special jurisdiction. The Supreme Cassation Court and the State (National) Council together form the Constitutional Court. By introducing such a system, Rwanda placed itself among the countries which separate constitutional review from the ordinary judiciary.

The *Constitution* of 10 June, 1991, reestablished the Constitutional Court, composed of the Court of Cassation and the Council of State assembled, which is in charge of reviewing the constitutionality of statutes and statutory orders. It alone is competent to order the forced resignation of the President of the Republic (Article 90).

SENEGAL

Under the *Constitution* of 1960, the Supreme Court was not empowered to carry out constitutional review.

However, the *Constitution* of 7 March, 1963 (amended on 20 June, 1967, 14 March, 1968, and 26 February, 1970) introduced the Supreme Court as a constitutional review body (the last Subparagraph of Article 47). The powers of the Supreme Court were as follows:

- preventative constitutional review of statutes (Article 63);
- preventative constitutional review of international treaties (Article 78).

Subsequently the organisation and work of the Supreme Court of Senegal was regulated by *Ordinance* No. 60.17 of 3 September, 1960. Further amendments which generally adopted the previous regulation were included in *Act No. L.O. 43186* of 29 December, 1986, primarily concerning the composition of the Supreme Court. The essential amendments were adopted by Act *No. 87-09* of 2 February 1987.

The former constitutional basis for the system of constitutional review was in the Constitution of 7 March, 1963, amended on 20 June, 1967, 14 March, 1968, 26 February, 1970, 19 March, 1976, 6 April, 1976, 28 December, 1978, 6 May, 1981, 1 May, 1983 and 24 March, 1984, as well as on 3 September, 1992 and on 13 June, 1994. Under this regulation, the Court was composed of: its President, three presidents of chambers, the public prosecutor, the State legal officer, 14 judges and 15 advisers. The members of the Supreme Court were appointed by decree, and their office is for life. The Court had the following powers: the review of presidential elections, the review of the organisation of referenda, the preventative constitutional review of basic and other statutes, the preventative constitutional review of international treaties (generally, on the request of the President of the Republic), impeachment against the President of the Republic, the protection of the constitutional rights of individuals, the review of the implementation of the budget, and a cassatory power above the ordinary courts.

Under the regulation in force, the Constitutional Council was introduced (Article 80). The Council is comprised of five members: a President, a Vice-President and three judges. The duration of their mandates is six years. The Court is partially renewable every two years starting with the President or two members other than the President, in an order based on the date of the end of their mandates (Article 80). The members of the Council are appointed by the Head of State. The mandate of Council members cannot be renewable. It is only possible to terminate the office of Council members before the expiration of their mandate due to their physical incapacity, and under conditions specified by organic statute.

The Council is the guardian of the rights and freedoms defined by the *Constitution* and statute (Article 82).

The Council reviews the constitutionality of statutes and international obligations, and jurisdictional disputes between the executive and the legislative branches, conflicts of competence between the Council of State and the Court of Cassation, as well as of claims of unconstitutionality raised before the Council of State or the Court of Cassation (Article 82).

Except in cases of flagrant offense, Council members can only be prosecuted, arrested, detained or judged in a criminal matter with the authorisation of the Council and under the same conditions as the magistrates of the Council of State and the Court of Cassation (Article 83).

Organic statute determines the other powers of the Constitutional Council, as well as its organisation, the regulations for appointing its members and the proceedings to be followed before it (Article 84).

THE SEYCHELLES

The *Constitution (Third Republic)* of 21 June, 1993 introduced the function of the Supreme Court as Constitutional Court (Article 129). Such jurisdiction and powers are exercised by not less than two judges sitting together.

Constitutional questions before the Constitutional Court may be initiated by any affected individual (Article 130). Upon hearing an application, the Constitutional Court may:

- declare any act or omission which is the subject of the application to be a contravention of the *Constitution*;
- declare any statute or the provision of any statute which contravenes the *Constitution* to be void;
- grant any remedy available to the Supreme Court against any person or authority which is the subject of the application or which is a party to any proceedings before the Constitutional Court, as the Court considers appropriate.

When in the course of any proceedings in any court, other than the Court of Appeal of the Supreme Court sitting as the Constitutional Court, or tribunal, a question arises with regard to whether there has been or is likely to be a contravention of the *Constitution*, the court or tribunal shall, if it is satisfied that the question is not frivolous or vexatious or has not already been the subject of a decision of the Constitutional Court, immediately adjourn the proceedings and refer the determination of the question to the Constitutional Court.

SIERRA LEONE

Under the *Constitution* of I October, 1991, the Supreme Court is empowered to perform constitutional review. It is composed of its president, at least four permanent judges and an appropriate number of other judges (Article 121 of the *Constitution*).

The Supreme Court has original and exclusive jurisdiction in all matters concerning the implementation of the *Constitution* as well as the power of constitutional review following the model of the American system of diffuse review (Article 124 of the *Constitution*). The following proceedings may be initiated before the Supreme Court: *habeas corpus*, *certiorari, mandamus* and prohibition (Article 125 of the Constitution). The Constitution also allows individual complaint (Para. 1 of Article 127 of the *Constitution*).

The Court decisions are final and indisputable (Article 122 of the *Constitution*).

SOUTH AFRICA

The country was established in 1910 by the unification of former British colonies under the *South Africa Act 1909,9 Edward VII, Ch. 9.* The further constitutional documents are the *British Statute of Westminster 1931 (22 Geo. V, Ch.4)* as well as the *South African Status of the Union Act 1934 (the Act No. 69, 1934)* and the *Republic of South Africa Constitution Act 1961 (the Act No. 32, 1961).* From the beginning, the country adopted the British legal system with all its elements, which meant that the constitutional review was not included. Following such regulation, the Supreme Court functioning under the *Constitution* of 1961 and the Supreme Court of 1969 were not empowered to exercise constitutional review.

The Court was established in 1994 by South Africa's first democratic constitution - the *interim Constitution of 1993*. By the *1996 Constitution*, the Court established in 1994 continues to hold office. The eleven member Court held its first session in February 1995. The Court members may serve for a non-reappointable term of 12 years, and must retire at the age of 70. They are all independent. Their duty is to uphold the law and the *Constitution,* which they must apply impartially and without fear, favour or prejudice.

The Constitutional Court consists of a President, a Deputy President and nine other judges. A matter before the Constitutional Court must be heard by at least eight judges. The Constitutional Court (Article 167 of the *Constitution*) is the highest court in all constitutional matters. The Court:

- may only decide constitutional matters and issues connected with decisions on constitutional matters;
- issues the final decision on whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.

Only the Constitutional Court may:

- decide disputes between State bodies in the national or provincial sphere concerning the constitutional status, powers or functions of any of those State bodies;
- decide on the constitutionality of any parliamentary or provincial Bill;
- decide on applications by members of National Assembly or members of a provincial legislature to the Constitutional Court for an order declaring that all or part of an Act of Parliament or an Act of a provincial legislature is unconstitutional;
- decide on the constitutionality of any amendment to the *Constitution*;
- decide that the Parliament or the President has failed to fulfil a constitutional obligation; or
- certify a provincial constitution.

The Constitutional Court makes the final decision on whether an Act of Parliament, a provincial Act or the conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force.

The national legislation and the *Rules of the Constitutional Court* allow a person, when it is in the interest of justice and with leave of the Constitutional Court:

- to bring a matter directly to the Constitutional Court; or
- to appeal directly to the Constitutional Court from any other court.

A constitutional matter includes any issue involving the interpretation, protection or enforcement of the *Constitution*.

The Constitution requires that a matter before the Court is heard by at least eight judges. In practice, all eleven judges hear every case. If any judge is absent for a long period or a vacancy arises, an acting judge may be appointed by the President of the Republic on a temporary basis. Decisions of the Court are reached by a majority vote of the judges sitting in that case. Each judge must indicate his or her decision. The reasons for the decision are published in a written judgment.

The Court played an important role in the adoption of the 1996 *Constitution*. Concerning the *Interim Constitution,* the Parliament sitting as the Constitutional Assembly was required to produce a new constitutional text. In turn, the Court was required to certify that the new text complied with the 34 Constitutional Principles agreed upon in advance by the negotiators of the *Interim Constitution*. In its decision on the *Certification of the Constitution of the Republic of South Africa 1996 (4) SA 744 (CC) (6 September, 1996)* the Court ruled that the constitutional text adopted by the Constitutional Assembly in May 1996 could not be certified. The Court identified the features of the new text that did not in its view comply with the Constitutional Principles and gave its reasons for that view. The Constitutional Assembly then had to reconsider the text, taking the Court's reasons for non-certification into account. The Constitutional Assembly reconvened and on 11 October, 1996, adopted an amended constitutional text containing many changes from the previous

text, some dealing with the Court's reasons for non-certification and others tightening up the text. The amended text was then sent to the Constitutional Court for certification. In its judgment contained in the *Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996 (4 December, 1996)* the Court held that all of the grounds for the non-certification of the earlier text had been eliminated in the new draft, and accordingly certified that the text complied with the requirements of the *Constitutional Principles*. The text duly became the *Constitution of the Republic of South Africa, 1996* and came into effect in February 1997.

The judgments of the Court are based on the *Constitution,* which is the supreme law of the land. They guarantee the basic rights and freedoms of all persons. They are binding on all organs of government, including the Parliament, the Presidency, the police force, the army, the public service and all courts. This means that the Court has the power to declare an Act of Parliament null and void if it conflicts with the *Constitution* and to review executive actions in the same way.

When interpreting the *Constitution*, the Court is required to consider international human rights laws and may consider the law of other democratic countries. The Constitutional Court is the highest court in the land for all constitutional matters.

KWAZULU-NATALITHE FEDERAL REPUBLIC OF SOUTH AFRICA

The position of the Constitutional Court was regulated by the *Resolution of the Legislative Assembly* of 1 December, 1992. The Constitutional Court had original and exclusive powers concerning the following matters:

- constitutional review of State legislation;
- constitutional review of regional legislation;
- deciding on non-conformity between State and regional legislation;
- deciding on jurisdictional disputes between regions within the State;
- constitutional review of federal legislation;
- deciding on jurisdictional disputes between federal and State bodies;
- impeachment against the governor and ministers;
- validity and legality of collective agreements;
- constitutional review of the statutes of political parties;
- other matters as determined by the *Constitution* or the *Constitutional Act.*

The circle of petitioners before the Constitutional Court was limited to State bodies, and under certain conditions, also political parties. The decisions of the Constitutional Court had *erga omnes* effect.

The Constitutional Court was composed of 15 members. Three were appointed by the Governor, six by the Parliament, three by the Judicial Council and three by the Bar Chamber. When deciding on impeachment, the Constitutional Court was able to extend its composition with additional members. Their qualifications and powers were determined by the Constitutional Court. Constitutional Court Judges were appointed from among lawyers and attorneys at law with more than 20 years of professional practice, professors of law and from among judges of the highest courts. Even foreign citizens were entitled to apply for the position of Constitutional Court Judge. They were appointed for 10 years; re-election was not possible. The office of constitutional court judge was incompatible with any other public office or with any professional activity on the territory of South Africa. After retirement, Constitutional Court Judges were not allowed to hold any public office. The Constitutional Court worked also in chambers composed of four or more judges. The members of

the Constitutional Court appointed their president from among themselves for three years. The Constitutional Court was empowered to regulate its own organisation and work by its own internal regulation. Members of the Constitutional Court enjoyed immunity; however, they could be charged with a crime by 3/4 of the representatives of both parliamentary chambers. The salaries of Constitutional Court Judges were determined by statute, and they could not be lower than the salaries of ministers. The Constitutional Court created and proposed its own budget to the Parliament directly.

SUDAN

Originally constitutional review was exercised by the Constitutional Chamber of the State Court (Article 44 of the *Constitution* of 23 January, 1959).

Under the *Constitution* of 10 October, 1985, the protector of the *Constitution* and statutes is the Supreme Court (Articles 125 through 128), with the following powers:

- the interpretation of the *Constitution* and statutes;
- the constitutional review of statutes;
- the protection of basic rights and freedoms.

Concerning constitutional matters, the Supreme Court and Court of Appeals act together provided that the composition of this body is not less than three judges. They are appointed by the Head of State.

Under the (Federal) *Constitution* of 24 December, 1995, the constitutionality of any statute passed by the (Federal) National Assembly or a provisional decree issued by the President of the Republic, or a member state law passed by the member state Assembly, or a provisional decree issued by the member state Government, may be challenged before the Supreme Court, on the basis that such a statute or decree is in conflict with the federal constitutional system or contravenes any of the human rights enshrined in the *Constitution* (Article 68).

TOGO

Constitutional review was introduced by the establishment of the Constitutional Chamber of the Supreme Court (Article 70 of the *Constitution* of 11 May, 1963). The same institution was reintroduced by the *Constitution* of 30 December, 1979 (Article 44). The Constitutional Chamber of the Supreme Court was composed of: the President of the Supreme Court and five members, who were appointed by the Council of Ministers following the proposals of political parties.

Under the new *Constitution* of 14 October, 1992, constitutional review is exercised by the Constitutional Court as the highest jurisdiction of the State regarding constitutional matters (Article 99). The Court is composed of seven members, of which two are elected by the National Assembly upon the proposal of the President of the Assembly, one member appointed by the President of the Republic, one member appointed by the Prime Minister, one magistrate elected by his peers, one lawyer elected by his peers, and one professor of law elected by his peers, for a non-renewable term of seven years (Article I 00). During the first term, two members of the Court are elected by the Parliament for three years and one member is appointed by the President of the Republic for three years. The Court President is elected by his peers for a renewable term of three years (Article 101). Court members enjoy immunities (Article 102); their office is incompatible with other government office, any elected office, public employment and with any professional activity (Article 103). The organization and functioning of the Court, the proceedings, and the disciplinary codes relating to

Court members are established by an organic statute (Article 103). The Court has the following powers:

- to exercise the preventative constitutional review of statutes and the rules of procedure of the highest State bodies;
- to exercise the concrete (repressive) constitutional review of statutes requested by an ordinary court;
- to exercise a consultative function.

Court decisions are not susceptible to any other authority. These decisions apply to all public bodies and to all civil, military and judicial authorities (Article 106).

TUNISIA

Constitutional review is exercised by the State Council (Article 69 of the *Constitution* of 1 June, 1959, amended in 1965, 1967, 1969, 1975, 1976, 1981, 1988, 1993), which was established in 1987. It is composed of professors of law and judges. Its powers are very limited; generally, it has only a consultative power.

UGANDA

Under the *Constitution* of 27 September, 1995, any question as to the interpretation of the *Constitution* is determined by the Court of Appeals sitting as the Constitutional Court (Article 137). When sitting as a Constitutional Court, the Court of Appeals consists of a bench of five members of that Court. A person who alleges that an act of Parliament or any other law or anything in or done under the authority of any law, or an act or omission by any person or authority, is inconsistent with or in contravention of a provision of the *Constitution*, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.

Where any question as to the interpretation of the *Constitution* arises in any proceedings in a court of law other than a Field Court Martial, the court may, if it is of opinion that the question involves a substantial question of law, and, if any party to the proceedings requests it to do so, refer the question to the Constitutional Court for a decision.

ZAIRE

The Constitutional Court of Zaire (the Belgian Congo, the Democratic Republic of Congo) was established as an independent constitutional review body by the Basic Act of 19 May, 1960, as well as by the *Constitution* of 1 August, 1964. By the Constitution of 24 June, 1967, the same constitutional review system was adopted (Para. 4. of Article 19). The Constitutional Court had the following powers (Article 71 of the *Constitution*):

- the constitutional review of statutes and other acts having the force of statute;
- the adjudication of jurisdictional disputes between the highest State bodies;
- the interpretation of the *Constitution*;
- the preventative constitutional review of international treaties (Subpara. 4 of Article 68 of the Constitution).

The organisation and work of the Constitutional Court was regulated by its *Rules of Procedure* (Article 45). Constitutional Court judges were appointed by the President of the Republic, one third of them on his own proposal, one third of them on the proposal of the National Assembly, and one third of them on the proposal of the Judicial Council (*conseil de la magistrature*).

The mentioned system was amended by Act No. 74-020 of 15 August, 1974, which gave constitutional review power to the Supreme Court. This new power of the Supreme Court was adopted by the subsequent Act of 15 February, 1978, as well as by the *Constitutional* Act of 19 February, 1980.

The further *Constitution* of 27 June, 1988, established in Article 103 the following powers of the Supreme Court (*Cour Supreme de Justice*): determining the constitutionality of statutes and other acts having the force of statute, the interpretation of the *Constitution* as well as the constitutional review of other acts issued by other State bodies.

The new *Constitution* of 5 July, 1990, again vested in the Supreme Court the constitutional review function with the following powers: the constitutional review of statutes and other acts having the force of statute, the interpretation of the *Constitution*, the review of presidential and parliamentary elections, as well as the review of the legality of referenda (Article 103 of the *Constitution*).

ZAMBIA

The *Constitution* of 1991 (amended in 1996) introduced a special Tribunal, which may be appointed by the Chief Justice (Article 27). The Tribunal consists of two persons selected by the Chief Justice from among persons who hold or have held the office of a judge of the Supreme Court or the High Court. The Tribunal is empowered to exercise:

- the preventative review of the constitutionality of bills (within three days after the final reading of the bill in the Assembly);
- the repressive review of the constitutionality of statutory instruments (within fourteen days of the publication of the instrument in the official gazette);
- the concrete review of constitutionality when requested by an ordinary court.

ZIMBABWE

The *Constitution of Zimbabwe Amendment (No. 9) Act*, 1989, introduced the parliamentary review of constitutionality. For this purpose the Parliamentary Legal Committee was established (Article 4OA). The Parliamentary Legal Committee consists of such number of members of Parliament, other than Ministers, being not less than three, as the Committee on Standing Rules and Orders may from time to time determine, the majority of whom must be legally qualified as follows: they must have been a judge of the Supreme Court or the High Court; or qualified to practice law in Zimbabwe for not less than five years, whether continuously or not; or have been a magistrate in Zimbabwe for not less than five years; or possess such legal qualifications and such legal experience as the Committee on Standing Rules and Orders considers suitable and adequate for their appointment to the Parliamentary Legal Committee.

The Parliamentary Legal Committee examines (Article 40B):

- every bill, other than a constitutional bill, which has been introduced in Parliament;
- every bill, other than a Constitutional bill, which is. amended after its examination by the Committee, before the bill is given its final reading in Parliament;
- every draft bill transmitted by a Minister to the Secretary of the Parliament for reference to the Committee;
- every statutory instrument published in the official gazette;
- every draft statutory instrument transmitted by the authority empowered to do so to the Secretary of the Parliament for reference to the Committee.

In addition, the Committee reports to Parliament or the Minister or authority, as the case may be, whether in its opinion any provision of a bill, draft bill, statutory instrument or draft statutory instrument would, if enacted, be, as the case may be, in conflict with the Declaration of Rights or any other provision of the *Constitution*.

It is the duty of the Parliament to consider any report presented to it which states that, in the opinion of the Parliamentary Legal Committee, a provision of a bill would, if enacted, be in conflict with the Declaration of Rights or any other provision of the *Constitution*.

Asia

1. General picture

Despite politically unstable constitutional systems in Asian countries, the institution of constitutional/judicial review has been or is a feature of the systems of the following countries: Bangladesh, Brunei, China, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Mongolia, Nepal, North Korea, Pakistan, Papua New Guinea, the Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam.

The constitutional systems of the above countries were influenced by various foreign legal systems. The Soviet model influenced China, Laos, North Korea and Vietnam. Certain countries reflect the influence of the American system (e.g. India, Japan, Papua New Guinea). Individual legal systems contain elements of the German, Swiss and French systems (e.g. Japan, South Korea, Taiwan, Thailand), and in some systems, the elements of the Dutch system (indonesia, Sri Lanka). The greatest contribution of the American system to the development of legal systems in Asian countries is, however, evident in the adoption of the principle of the independence of the judiciary in many of these systems, as relating to the constitutional review of statutes and other legal measures. The constitutional review function is most developed in India, Japan, the Philippines and in South Korea. The development of individual systems was also influenced by the Indian system; under its effect constitutional review developed in Malaysia, Singapore and in Sri Lanka.

Asian countries include the following main models of constitutional review:

- THE AMERICAN MODEL has been adopted for appellate reviews in specific proceedings relating to the constitutionality of statutes and administrative measures within the scope of the general rules of proceedings; such a model of a diffuse judicial review was above all adopted by the former and by the existing British Commonwealth countries (Bangladesh, Hong Kong (until 1 July, 1997), India, the Philippines), Malaysia, Nepal, Pakistan, and Singapore). This system has also been adopted by Japan;

- the so-called EUROPEAN OR AUSTRIAN MODEL, used for the review of the constitutionality of statutes in special proceedings of special constitutional courts is less widespread in Asia (Mongolia, South Korea, Sri Lanka, Thailand);

- the MIXED SYSTEMS, with elements of the Continental and Common Law systems (Indonesia, Taiwan);

- SPECIAL SYSTEMS OF CONSTITUTIONAL REVIEW (Brunei, Birma/Myanmar, China, Hong Kong as a special Administrative Territory of China (after l July, 1997), North Korea, Laos, Vietnam), where the function of constitutional review is performed predominantly by the Parliament or certain parliamentary bodies.

2. The Particular Systems of Constitutional Review

BANGLADESH

The *Constitution* of 4 January, 1972, was temporarily suspended in 1974 because a State of Emergency was declared. This *Constitution* was created following such models as the *Magna Carta* of 1215, the *Petition of Rights* of 1628 and the *Bill of Rights*, as well as the *American Constitution*, but in the form of a written *Constitution*. It established a cataiog of constitutional rights. A diffuse constitutional review was introduced following the American model. The *Constitution* was essentially amended on 15 August, 1975. This constitutional amendment introduced the independence of the judiciary and two courts as the highest State courts were established: the Supreme Court and the High Court. The Supreme Court has the role of Appeal Court in relationship to the High Court. However, the High Court has original power to exercise constitutional review following the American model: *i.e. mandamus, prohibition, quo warranto, certiorari, habeas corpus*. The same order was reintroduced by the Constitution of 10 October, 1991.

BRUNEI

The *Constitution* of 1959 with its amendments (which is still in force) introduced the principle of the supremacy of the *Constitution.*

The constitutional review body is the Interpretation Tribunal, which also performs a consultative function for the Head of State (the *sultan*). Court decisions are issued in written form, are published in the Official Gazette, and are final and binding on all State bodies. The Court is composed of the president and two members appointed by the Head of State. The Court President may be a person who has held a high judicial office or who has been a judge for the last ten years in any part of the British Commonwealth (Article 86 of the *Constitution*).

CAMBODIA

Under the *Constitution* of 21 September, 1993, the Constitutional Council has a duty to safeguard respect for the *Constitution*, to interpret the *Constitution*, and the laws passed by the Assembly (Article 117). The Constitutional Council has the right to examine and decide on contested cases involving the election of assembly members.

The Constitutional Council is composed of nine members with nine-year mandates (Article 118). 1/3 of the members of the Council is replaced every three years. 3 members are appointed by the King, 3 members by the Assembly and 3 others by the Supreme Council of the Magistracy. The President is elected by the members of the Constitutional Council. He/she has a deciding vote in case of a deadlock. Council members are elected from among individuals with degrees in Law, Administration, Diplomacy or Economics and who have considerable professional experience (Article 119). The office of Council member is incompatible with that of a member of the Government, member of the Assembly, President or Vice-President of a political party, or President or Vice-President of a trade-union or sitting judges.

The King, the Prime Minister, the President of the Assembly, or 1/10 of the Assembly members may forward draft bills to the Constitutional Council before their promulgation (Article 121). The Assembly Rules of Procedure and various organisational statutes must be forwarded to the Constitutional Council before their promulgation. The Constitutional Council decides within no more than thirty days whether the statutes and the Internal Rules of Procedure are constitutional.

After a statute is promulgated, the King, the Prime Minister, the President of the Assembly, 1/10 of the Assembly members or a court, may request that the Constitutional Council examine the Constitutionality of that statute (Article 122). Citizens have the right to appeal against the constitutionality of statutes through their representatives or the President of the Assembly.

Provisions in any article ruled by the Constitutional Council as unconstitutional may not be promulgated or implemented (Article 123). Council decision are final.

The King consults with the Constitutional Council on all proposals to amend the Constitution (Article 124).

An organic statute specifies the organisation and operation of the Constitutional Council (Article 125).

CHINA

The Chinese legal system in force has not adopted the judicial review of constitutionality. The current body exercising constitutional review is the National People's Congress and its Standing Committee. The National People's Congress is the highest body of State authority and as such it is empowered to decide on the most important State matters. According to Chinese legal theory, the establishment of a special constitutional review body would be in conflict with the system of "democratic centralism and the integration of the decision making process". Chinese legal theory notes many failings of the western systems of constitutional review where such review is exercised by a judicial body. They note that courts do not have review power as long as statutes and other regulations prejudice the rights of citizens and require citizens to lodge an application before a court. Another failing Chinese theorists note is the situation in those western systems in which the Constitutional Court can not abrogate a statute (an active role), but merely issue a decision that such a statute not be implemented (a passive role). In addition, they claim that in western systems it is difficult to find a completely independent constitutional review body.

The mentioned review of constitutionality was introduced by the Chinese Constitution of 1954 as well as by the Constitution of 1978 (but the Constitution of 1975 did not specify which State body is empowered to exercise such review). The new Chinese Constitution regulates the matter more precisely because it determines explicitly that both bodies, the National People's Congress as well as its Standing Committee are empowered to exercise the review of constitutionality. When the Congress is in session (once a year) it is not possible to also discuss constitutional matters, however such matters should be followed continuously. Such a role is performed by the Standing Committee, which is a permanent committee and meets every two months. The committee works under the supervision of the National People's Congress. The activities of the Standing Committee are supported by some special working bodies, e.g. the National Council, the Judicial Council, the Financial and Economic Council, etc. (whose responsibilities are divided concerning particular fields of activities). Their work is regulated by the National People's Congress Basic Act; they study the constitutionality and legality of statutes and other regulations of central, local and autonomous authorities. Their reports are presented before the Standing Committee. The Councils operate following the directives of the Standing Committee and/or the National People's Congress. In addition, all other State bodies, public organisations and citizens are obliged by statute to inform these Councils of eventual cases of unconstitutionality or illegality. However, these Councils are not empowered to decide a matter, but they may only submit proposals and commentaries in the form of reports to the Congress or the Standing Committee. The working committees also study draft statutes and other regulations for the Standing Committee and the Congress. In such a manner a certain form of the preventative review of constitutionality and legality has been exercised. Legal

theory has stated that there certainly also exists real violations of the Constitution and statutes in the form of unconstitutional and illegal activities which are impossible to follow.

Chinese legal theory emphasizes that the western system of the review of constitutionality and legality exercised by one specialized body is not acceptable for their system of democratic centralism and for the structure of the Chinese State. Despite this official statement, there are some proposals to establish a special body under the supervision of the National People's Congress specialised only in the review of constitutionality and legality. Such a body may be called the Constitutional Council of the National People's Congress. It would be elected by the National People's Congress and composed of 50% representatives and 50% legal advisers (of the appropriate age, qualification, and experience etc.). The powers of the Constitutional Council would be as follows:

- reporting on the unconstitutionality or illegality of regulations issued by the supreme legislative body (the National People's Congress and the Standing Committee);
- deciding on the unconstitutionality and illegality of other regulations issued by other State bodies;
- proposing that the National People's Congress or its Standing Committee establish an Investigation Council for discovering unconstitutionality;
- reviewing any other regulations;
- evaluating the implementation of the Constitution in the country and submitting appropriate reports to the National People's Congress and its Standing Committee;
- submitting opinions and proposals to the National People's Congress and its Standing Committee;
- deciding on jurisdictional disputes between State bodies.

Under the Constitution in force, the local People's Congresses and standing councils as local bodies of State authority for particular local administrative territories, are empowered to exercise constitutional review. The jurisdictions between both central bodies and local bodies in the respective fields are separated. The central bodies exercise the review of constitutionality and legality on the level of cases and/or regulations which are important for the whole country, while local bodies exercise such function on their appropriate local level. The central bodies are empowered to review decisions passed by local bodies exercising the review of constitutionality and legality, i.e. the central bodies may abrogate the decisions of local bodies if such decisions are issued in conflict with the spirit of the *Constitution*.

HONG KONG

Until 1 July, 1997 the constitutional review existed in Hong Kong as an evaluation of the conformity of ordinances with local constitutional acts; in such a framework the then local Legislature was limited concerning its legislative activities.

Hong Kong had a written *Constitution* based on two acts of the British Queen:

- the *Letters Patent* of 5 April, 1843;
- the *Royal Instructions* of 6 April, 1843.

The texts of both documents were valid from 14 February, 1917, and were amended by later amendments and changes. Since 1 July, 1997 onwards the basic constitutional act of Hong Kong has been the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*. Following the new legal order it is expected that the institution of constitutional review will be implemented in the same form on the basis of the mentioned constitutional act, *i.e.* the evaluation of local ordinances with the *Basic Law*.

Generally speaking, the American diffuse system of judicial review is in force, which means that all courts may deal with such matters, with the Supreme Court providing an appropriate supervisory role. The Supreme Court of Hong Kong in current form dates from 1976. It operates in senates composed of three or five judges. The Supreme Court includes its component parts: the High Court and the Court of Appeals. Constitutional review is of great importance, primarily from the point of view of limiting the competencies of the Legislature. Delegated legislation (local ordinances) must not be in conflict with either basic acts.

The legal protection of constitutional rights is guaranteed by the following proceedings: *habeas corpus, mandamus,* prohibition and *certiorari*.

INDIA

In general, India adopted the American system of diffuse judicial review, which means that such review is exercised by all courts, however, the Supreme Court, as well as some other high courts, are empowered to decide in several special proceedings on human rights protection, e.g. *habeas corpus, mandamus* and *certioari.*

Under the first system introduced by the *Basic Constitutional Act* in 1949, the Supreme Court was exclusively empowered to carry out constitutional review. The system in force, based in particular on *Constitutional Amendment* No. 42 from 1976, as well as on *Constdutional Amendments* No. 43 and 44 from 1977 and 1978, empowers the Supreme Court and all the highest courts in the country to exercise judicial review in different forms of proceedings (*e.g. habeascorpus etc*.). However, in accordance with the constitutional system in force, the powers of the Indian Supreme Court are limited. It is exclusively empowered to exercise the constitutional review of central statutes. There is also a quorum required for the unconstitutionality of a statute to be declared, ie. no less than 7 judges or no less than two thirds of Court members.

The forms of human rights protection proceedings in the jurisdiction of the Supreme Court are listed in Article 32 of the *Indian Constitution* (adopted following the American model): *habeas corpus, mandamus, prohibition, certiorari, quo-warranto*. As adopted from English law, in India the last remedy is a decision of the Supreme Court.

In addition, the Indian system also features the constitutional review of legislation following the American model: the courts are authorized to declare null and void acts issued by the Legislature and the Executive which are determined to be unconstitutional. However, the Indian system of constitutional review differs from the American: in India such review is not based on judicial dogma as in the USA, but constitutional review is explicitly determined by a written Constitution (Article 13 - basic rights protection; Articles 32, 131, 131a, 132, 132a, 133, 134, 135, 136, 137 and Article 226 of the *Constitution*). Furthermore, the system in force is described as a system containing elements of the American system of judicial supremacy as well as elements of the English system of parliamentary supremacy.

INDONESIA

The first *Constitution* dated from 1945, and the second one from 1950. Subsequently a new *Constitution* was adopted in 1955, but in July 1959 the 1945 Constitution was adopted again.

The *Constitution* in force is based on the following principles: the recognition of constitutional rights, legality concerning all statutes in all their possible forms, the independence of the judiciary.

Concerning constitutional review, the Indonesian Supreme Court only has the power to interpret statutes, but not to review them in the sense of an American judicial review. However, the Indonesian Supreme Court is empowered to exercise a certain preventative review concerning cases relating to the organisation of the Government (the review of draft statutes and other regulations). The courts are independent and free when exercising their judicial function. The Supreme Court has exclusive cassatory jurisdiction concerning all cases. Indonesia does not have any constitutional council (as in France) nor any constitutional court (of the European type). The system in force is a certain mixed European- Common Law system.

Habeas corpus proceedings were introduced in December 1981 by the new *Criminal Code.*

JAPAN

Under the *Constitution* of 1947, which was created under American influence, the Japanese system of constitutional review differs substantially from the American diffuse system. Para. 1 and 2 of Article 76 of the *Constitution* determine that constitutional review is concentrated within the Supreme Court. In addition, under Article 81 of the *Constitution*, the Supreme Court is empowered to carry out the constitutional review of any statute, order, executive regulation or administrative act. All the courts, the Supreme Court at the top, may determine the constitutionality of laws, orders, regulations or official acts only when the determination of constitutionality is required in the course of making a ruling in concrete cases. They do not have the power to determine the constitutionality of laws, orders, regulations or official acts which are not related to concrete cases. Such characteristics are similar to the European model of constitutional review. The Japanese system also has a particular form of the popular complaint, which is, however, limited to a dispute of the validity of elections (the so-called people's action-*minshu* sosho or objective action-*kyakkensosho*). However, it differs from the European system because the proceedings entail the decision making process in concreto (concerning a concrete case) under Article 76 of the *Constitution*; but at the same time Article 81 of the *Constitution* grants to the Supreme Court the authority of the court of last instance. On the other hand, the Supreme Court is not empowered to exercise the abstract review of norms because it does not have an appropriate legal basis in the *Constitution.*

The determination of unconstitutionality in Japanese system (as in the American system) has the following two forms:

- a statute itself may be declared unconstitutional. In practice, the Japanese Supreme Court had issued until 1991 4 decisions concerning such matters which have erga omnes effect;
- on the other hand, the Court may decide that the implementation of a statute is unconstitutional in a concrete case. Such cases are most frequent in Japanese constitutional case-law. Therefore, court decisions in principle have an *interpattes* effect.

The Japanese system also allows dissenting or concurring opinion of judges. Subsequent discussion concerning the suitability of the dissenting opinions of Supreme Court judges resulted in the expansion of such dissenting opinions.

Japanese Supreme Court judges are appointed by the Government. In addition, There is a particularity that Supreme Court judges may be recalled by electors within a general electoral procedure in the House of Commons. Up to the present, such proceedings have not led to a recall in practice.

MALAYSIA

The first *Constitution* was adopted on 31 August, 1957 (the *Federation of Malaysia Agreement*). Diffuse constitutional review was possible even before independence (carried out by all ordinary courts as well as the highest courts and the Supreme Court). However, the influence of the American system was only indirect. The *Constitution* in force (subsequently introduced as the *Constitution of Malaysia* of 16 September 1963, amended in 1992, 1993, and 1994) explicitly declares the principle of the supremacy of the *Constitution* (Article 4).

At present constitutional review is regulated separately by a written constitutional act. The subject of such a review can be any executive regulation, and under certain conditions the constitutional review of statutes is also possible. In addition, the courts also have the function of interpreting the *Constitution*.

The conditions for being appointed a judge of a higher court are as follows: citizenship and ten years of practice as an attorney at law or judicial experience in the public administration. Judges are independent. Concerning their number, a directive declares that any court must be composed of no less than 5 judges (for the Supreme Court of Malaysia 12 judges are determined, for Borneo 8 judges; however the Parliament can change this number; so for the Supreme Court of Malaysia, the Parliament determined in practice 15 judges). The judges are appointed by the Parliament following their proposal by the Government. The maximum age limit for appointment is 65 years.

The Supreme Court (the Federal Court) has original jurisdiction to carry out constitutional review (Articles 128 to 130). With the introduction of constitutional review, Malaysian case-law has been absorbing American constitutional case-law; however, in the past, their case-law was more influenced by the English or Indian systems. The Federal Court may also exercise the constitutional review of statutes issued by the legislature: in such situations, the Court is explicitly empowered to exercise the constitutional review of such statutes. In addition, the court is also explicitly empowered to adjudicate jurisdictional disputes between the Federation and its constituent entities. Concerning constitutional disputes relating to other kinds of legislation, other (ordinary) courts are empowered to initiate such proceedings by requesting such before the Federal Court (the "concrete review").

It is possible to initiate *habeas corpus* proceedings before the High Court.

A real diffuse review was introduced by the constitutional amendment of 1981.

MONGOLIA

The new Mongolian *Constitution* was adopted on 12 February, 1992.

This *Constitution* introduced the Constitutional Court as an independent body with exclusive power to carry out constitutional review - *Undsen Huuliin Tsets* (Articles 64 to 67 of the Constitution). The Court is composed of nine members appointed for six years. They are appointed by the Parliament: three by itself, three on the proposal of the Head of State, and three on the proposal of the Supreme Court. The members of Tsets elect the President for three years from among themselves; one re-election is possible. The dismissal of a judge of the Constitutional Court prior to the expiration of their term of office is possible as determined by Para. 4 of Article 65 of the *Constitution* if a judge violates statute. Such a judge is dismissed by the Parliament following the decision of the Tsets and the body which proposed that the judge be elected.

Proceedings before the Tsets may be requested by the following petitioners (Para. 1 of Article 66 of the *Constitution):* the Parliament, the Supreme Court and the Public Prosecutor. It is not clearly

defined by the *Constitution* if the proceedings can be initiated by an individual petitioner. However, following the list of *Tsets* powers, it is possible to state that this body deals also with the constitutional complaints of citizens. It is foreseen that a *Tsets Act* will regulate this matter in detail. The *Tsets* is empowered to adjudicate jurisdictional disputes between different State bodies. It is only empowered to issue an opinion, which then has to be finally approved by the Parliament; but in some cases the decision of the *Tsets* can be final (Para. 2 of Article 66). Furthermore, the *Tsets* is empowered to decide finally on the constitutionality of regulations issued by the Parliament, the President of the Republic or by the Government. The *Tsets* also decides on the constitutionality of referendums as well as on the constitutionality of presidential and parliamentary elections. In addition, the *Tsets* deals with the impeachment of the Head of State, the President of the Parliament as well as the Prime Minister. The *Tsets* also decides on the dismissal of representatives; the result of such proceedings may only be an opinion, the final decision has to be issued by the Parliament.

NEPAL

The *Constitution* in force was adopted in December 1981 and is based on the *Constitutional Amendments* of 25 January, 1967, 12 December, 1975 and of 15 December, 1980.

The right to legal remedies for the protection of human rights before the Supreme Court is regulated by Article 16 in connection with Article 71 of the *Constitution.*

The Supreme Court is composed of the President and a limited number of judges determined by statute, but not more than six (Article 68 of the *Constitution*). The Court has statutory autonomy: it may issue its own internal rules. The Court President is appointed by the King following consultations with the highest State officials (the raj sabha, similar to the State Council); other judges are appointed by the King following consultation with the Court President. Judges are appointed for ten years, one reappointment is possible for a term of office as determined by the King himself (Article 69). The maximum age limit for judicial office is 65 years, the minimum is 45 years. Other conditions are as follows: candidates must be lawyers; have no less than five years of recent judicial experience; and no less than seven years' experience in government service or as an attorney at law. The dismissal of a judge of the Constitutional Court prior to the expiration of their term of office is possible on the request of the affected judge or as a consequence of inappropriate professional performance.

The Court has the following powers:

- jurisdiction above other courts;
- special powers:
- the evaluation of the implementation of the *Constitution*;
- the power to decide in cases of *habeas corpus, mandamus*, prohibition, *quo warrants and certiorari* concerning human rights protection (Article 71).

Generally speaking, the American system of judicial review was adopted. Within the scope of this system, the constitutional review of statutes is also possible, because the Constitution explicitly determines that statutorial principles as determined by the Supreme Court in matters of its jurisdiction are binding on all other courts (*stare decisis*). However, the Supreme court may change its decisions (Article 73 of the *Constitution*).

The *Constitution* of 9 November, 1990, reintroduced the Supreme Court as the highest court in the judicial hierarchy (Article 86). Judges may hold office until they attain the age of sixty-five. The term of office of the Chief Justice is seven years from the date of appointment (Article 87). Any

Nepali citizen may file a petition in the Court to have any statute or any part thereof declared void on the grounds of inconsistency with the *Constitution* because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by the *Constitution* or on any other grounds. Furthermore, extraordinary power rests with the Supreme Court to declare that statute as void either *ab intio* or from the date of its decision if it appears that the statute in question is inconsistent with the *Constitution* (Article 88).

In addition, the Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including *habeas corpus*, *mandamus*, *certiorari*, prohibition and *quo warrants.*

NORTH KOREA

The *first Constitution* was adopted on 8 September, 1948, the current *Constitution* was adopted on 27 December, 1972, and revised on 9 April, 1992.

A certain form of constitutional review fails under the jurisdiction of:

- the Standing Cornmittee of the Supreme People's Assembly[72], which, following Article 101 of the *Constitution*, examines and adopts bills raised in the intervals between sessions of the Assembly, abrogates old laws and regulations when new bills and amendments to laws are adopted, and interprets current laws and ordinances. The Standing Committee issues decisions and instructions (Article 102);
- the Public Prosecutor's Office, which is responsible under Para. 2 of Article 165 of the *Constitution*, for deciding if acts of State bodies are in conflict with the *Constitution* and other regulations issued by the National Assembly, the Head of State and other State bodies of the highest level.

PAKISTAN

The first *Constitution*, adopted in 1956 and amended in March 1962, was followed by the first democratic *Constitution* after the establishment of the State, adopted in 1973 (amended by *Amendment* No. 2 on 16 October, 1979, as well as by *Presidential OrderNo. 1* on 27 May, 1980), which included constitutional rights guarantees. It also determined the jurisdiction of the Supreme Court for particular forms of the constitutional review of statutes, both preventative and repressive. Furthermore, *habeas corpus* proceedings were introduced.

The *Provisional Constftution Order* of 24 March, 1981, granted the President of the State the right to amend the *Constitution*, which resulted in the suspension of the *Constitution* in 1973. This entailed a termination of the independent judiciary (Articles 175 to 212 of the *Constitution* of 1973) and the developed judicial review system exercised by the Supreme and High Court concerning human rights protection (which was guaranteed by Articles 8 to 28 of the *Constitution* of 1973). In the meantime, the *Constitution* was amended by *Amendment No*. 4 of 1975 and by *Amendment No. 5* of 1976. Both amendments limited the jurisdiction of higher courts in the field of human rights protection, which had been introduced by the *Constitution* of 1973. Following such tendencies, the executive branch ignored directions issued by the then Supreme Court in 1977 concerning conditions for the reestablishment of the system of legality. Under the *Constitution* of 1973, Pakistan also had *habeas corpus* proceedings, which were finally abrogated by an Act in 1981.

THE PHILIPPINES

The first *Constitutions* dated from 1935 and from 1973. The *Constitution* of 1935 first introduced constitutional review (the Supreme Court and/or all ordinary courts - the American system of diffuse review). The existing *habeas corpus* proceedings were suspended from 1973 to 1986.

The second *Constitution* of 1973 (amended in 1981) adopted the same system.

Under the *Constitution* of 15 October, 1986, the Supreme Court is empowered to perform constitutional review (item 2 of Para. 4 of Article 8 of the *Constitution).* Diffuse proceedings were adopted following the American model, which means that all ordinary courts are obliged to protect human rights and freedoms (sentence 2 of Para. 1 of Article 8 of the *Constitution*). The courts instituted a number of standards concerning the constitutional review as well as the appropriate conditions for such a review, e.g.:

- the existence of a concrete case;
- the personal and essential interest of any party that initiates a constitutional review;
- the need that the constitutional question be decided before the issuance of a decision in a particular case.

The judiciary enjoys financial autonomy and independence. The Supreme Court is composed of the President and 14 members (item 1 of Para. 4 of Article 8 of the *Constitution).* The Court may also act in chambers composed of three, five or seven members. Questions concerning the constitutional review of statutes and international treaties are decided by the Court in principle in a plenary session; cases concerning the constitutionality of presidential decrees, the promulgation of decrees, ordinances and other regulations are decided by two thirds of Court members present and voting. The Court's powers include the following (Para. 5 of Article 8): ceitioari, habeas corpus, mandamus, (similar to the]n.dian system), as an Appeals Court decides in cases in lower courts concerning constitutional review.

Members of the Supreme Court must be citizens of the Philippines of no less than 40 years of age and with no less than 15 years of legal experience. The office of.judge is incompatible with any other quasi-judicial or administrative office. Judges of the Supreme Court are appointed by the President of the Republic.

Dissenting or concurring opinions are welcomed, but must be supported.

SINGAPORE

The first *Constitution* of the independent State was adopted on 16 September, 1963 (revised in 1992, amended in 1993, 1994, 1995).

It is characteristic of Singapore that the country does not have a single constitutional text, but rather that three texts are still in force:

- the State *Constitution* of Singapore of 1963;
- the *Constitution of the Federation of Malaysia of 1963*;
- the *Singapore Independence Act No. 9* of 7 August, 1965.

The principle of the supremacy of the *Constitution* was introduced (Article 4 and Para. 2 of Article 5 of the *Constftution* of 1963).

Singapore introduced the American system of diffuse constitutional/judicial review, but the American principle of stare decisis is less implemented in practice. However, in the *Constitution* of

Singapore, the American system is in use only indirectly because of the many adopted elements of the Malaysian and Indian *Constitutions.* In general, the case-law, and primarily the constitutional case-law, is closer to British conservativism than American activism.

The highest body carrying out constitutional review is the Supreme Court. Singapore also has *habeas corpus* proceedings and *mandamus*, prohibition, *quo warranto and certiorari*. The practice of Singapore courts is influenced not so much by American jurisprudence, as by the English, Malaysian, and mainly the Indian Supreme Courts. Such a situation is a consequence of their similar constitutional systems, in the framework of which, Singapore courts have tried to adapt foreign jurisprudence to their concrete circumstances.

SOUTH KOREA

Since its founding South Korea has survived six major State structure changes and nine constitutional changes. The first *Constitution* was adopted on 17 July, 1948, later amended in July 1952, November 1954, July 1960, November 1960, November 1962, October 1969, December 1972, October 1980 and in October 1987. Constitutional review was introduced by the first *Constitution* (during the First Republic from 1948 to 1960), however, constitutional review in a proper sense following the German model, was actually introduced by the so-called *Constitutionof the Second Republic* (1960-1961). The Third Republic (1962-1972) adopted the American system. of constitutional review, which was exercised by the Korean Supreme Court. The Fourth Republic (1972-1980) as well as the Fifth Republic survived a period of regression concerning constitutional review. Only a constitutional commission was active in that period because the principle of constitutional review was not compatible with the then ruling military regime. By the special *Declaration of 29 June,* 1987, democracy was reestablished and the principle of the separation of powers was introduced: the legislature, the executive as well as the judicial branch. This was an appropriate basis for the introduction of constitutional review, which was reestablished following the German model.

The *Constitution* of the Sixth Republic regulated the Constitutional Court (*heonbeop jaepanso*) in Chapter VI by Articles 111 to 113. The position and work were regulated in detail by *Constitutional Court Act No. 4017* of 5 August, 1988, which came in to force on 1 September, 1988.

The Constitutional Court is composed of nine members. All members are appointed by the President of the Republic for six years. Members may be reappointed; three of the Court members are proposed by the Parliament, the other three by the President of the Supreme Court. The President of the Constitutional Court is appointed by the President of the Republic on the basis of the previous approval of the Parliament. The heads of the legislative, executive and judicial branches are associated members of the Constitutional Court on the basis of their office. Members of the Constitutional Court are appointed from among candidates who are no less than 40 years old, have no less than 15 years of legal experience practicing law (as judges, prosecutors, attorneys at law, lawyers), or who have held a high office in a public enterprise or who have been a professor of law. The upper age limit is fixed at 65 for Court members and 70 years for the Court President. The independence of Constitutional Court Judges is insured by three factors: their irremovability, except if they receive a sentence for a criminal offence; their political neutrality, which means that Constitutional Court Judges may not be members of any political party; their incompatibility which means that the office of Constitutional Court Judge is not compatible with any parliamentary office, membership in any local assembly, or the position of employee, administrative clerk or adviser in any special interest group. In practice only six judges are permanent. The others hold honorary offices. They are mainly professors of public law.

The Constitutional Court has its own administrative services and a body which carries out research in the field of constitutional review and which prepares draft decisions. Concerning its status as a constitutional institution, the Constitutional Court has its own independent budget. Funds are granted to the Court from the State budget on the basis of statute. The Constitutional Court also has administrative autonomy concerning its internal rules, proceedings and administration.

The powers of the Constitutional Court are divided into the five following areas:

- constitutional review of statutes;
- impeachment;
- deciding constitutional complaints of individuals;
- determining the constitutionality of political parties;
- adjudication of jurisdictional disputes between State bodies.

Decisions are issued by a majority of six votes. The petitioners before the Constitutional Court are required to have legal representation. The review of the constitutionality of statutes is based on rules of civil proceedings; impeachment is based on rules of criminal proceedings; concerning other matters, mainly administrative proceedings rules are applied.

The constitutional review of statutes is regulated by Article 107 of the *Constitution*, the petitioners are ordinary courts. The Korean *Constitutional* Court features only the concrete review of statutes and the abstract review. Such reviews also existed in the period of the Second Republic. In the period of the Sixth Republic the abstract review was not practiced, however, as a certain form of compensation, the individual constitutional complaint was introduced. Korean constitutional review applies to statutes issued by the Parliament as well as acts of the Head of State having the force of statute.

Under Article 65 of the *Constitution,* impeachment proceedings may be initiated against the highest State officers due to a violation of the *Constitution*: e.g. against the Head of State, the Prime Minister, members of the Government, judges, Constitutional Court Judges, the central electoral commission, and members of the Office of Financial Inspection.

Under Article 68 of the *Constitutional Court Act* of 1988, following a violation of constitutional rights by a public authority body, citizens may lodge a constitutional complaint before the Constitutional Court. A complaint is a subsidiary legal remedy for individuals, whose introduction was influenced by the Swiss, German and Austrian experiences. The object of such a complaint may be any act of State and focal authorities. All acts of the legislative and executive branch are included. However, it is necessary, before lodging a complaint, to exhaust all possible legal remedies. The judgments of ordinary courts are excluded from the constitutional complaint; however, the Supreme Court is empowered to carry out their review.

The review of the constitutionality of political party activities is determined in Subpara. 4 of Article 8 of the *Constitution*; such activities which violate the democratic order may be disputed.

The adjudication of jurisdictional disputes between public authority bodies is regulated by Article 61 of the *Constitutional Court Act* of 1988. There are three kinds of jurisdictional disputes:

- disputes between State bodies;
- disputes between State bodies and local communities;
- disputes between local communities.

The South Korean constitutional review system also includes the issuance of dissenting/concurring opinions.

Constitutional Court decisions are binding on all State bodies.

SRI LANKA

The Constitutional Court was introduced by the *Constitution* of May 1972 (Articles 54 and 55 of the Constitution). The Constitutional Court was empowered to carry out the constitutional review of legislation. It also was able to exercise the preventative review of legislation following special proceedings. In addition, the constitutional review also included *ceitioari* and *mandamus* proceedings.

The *Constitution* of 1972 was repealed and a new *Constitution* was adopted in February 1978 (Amended on 20 November, 1978, 26 February, 1979, 27 August, 1982, 25 February, 1983 , 8 August, 1983, 4 October, 1983, 6 March, 1984, 24 August, 1984, 6 August, 1986, 17 February, 1987, 14 September, 1987, 14 November, 1987, 24 May, 1988 and 17 December, 1988). By the mentioned *Constitution*, the constitutional review jurisdiction of the Supreme Court was introduced (Article 118). The Supreme Court exercises:

- preventative constitutional review of statutes (Articles 119 to 124);
- interpretation of the *Constitution* (Article 125);
- to hearing and determining of any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right (Article 126);
- a consultative function (Article 129);
- jurisdiction in election petitions (Article 130).

The Supreme Court is composed of the Chief Justice and of not less than six and not more than ten other judges. The members of the Court are appointed by the President of the Republic (Article 107).

TAIWAN

The constitutional basis is the Constitution of the Chinese Republic of Taiwan (*Zhunghua minguo xian-fa*) of 1 January, 1947.

In Taiwan constitutional review is exercised by the Assembly of Supreme Judges of the Supreme Court, with special regard to the interpretation of the *Constitution* (*Sifa-yuan da-fa-guan hui-yi*). The system also includes the dissenting or concurring opinions of judges (*butongyi-jian-shu*). The jurisprudence is published in a special collection (*sifa-yuan da-fa-guan hui-yijieshi-huibian*), together with the dissenting and concurring opinions of judges added to the appropriate decision or interpretation.

The interpretation of norms has a long tradition in the Chinese legal system, as it derives from ancient Chinese history. The national doctrine as an interpretative standard based on legal philosophy, has an even higher reputation and authority than the regulation itself. In modern Chinese constitutional history the interpretative function has been held by different institutions (e.g., the Supreme Court in Beijing established on 7 December, 1906, the Supreme Court in Nanjing established on 25 October, 1927, as well as the Judicial Office established on 20 October, 1928). Provisions concerning the interpretative function of the judiciary were included in only a few *Constitutions*, e.g., the *Constitution* of 1 May, 1914, which introduced a special consultative court for deciding cases of suspect implementation of the *Constitution* by the President of State. The work

of this body was regulated by special statute. Under the *Constitution of the Republic of China* of 10 October, 1923, constitutional review was exercised by members of both chambers of the Parliament. The draft *Constitution* of 1 June, 1931, empowered the central executive Party Committee to carry out constitutional review, however, under the draft *Constitution* of 5 May, 1936, this function was assigned to the Judicial Office.

In Taiwan the *Constitution* of 1 January, 1947, as the *Constitution of the Republic of China* is still in force. Under Articles 78 and 173 of this Consthution, the Judicial Office is empowered to interpret the Constitution, as well as statutes and executive regulations. Under Article 79 of the *Constitution,* the Judicial Office appoints a list of high judges to carry out this function. They are appointed on the proposal of the President of State with the consent of the Supervisory Office. The activities of the Judicial Office are regulated by the *Assembly of High Judges* Act of 21 July, 1958. On 3 October, 1958, the *Act on the Implementation of the Assembly of High Judges Act* was issued.

Under the regulation in force the mentioned body is composed of 17 high judges. They are appointed for nine years by the President of State with the consent of the Supervisory Office. This is not an ordinary but a special court. Under Para. 3 of Article 4 of the Act, the only legitimate petitioners are the central or local authority irrespective of the concrete case which the petitioner has been dealing with. This is different than in the USA or Japan, where a concrete case before the court is a precondition for any constitutional review and where the system of abstract review was not adopted. When merely a doubt exists concerning the implementation of the *Constitution* or concerning the conformity of statutes or executive regulations with the *Constitution*, the petitioner may request an "interpretation" from the Judicial Office. The Judicial Office has exclusive jurisdiction to exercise constitutional review (which results from the influence of the European model of constitutional review). The ordinary courts (unlike the American system) are not empowered to exercise constitutional review; they can petition for concrete reviews (concerning the constitutionality of a norm in a concrete.case which has been dealt with by such court). The system does not include an ex *officio* abstract review. Beside the abstract review of norms, the Judicial Office is empowered to issue official interpretations of statutes and executive regulations, and to decide on the request of a citizen affected by any decision concerning their constitutional rights (item 2 of Article 41 of the Act). This is a certain kind of constitutional complaint, which has failed to be used in practice, because many constitutional rights were suspended by statutes due to States of Emergency. In addition, the Judicial Office is empowered to decide on the impeachment to a Minister and the highest State officials (Articles 97 to 99 of the *Constitution*). The Judicial Office is also empowered to adjudicate jurisdictional disputes between the highest State bodies. When adjudicating such cases, the Judicial Office has to limit its interpretation to the *Constitution* - a border which may not be crossed by a political interpretation). In practice decisions issued by the Judicial Office resulting in the annulment of unconstitutional statutes are rare. Even following such decisions, the empowered legislature has not reacted by issuing new legislation. Such situations show that political bodies are not always prepared to accept or implement the decisions issued by the Judicial Office. An additional reason for such a relationship with political bodies is also the fact that the *Assembly of High Judges Act* did not regulate the effects of decisions issued by the Judicial Office.

However, the system of Taiwan includes some elements of the American system:

- Habeas corpus proceedings (Article 8 of the *Constitution*) adopted following the American model.
- Under Article 24 of the *Constitution*, in cases involving the violation of statute by a State body, such a body is liable also under criminal and civil law and the affected person may request before an ordinary court an appropriate indemnity from the State (the *respondent superior* from the American common law).

THAILAND

The first *Constftution* was adopted on 27 June, 1932, followed by many constitutional amendments.

The subsequent *Constitution* was adopted in 1978 (the *Constitution of the Kingdom of Thailand B.E.2521*), and amended by *Amendment B.E.2528* (of 1985) and *Amendment B.E.2532* (of 1989). The Constitutional Court was regulated in Chapter X (Articles 184 to 193). The court was composed of the President of the Parliament, the President of the Supreme Court, the General Public Prosecutor and four judges appointed by the Parliament from among qualified candidates. The office of the President of the Constitutional Court was exercised by the President of the Parliament. lncompatibilities were determined by Article 185 of the *Constitution*: A member of the Constitutional Court was not able to be a senator, a member of a representative chamber, a member of a local assembly, a local administrator, a permanently paid employee, an employee of a local authority or an employee of a State enterprise. A member of the Constitutional Court enjoyed certain privileges as determined by statute (Article 186). The office of a member of the Constitutional Court could terminate in the following situations (Article 188): death, resignation, acceptance of another office which is incompatible with the office of Constitutional Court Judge, or a sentence of imprisonment. The Constitutional Court was empowered to carry out the preventative review of draft statutes (Article 190 of the *Constitution*) on the request of the Parliament or the Prime Minister. In addition, the Constitutional Court exercised the concrete review of norms on the request of an ordinary court (Article 191 of the *Constitution*). The Constitutional Court also adjudicated jurisdictional disputes between the Supreme Court and other courts, as well as disputes between other courts (Article 179 of the *Constitution*). The decisions issued by the Constitutional Court were final and were published in the Official Gazette (Article 192 of the *Constitution*).

The *Constitution* in force was adopted on 11 October, 1997. The Constitutional Court is regulated by Articles 255 to 270. The Court consists of the President and fourteen judges appointed by the King following the proposals of the Senate and the judges of the Supreme Court, judges of the Supreme Administrative Court, qualified lawyers, as well as qualified political scientists (Article 255). The judges elect one from among themselves to be the President of the Court. Special qualifications for the mentioned candidates and their incompatibilities are defined by Articles 256 and 258.

The President and the judges hold their office for nine years from the date of their appointment by the King and they hold office for only one term (Article 259). The outgoing Court members remain in office to per-form their duties until the newly appointed President and judges of the Court take office. In addition, the Court members vacate office upon: death, reaching seventy years of age, resignation, being disqualified, committing a violation, being sentenced by a judgment to imprisonment, etc. (Article 260). The Court has the following powers (Articles 263 to 266):

- to exercise the preventative constitutional review of statutes and the rules of procedure of the Parliament;
- to exercise the concrete (repressive) review of the constitutionality of statutes requested by an ordinary court; such decisions of the *Constitutional* Court apply to all cases but do not necessarily determine the final judgements of the courts;
- to adjudicate jurisdictional disputes between State bodies.

The consultative chamber of the Court for hearing a decision consists of not less than nine judges. The decision is arrived at by a majority of votes, unless otherwise determined in the Constitution. The Court decisions and all judges thereof are published in the official gazette (Article 267). The Court decision must at least consist of the following: the background of the allegation, a summary of the facts from the hearings, the reasoning of the decision on questions of fact and questions of

law, and the provisions of the Constitution and the law invoked and resorted to (Article 267). Court decisions are deemed final and binding on the National Assembly, Council of Ministers, courts and other State bodies (Article 268). The proceedings of the Court are prescribed by the Constitutional Court (Article 269). The Court has an independent administrative unit with a Secretary as its head responsible directly to the President of the Court (Article 270). The Court office has autonomy in personnel administration, its budget and other activities as provided by statute (Article 270).

VIETNAM

Under the former *Constitution of the Republic of South Vietnam* of 24 October, 1956, amended in 1960, the Constitutional Court was introduced by Articles 85 to 88. The Court was empowered to decide on the constitutionality of statutes, decrees having the force of statute, administrative regulations, and to exercise the concrete review of norms (as requested by ordinary courts in concrete cases). Decisions on the unconstitutionality of statutes had an *erga omnes* effect, they were published in the Official Gazette. Similar to South Korea, the amended *Constitution of South Vietnam* of 1 April, 1967, granted the function of constitutional review to the Supreme Court (Articles 76 to 83 of the new *Constitution*). This Court was called the *Alta Cotte de Justicia*. It was empowered to exercise the constitutional review of statutes, decrees having the force of statute, other decrees, ministerial orders and other regulations issued by administrative bodies (Para. 1 of Article 91 of the *Constitution*).

The former North Vietnam adopted its first *Constitution* in November 1945. The second *Constitution* was adopted on 31 December, 1959, the third in July 1976, and a further draft constitutional text was created in December 1980. Under the North Vietnam *Constitution* of 1959, the power to exercise the preventative review of draft statutes was held by the Standing Committee and the National Committee of the National Assembly. The power to interpret the *Constitution* was held by the State Council. Under Article 105 of the *Constitution*, the Supreme People's Supervisory Body was introduced, which had to supervise the implementation of statutes by State bodies and citizens.

The *Constitutionof the Socialist Republic of Vietnam* of 15 April, 1992, introduced the parliamentary review of constitutionality. The National Assembly Standing Committee has the following duties and powers:

- to supervise enforcement of the *Constitution*, statutes and resolutions of the National Assembly, as well as orders and resolutions of the National Assembly Standing Committee itself;
- to discontinue the implementation of the acts of the Government, the Prime Minister, the Supreme People's Court, and the Supreme People's Organ of Control which are at variance with the *Constitution*, statutes and resolutions of the National Assembly;
- to recommend that the National Assembly rescind these acts as well as the acts of the Government, the Prime Minister, the Supreme People's Court and the Supreme People's Organ of Control which are at variance with the orders and resolutions of the National Assembly Standing Committee itself (Article 81). In addition, the committees of the National Assembly study and review bills, petition statutes, draft regulations, other bills and the reports entrusted to them by the National Assembly. They exercise their right of supervision within the scope of their duties and jurisdiction as prescribed by statute (Article 95).

CENTRAL AND SOUTH AMERICA

1. General picture

Constitutional review (with different effects) also developed in the countries of Central and South America. This justice is based on a rather rich tradition of constitutionalism in some countries.

There are four main systems of constitutional review:

a) THE AMERICAN OR DIFFUSE MODEL, the most widespread model, in which all courts, from the lowest to the highest, review the constitutionality of statutes and administrative measures in specific proceedings using common procedural rules. In the diffuse system decisions generally take effect inter parties only. As a rule, court decisions concerning the unconstitutionality of statutes is retroactive, *i.e. ex tunc* (with *pro praeterito* consequences).

The American system of judicial review has influenced numerous countries in Central and South America, where it was adopted even back in the 19th century by mainly countries with a federal state system[73]. In some countries this system has subsequently been amended and corrected through the parallel introduction of the European model., such cases are referred to here as the "mixed systems" of modern Brazil, Colombia, Ecuador, Guatemala, Peru and Venezuela.

The characteristics of the Central and South American variant of this system are as follows: all judges and courts have constitutional/judicial review jurisdiction; in pure systems standing is reserved for (ordinary) courts only; decisions have *inter parties* effect; the contents of the decision are in fact the finding - a statute may be declared null and void (the principle of the nullity of an unconstitutional State regulation), with ex tunc and/or pro-praeterito effect.

The systems with the American model of judicial review in Central and South America are further characterized by *amparo* proceedings. In Argentina *amparo* was established in 1853 by the *Federal Constitution*, but in practice the Supreme Court began to exercise its powers as late as in 1860. Mexico was the first to introduce it on 5 February, 1857, and readopted it in the *Constitution* of 5 *February, 1917. Amparo* proceedings were also introduced by other countries following the Mexican model[74].

b) THE EUROPEAN OR AUSTRIAN (OR CONCENTRATED) MODEL, adopted by Constitutional Courts specialized for the review of the constitutionality of statutes in special proceedings, is less widespread. In such a system the decisions of the constitutional review body have an erga omnes effect and they may declare unconstitutional statutes to be abrogated. Their decisions have an ex nunc effect with pro future consequences, i.e. the abrogation takes effect only at the moment when the decision on abrogation is issued by the Court. There is a characteristic feature that in some countries the concentrated system exists in parallel to the diffuse system (i.e. in Brazil, Colombia, Ecuador, Guatemala, Peru and Venezuela). The exclusive power of constitutional review is reserved either for the Supreme Court (Panama, Paraguay, Uruguay), for a special chamber of the Supreme Court (Costa Rica) or for the Constitutional Court (the Argentinean Province of Tucuman, Chile, Surinam[75]). Considering the fact that the introduction of constitutional/judicial review is usually related to the democratisation process in a specific country, it is worth mentioning the example of Argentina, where this transformation process of the social and legal system started on the level of province (as evidenced by the introduction of the constitutional protection of human rights in individual provincial Constitutions or even by the above example of the establishment of a Constitutional Court in the Province of Tucuman).

c) Some countries have a MIXED, l.E. DIFFUSE AND CONCENTRATED SYSTEM OF CONSTITUTIONAL/JUDICIAL REVIEW, *e.g.* Brazil, Colombia, Ecuador, Guatemala, Peru and Venezuela. Most often these countries have modified the original diffuse system by adapting it to the respective circumstances (e.g. in Argentina, and in particular, Mexico, with its specific juicio de

amparo as a form of constitutional complaint). Accordingly, the concentrated and diffuse systems of constitutional/judicial review may coexist in the same country.

Mixed systems are characterized by the popular complaint (*actio popularis*) as introduced by certain countries[76].

d) OTHER SYSTEMS OF CONSTITUTIONAL REVIEW

A special system of constitutional review is known in Cuba, where according to the *Constitution* of 24 February, 1976, the power of constitutional review is held by the National Assembly (legislative body).

2. The Particular Systems of Constitutional Review

ARGENTINA

Generally, the system of incidenter review (indirect constitutional review) was adopted. However, some provinces have a double system of constitutional review (direct and indirect). The new regulation in some provinces after 1957 is of main importance (Chaco, Chubut, Formosa, Neuquen, Rio Negro).

The constitutional review system is based on Articles 31 and 100 of the *Constitution of* 1 May, 1853 (with *Amendments from 1860, 1866, 1898, 1957 and 1994).* With reference to the prevailing system, each judge is empowered, irrespective of their position, to evaluate the conformity of laws and administrative acts with the *Constitution.* Constitutional review is exclusively reserved for the judiciary. The decisions take effect *ex tunc* and, naturally, *inter partes.*

Habeas corpus proceedings are possible; a complaint of this kind is meant to protect the right to Personal Liberty (Article 18 of the *Constitution).* Exclusive power to decide on such complaints is reserved for criminal judges, however this is limited merely to deciding on acts and facts where a violation of fundamental constitutional rights is involved. The *amparo* is regulated by the *Ley nacional sobre Ley de Amparo* of 18 October, 1966.

Another type of proceeding includes specific protection complaints - *recurso de amparo.* This was introduced pursuant to the decisions of the Argentinean Supreme Court of 1957 (the *Angel Siri* Case) and of 1958, on the example of the *amparo* complaint in Mexico and in certain other Central American countries, as well as in Brazil, where such a complaint is referred to as the *mandado de seguranca.* With the *recurso de amparo,* the protection of rights was extended from *habeas corpus* (relating to the right to Personal Liberty) also to all other rights guaranteed by the national *Constitution.* Whether to decide on such complaints is the decision of each judge.

On the federal level the Supreme Court is empowered to settle jurisdictional disputes between judges of different provinces, or judges of federal and provincial levels according to specific proceedings.

The constitutional review in Argentinean Provinces consists of the following:

- the constitutional complaint against laws before the highest provincial court (only in the Provinces of Buenos Aires, La Rioja, Chaco, Neuquen, Entre Rios, Santiago del Estero, and Rio Negro);

- *habeas corpus,* in all provinces, provided that cases are in the jurisdiction of the relevant criminal judge;
- *amparo,* in all provinces, provided that cases are in the jurisdiction of the relevant judge. In such cases the Province of Tucuman, however, anticipates the jurisdiction of the Constitutional Court. With reference to the *amparo,* the Province of Tucuman anticipates the possibility of abstract constitutional review (Para. 4 of Article 22 of the *Constitution);*
- jurisdictional disputes between municipalities in a specific province which are subject to the decisions of the Provincial Supreme Court.

The "abstract" constitutional review only follows the so-called *incidenter* proceedings.

The *Constitution* of the Province of Tucuman of 28 April, 1990 established its Constitutional Court on the European model *(Tribunal Constitutional).* Its power is limited to provincial legislation. The Constitutional Court is declared to be the supreme protector of the *Constitution,* in particular in cases of its violation (e.g., impeachment, Article 5, Para. 1 of Article 133 of the *Constitution).* The *Constitution* envisages the *amparo* as a means of protecting constitutional rights before the Constitutional Court (Article 22 of the *Constitution).* The five member Constitutional Court is empowered to carry out repressive abstract constitutional reviews of laws and executive regulations (Para. 1 of Article 134 of the *Constitution),* preventative abstract constitutional reviews of draft laws and draft executive regulations (Para. 2 of Article 134 of the *Constitution),* reviews of elections of members of the Provincial legislative body (Para. 3 of Article 134 of the *Constitution), to* adjudicate charges against State officers in cases concerning violations of the *Constitution* (Article 5 and Para. 4 of Article 134 of the *Constitution),* and to settle jurisdictional disputes between legislative and executive bodies of the Province, between Provincial courts, municipal bodies, between the Province and municipalities, as well as between municipalities themselves (Para. 5 of Article 134 of the *Constitution).*

BELIZE

Under the *Constitution* of 21 September, 1981, amended by *Act* No. 26 of 1988, where any question as to the interpretation of the *Constitution* arises in any court and the court is of the opinion that the question involves a substantial question of law, the court has to refer the question to the Supreme Court (Article 96).

BOLIVIA

Under the *Constitution* of 2 February, 1967, the Supreme Court of Justice, among other duties, was empowered to decide, as the final authority, upon questions of pure law wherein the decision rests upon the constitutionality or unconstitutionality of a law, decree or resolution of any kind (Article 127). It was also empowered: to decide on charges against the President and Vice-President of the Republic and Ministers for offences committed in the discharge of their office whenever Congress decrees impeachment; to settle jurisdictional disputes between municipalities or between these and political authorities, and between either of these and the municipalities of the provinces; to decide complaints against the resolutions of the legislative branch or one of its chambers, whenever such resolutions may effect one or more concrete rights, either civil or political; to decide disputes between local governments, whether they concern their boundaries or any other rights in such a controversy.

By the *Law of Reform of the Political Constitution of the State* of 12 August, 1994, the Constitutional Court was newly reinstituted. The new Constitutional Tribunal is composed of five members elected to ten-year terms. Its powers are detailed in Article 120, all of which deal with issues of constitutionality, unconstitutionality, and conflicts of competence. Article 121 specifies

that there is no further recourse beyond a decision of the Tribunal, and that statute regulates its organisation and functioning as well as the proceedings before the Tribunal.

BRAZIL

In general, the Brazilian system of constitutional review is a mixed system. Similar to the Argentinean, also the Brazilian system follows the American model. However, by the constitutional reform of 1934 the direct request for the determination of unconstitutionality before the Supreme Court of Justice was introduced. Therefore the Brazilian system can be treated as a mixed system.

The diffuse system already existed under the *Constitution* of 1891 and the *Federal Act No. 221* of 1894. All federal judges are empowered to carry out the constitutional review of statutes and federal executive regulations. At the same time, in the Brasilian system *habeas corpus* proceedings have a long tradition as introduced by Para. 22 of Article 73 of the *Constitution* of 1891.

The powers of the Brazilian Supreme Federal Court are as follows (Articles 102, 103, 34 and 36 of the *Constitution):*

- the abstract review of federal and provincial legislation, and its conformity with the *Federal Constitution* as requested by the acao *direta de inconstitucionalidade.* The circle of petitioners of the acao was extended by the Constitution of 1988. When deciding on an abstract review, the Supreme Federal Court may by a temporary order temporarily suspend the implementation of certain statute;
- an abstract omissional complaint may be lodged by the same circle of petitioners;
- *representacao interventiva:* the interventionist complaint of the General Public Prosecutor requesting the evaluation of the conformity of provincial law with appropriate principles of federal regulations;
- jurisdictional disputes between the Federation and provinces and between provinces;
- *habeas corpus* proceedings (limited to the protection of personal liberty);
- *habeas data* proceedings, which entails the constitutionally guaranteed implementation of informational self-determination. This was introduced by Article 6 of the *Constitution* of 1988.
- *mandado de seguranca* (from 1934 onwards), a wider legal remedy protecting the constitutional rights which are not protected by *habeas corpus;*
- *mandado de injuncao,* a special individual complaint in case of an omission by the legislature, as introduced by Article 5 of the Constitution of 1988.

Decisions issued by the Supreme Federal Court in abstract review proceedings have *erga omnes* effect - *eficacia general,* and the force of statute (Articles 175 and 178 of the *Rules of Procedure of the Supreme Federal Court).* Decisions concerning the unconstitutionality of statutes issued in *incidenter* proceedings in a concrete case only have *inter partes* effect (with the exception of the *erga omnes* effect granted in 1934).

Decisions and temporary orders are published in the Official Gazette, and simultaneously also in the Official Digest. Generally, the parties are obliged to pay court fees. *Habeas corpus* proceedings and the abstract review are free of charge.

The concentrated system, from 1934 onwards, gives the Supreme Federal Tribunal the power to determine the unconstitutionality of the constitutions of member states and state laws, however, only on the request of the Attorney General of the Republic, which entails an element of the abstract review of norms. By the *Constitutional Amendment* of 12 December, 1965, such a possibility was extended to include the constitutional review of all state regulations, federal as well as those issued

by member states. In such a manner, the abstract review of norms was introduced based primarily on the request of the Attorney General of the Republic as a legitimate petitioner. By Article 103 of the *Constitution* of 1988 the circle of abstract review petitioners was extended. Petitioners may be different federal and provincial bodies, political parties represented in the parliament, and social organisations.

Under the diffuse Brasilian system, all courts of first instance are entitled to not implement any statute which they consider to be unconstitutional, however not *ex officio,* but always on the request of a party in the proceedings. Such decisions have *inter partes* and *ex tunc* effect.

The Brazilian Constitution of 1891 also introduced the competence of the Supreme Federal Tribunal to review decisions issued by lower courts in cases of constitutional matters, when requested by a party which has lost such a case. Such a decision has *inter partes and ex tunc* effect; the statute is still in force but not applicable in a concrete case. However, the Federal Chamber may declare such a decision issued by the Supreme Federal Tribunal to have *erga omnes and ex nunc* effect (from 1934 onwards as well as under the *Constitution* in force).

The concentrated system has been in the jurisdiction of the Supreme Federal Tribunal since 1934, but only the General Public Prosecutor has standing to petition. In this case the court decisions have *erga omnes* effect and they are declaratory.

Indirect constitutional review is possible in complaints concerning the protection of constitutional rights and freedoms *(mandado de seguranca)* which exist in parallel beside *habeas corpus* proceedings. In addition, the Brazilian system also has a certain form of the popular complaint, i.e. "popular action for the protection of public assets" (Para. 3 of Article 102 of the *Constitution* in force) which is, in principle, possible against administrative acts, but indirectly also entails the constitutional review of statutes (an administrative act may be based on an unconstitutional statute).

The most recent constitutional revision was adopted in 1988 (which was already amended in 1992, 1993, 1994, 1995, 1996, 1997 and 1998). Under the Brazilian system any court or any judge may declare unconstitutional any statute which could be implemented in a concrete case. This unconstitutional statute is not declared null, however, it may not be implemented. The court decision has only *inter partes* effect. On the other hand, the *Constitution* of 1934 regulated in Para. 4 of Article 90, the possibility that the decision of the Brazilian Supreme Federal Court by which in *incidenter* proceedings a statute is declared unconstitutional, may be granted the force of statute by an act of the Federal Chamber (the *Constitution* of 1988 regulates this matters by Para. 10 of Article 52).

Thg Supreme, Federal Court of Brazil *(Supremo Tribunal Federal)* is composed of 11 members (Article 101 of the 1988 *Constitution). They* are appointed by the President of the Republic after confirmation by an absolute majority of the members of the Parliament. There are some conditions determined by the *Constitution* for appointment: Brazilian citizenship, membership in the bar, a minimum age limit of 35 years, and a maximum age limit of 65 years. Under Article 95 of the *Constitution,* Court members are guaranteed permanency of salary, office for life and irremovability. However, Article 93 of the *Constitution* determines the mandatory retirement of age to be 70. The President of the Supreme Federal Court is elected directly (by an absolute majority) from among Court members for two years; re-election is explicitly excluded. Each judge may choose two legal advisers.

The Supreme Federal Court can also act as a proponent of statutes regulating the judiciary (Article 93 of the *Constitution). Under* Articles 99 and 168 of the *Constitution,* the Supreme Federal Court

also has administrative and financial autonomy (it may make independent proposals concerning its budget).

The Supreme Federal Court may work in a plenary session; such a session is obligatory in the following situations: determining the unconstitutionality of a statute; issuing a temporary order in abstract review proceedings; impeachment proceedings concerning the President of the Republic, ministers or representatives; or jurisdictional disputes. In addition, the Court also has two chambers composed of five members. Court proceedings were regulated by the *Rules of Procedure* of 16 March, 1967, amended on 27 October, 1980, in accordance with the explicit constitutional provision on the autonomy of the Supreme Federal Court concerning its internal organisation. The new *Constitution* does not contain an explicit authorisation granted to the Court to issue rules of procedure. Therefore, until matters are regulated by statute, the provisions of the old *Rules of Procedure* are implemented unless directly contrary to the *Constitution.* A plenum of the Court can decide in the presence of no less than 8 judges. A majority of six judges present and voting is necessary for a decision on the unconstitutionality to be issued. Any judge has always been able to issue a dissenting opinion (voto *vencido).* Such dissenting opinions must be included in the decision where also the *ratio* of votes is indicated in detail. Subsequently, the dissenting opinion is published as a part of the decision in the Official Digest of the Supreme Court *(Revista Trimestral de Jurisprudencia).*

CHILE

The Constitution of 1925 empowered the Supreme Court to exercise constitutional reaew, but this constitutional review was of an *incidenter* character (Article 86). By the constitutional reform of 21 January, 1970, the Constitutional Court was established, above all with the aim that a special body adjudicate jurisdictional disputes between State bodies. The activities of this Court ceased in 1973. The Constitutional Court was reintroduced by the *Constitution* of11 September 1980 (Articles 81 and 83). Its work is regulated by the *Basic Constitutional Act* of 12 May, 1981. The Court has the following powers: the preventative review of statutes; impeachment; the review of the constitutionality of referenda; the repressive review of the constitutionality of statutes and decrees having the force of statute requested by direct application; other powers as determined by statute.

COLOMBIA

The first *Constitution* of the present Colombia of 30 March, 1811 *(the Constitution of Cundinamarca)* introduced the constitutional review of statutes by a special Chamber similar to the *French Constitution of* 1799. Further *Colombian Constitutions* of 1821, 1832 and 1843 did not include any constitutional review of norms. However, the *Constitution of* 1853 determined in Item 6 of Article 42 that the Supreme Court may declare municipal regulations and regulations of provincial assemblies null if they violate the *Constitution* and statutes of the Republic. The *Constitution* of 1858 as the *Constitution of the Federal State of* Colombia, empowered the Supreme Court to suspend the unconstitutional legislative norms of federal member states. The final decision on the validity or invalidity of such norms was in the jurisdiction of the Chamber.

The new centrist *Constitution* of 1886 introduced in Article 90 a real constitutional review, i.e. that the Supreme Court decided on the constitutionality of statutes on the basis of a veto by the President, but the decision of the Supreme Court had *erga omnes* effect. This *Constitution* is, in general, still in force. The amendments adopted by Articles 40 and 41 of the *Constitutional Act* of 1910, are, in a modified version (the amendment of 1945), still in force. In case of conflict between a statute and the *Constitution,* the provisions of the *Constitution* prevail. The Supreme Court is empowered to protect constitutionality. The Court is empowered to decide finally on the constitutionality of statutes and executive regulations following a (popular) complaint, which may

be lodged by any citizen. On the other hand, it is important that the decisions of the Colombian Supreme Court have *erga omnes* effect, and at the same time the effect of *res judicata.* It is not possible to dispute a final Court decision. The *Colombian Constitution* also introduced impeachment but not in such an expressive form. Impeachment proceedings against the President of the Republic, a Minister, the Prosecutor General and the members of the Supreme Court may be initiated by the Parliament. The decision is issued by the Chamber.

Concerning the regulations of 1961, the constitutional review bodies were the Plenum of the Supreme Court and the Administrative Court. Their powers were as follows:

- the *actio popular* before the Supreme court - against a statute or an act having the force of statute; decisions have *erga omnes* effect;
- the *accion de nulidad* before the Administrative Court - against executive regulations; decisions have *erga omnes* effect;
- the *accion de restablecimiente del derecho* before the Administrative Court (in the form of a constitutional complaint); decisions have *inter partes* effect;
- impeachment of the highest State officials.

Since 1910 all Colombian courts have had a constitutional basis (Article 215 of the *Constitution)* for carrying out the constitutional review of statutes (the diffuse system). A legal basis for the diffuse system had already existed (Article 5 of the *Act No. 57* of 1887). However, this system functions in parallel with the concentrated system of constitutional review. The diffuse system has a feature whereby proceedings are not initiated by the Court *ex officio,* but on the basis of a petition of a party with expressed legal interest (standing). The decisions *have inter partes* effect. Similar to other diffuse systems, a judge can not declare an annulment, but only that the unconstitutional statutory provision may not be used. In addition, the *Colombian Constitution also* included the concentrated system of constitutional review (Article 214 of *the Constitution* of 1961), which was in the jurisdiction of the Supreme Court of Justice, and from 1968 onwards, in the jurisdiction of the Constitutional Chamber of the Supreme Court *(Sala Constituciona4. The* organisation and work of this Chamber is regulated in detail by *Decree No. 432* of 1969. Following this decree, the Chamber is composed of five judges, specialised in public law *(derecho publico).* It is empowered to exercise the direct and general constitutional review of all state regulations (the exceptions are international treaties), which may be initiated through individual complaint filed by any individual (without the condition of legal interest). The proceedings have an objective character. The Court is not bound by the petition and may work also *ex officio.* The right to the popular complaint is recognised as a constitutional right. The effects of decisions in concentrated systems are *erga omnes, res judicata and ex nunc.* Since 1886 it has been possible to carry out a preventative review on the basis of a veto of the President of the Republic before the promulgation of statute.

By the constitutional reform of 1979, the Constitutional Chamber of the Supreme Court received even more autonomy concerning constitutional review as influenced by the European system of constitutional review and tendencies in this field in Chile, Ecuador and Peru.

The new Constitution of 1991 regulates the protection and implementation of rights in the 4th Chapter of Part II of the Constitution. It is also important that the system introduced many remedies for constitutional rights protection:

- The right to individual complaint - *accion popular de inconstitucionalidad* - which as a wider right concerning the general protection of constitutional rights is not designed only for the protection of basic rights but for the protection of all constitutionality. Furthermore, Colombia (similar to Venezuela) introduced the popular complaint very early. It was adopted by the

Constitution of 1910, but later was regulated in detail by *Act No. 96* of 1936 and *Decree No. 432* of 1969, which were amended by later constitutional amendment in 1979.

- In accordance with the English tradition as well as with the tradition of many Latin American countries, e.g. Argentina, Bolivia, Venezuela, Brazil and Peru, the new *Colombian Constitution* also preserved *habeas corpus* proceedings for the protection of the right to personal freedom (Article 30 of the *Constitution).* This is a limited form of the constitutional rights oriented only to personal freedom.

- The new *Constitution* introduced also a specific and direct remedy for the protection of constitutional rights, regulated in Article 86 of the *Constitution* - the so-called *accion de tutela;* this right was primarily introduced into the constitutional text, mainly under the influence of Spanish law. This right includes the right of any individual to dispute a statute or an administrative regulation because of a violation of their constitutional rights. The *Constitution* envisages a detailed statutorial regulation on the exercising of this right (Article 90 of the *Constitution).* At the same time, the new *Constitution* explicitly determines the circle of rights which are protected by the *accion de tutela* (Article 86: the rights determined in Articles 11 to 31 as well as the rights determined in Articles 33, 34, 37 and 40). It entails the summary regulation of the protection of explicitly determined rights which have to be exercised directly on the basis of the *Constitution.* It is not important which body carries out the protection and on which proceedings the protection is based; what is important is what the subject of protection is. In practice there are rights which can be claimed by an affected individual any time before an ordinary court when such an individual feels affected following any violation due to any action or omission by a body of public authority. This legal remedy can be defined as a certain subsidiary amparo proceeding (besides the popular complaint adjudicated by the Constitutional Court and *habeas corpus* proceedings), similar to proceedings concerning constitutional rights protection from the Spanish system as regulated by the Act of 26 December, 1978. This Act regulated the protection of rights in cases when such protection was not covered by constitutional complaint under the Spanish *Constitutional Court Act.* However, the Spanish Constitutional Court is empowered under the Spanish *Constitutional Court Act* to adjudicate cases relating to *Act No. 62* of 1978. Such regulation differs from the Colombian *accion de tutela*, whereby ordinary courts are primarily empowered to adjudicate such cases and the Colombian Constitutional Court acts only in a supervisory capacity (Para. 9 of Article 241 of the *Constitution).*

It is important that the new *Constitution* defined the Constitutional Court as an independent institution exercising constitutional review which replaced the former Constitutional Chamber of the Supreme Court. This entails a great change in accordance with the principle of the supremacy of the *Constitution* under the influence of European countries which formed special bodies as protectors of the supremacy of the *Constitution.* However, Colombian legal theory supported the idea of creating an independent constitutional review a long time ago: in 1957, 1959, 1975 and in 1978.

COSTA RICA

Under the special Act of 1989 (which actually entailed the amendment of the *Constitution* of 8 November, 1949, whose most recent amendment was declared by *Law 7347 of 1 July, 1993)* the European model of constitutional review was adopted, however, with the modification that constitutional review is concentrated within a special chamber of the Supreme Court. This Constitutional Chamber of the Supreme Court is exclusively empowered to adjudicate the following cases concerning constitutional review: popular complaints requesting the constitutional review of a statute (with *erga omnes* effect); preventative reviews of draft statutes (as a consultative function), as well as the constitutional review of legislation in the form of a concrete review.

ECUADOR

Under the *Constitution* of 15 January, 1978, amended in 1983, the Supreme Court is exclusively empowered to exercise the constitutional review of statutes on the basis of a diffuse system. In addition, by the *same Constitution* of 1978, the Constitutional Court *(Tribunal de Garantias Constitucionales)* was established. Under Article 140 of the *Constitution,* the Court is composed of three members appointed by the Parliament, the President of the Supreme Court, the General Public Prosecutor, the President of the Supreme Electoral Court, a representative of the President of the Republic, a representative of Trade Unions and a representative of the Chamber of Commerce. It exercises the constitutional review of legislation in a concentrated form. In addition, it is also empowered to decide on complaints of citizens concerning violations of the *Constitution.* The new Ecuadorian *Tribunal de Garantias Constitucionales* functions on the basis of the amended *Constitution* of 12 July, 1979. It has many similarities to the Austrian model of constitutional review; however, the system in Ecuador still preserved amparo *and habeas corpus* proceedings.

Subsequently, the *Constitution* was amended in 1993, 1995, 1996 and in 1997. The proceedings of *habeas corpus, habeas data* and *amparo* were reintroduced. In addition, the Constitutional Tribunal *(Tribunal Constitucionao)* was introduced. It is composed of nine members and their respective substitutes, who last four years in their functions and may be re-elected (Article 174). The Court members must satisfy the same requirements as the ministers of the Supreme Court of Justice. The National Congress designates the Court members in the following manner:

- two from lists of candidates submitted by the President of the Republic;
- two from lists of candidates submitted by the Supreme Court of Justice, which may not include its own members;
- two elected by the Legislature, who may not be a member of a Legislature;
- one from the list of candidates submitted by the municipal mayors and the provincial prefects;
- one from the list of candidates submitted by the legally registered national workers headquarters and the national indigenous and peasant organisations;
- one from the list of candidates presented by the legally recognised *Production Chambers.*

The members may not be prosecuted for their votes and for the opinions that they formulate in the exercise of the powers attributable to their post. The Court elects a President and a Vice-President from among its members, to a two-year renewable term of office. The Court is empowered (Article 175):

- to decide on complaints presented regarding laws, decree-laws, decrees and ordinances, that are fundamentally or procedurally unconstitutional, and totally or partially suspend their effects;
- to decide on the unconstitutionality of administrative acts of all public authorities. The declaration of unconstitutionality brings about the revocation of the act, without prejudice to the administrative body that then adopts the necessary measures to preserve respect for constitutional norms;
- to take cognizance of resolutions that deny recourse to *habes corpus, or habeas data,* and of the cases of obligatory consultation or appeals foreseen in the Recourse of *Amparo;*
- to decide on objections of unconstitutionality made by the President of the Republic in the process of forming statutes (the preventative review);
- to settle jurisdictional disputes as assigned by the Constitution;
- to exercise the other powers conferred on it by the Constitution and statutes.

The declaration of unconstitutionality causes a judgment to be issued which is then promulgated in the official journal, from which date it enters into effect, leaving without effect the disposition and the act declared unconstitutional (Article 176). The Constitutional Tribunal reports annually to the National Congress in writing regarding the performance of its functions (Article 177).

EL SALVADOR

Under the *Constitution* of 15 December, 1983, the Supreme Court of Justice has a Constitutional Division, which is empowered to take cognizance of and resolve petitions on the unconstitutionality of statutes,

decrees and regulations, cases of *amparo, habeas corpus, and* controversies between the Legislature and the Executive branch.

The Constitutional Division is composed of five magistrates appointed by the Legislative Assembly. Its President is elected by the latter on each occasion similar to the parliamentary election of Magistrates to the Supreme Court of Justice.

GUATEMALA

The system of Guatemala can be characterised as a mixed system of constitutional review. The diffuse system was introduced by the *Constitution* of 1921 and was preserved until the *Constitution* of 1965, which is still in force. All courts are empowered to exercise judicial review *ex officio.* Proceedings are *incidenter,* decisions have a declaratory character with *inter partes* and *ex tunc* effect.

Influenced by the European model of constitutional review, the *Constitution* of 1965 introduced a concentrated system of constitutional review (Articles 216 to 265 of the *Constitution, i.e.* a tribunal dedicated to deciding constitutional matters - *Corte de Constitucionalidad). The* Constitutional Court has explicit power to determine the unconstit(itionality of statutes with *erga omnes* effect. However, this Constitutional Court is not a permanent body, it operates only if constitutional review is necessary. The Court is composed of 12 members. Four members are appointed by the Supreme Court of Justice; the others are appointed also by the Supreme Court but from among members of the Court of Appeals and the Administrative Justice Tribunal. The President of the Constitutional Court is at same time the President of the Supreme Court of Justice. Constitutional review is based on direct requests. However, such requests are not a popular complaint similar to the Venezuelan or Colombian popular complaint, because in Guatemala the circle of petitioners is limited: the National Council, the Public Prosecutor, as well as an individual who is directly affected by an unconstitutional statute or state regulation. In addition, the individuals must have legal counsel. The decisions have *erga omnes* and *ex nunc* effect (in exceptional cases, the Constitutional Court may determine *ex tunc* effect). The Court decisions are published in the Official Gazette *(Diario Officiao).* The system of Guatemala also includes amparo proceedings (following the Mexican model) and *habeas corpus* proceedings. Proceedings before the Constitutional Court are regulated by the *Ley de amparo, habeas corpus y de constitucionalidad* of 3 May, 1966.

In general, the *Constitution* of 31 May, 1985, amended on 17 November, 1993, adopted the same system. In concrete cases, in every proceedings of whatever competence or jurisdiction, in any instance, and in cessation and even before sentence is decreed, the parties are able to lodge as an action, exception, or incident the total or partial unconstitutionality of a statute. The (ordinary) court has to make a determination in that respect (Article 266).

Actions against the statutes, regulations or provisions of a general character which contain a partial or total absence of constitutionality are heard directly by the Tribunal or Court of Constitutionality *(Corte de Constitucionalidad)* (Article 267). Under the current system, the Court of Constitutionality is a permanent tribunal of exclusive jurisdiction, whose essential function is the defense of the constitutional order. It acts as a collegiate tribunal with independence from the other State bodies and exercises specific functions assigned to it by the Constitution and the statute in the matter (Article 268). The economic independence of the Court is guaranteed through a percentage of the revenues that correspond to the Judicial branch.

The Court is composed of five members, each of whom has a respective alternate (Article 269). When it is adjudicating matters of unconstitutionality against the Supreme Court of Justice, the Parliament, or the President or Vice-President of the Republic, the number of its members rises to seven, the other two members being selected by lot from among the alternates. The members serve a five-year term of office. They are appointed in the following manner:

- one member by the plenary of the Supreme Court of Justice;
- one member by the plenary of the Parliament;
- one member by the President of the Republic;
- one member by the Higher University Council of the State University;
- one member by the Assembly of the Bar Association.
- simultaneously with the appointment of the member, that of the respective alternate occurs before the Parliament.

In order to be a member of the Court, the following requirements must be fulfilled: candidates must be of Guatemalan origin; be a lawyer belonging to the Bar Association; be of recognized integrity; and have at least 15 years of experience (Article 270). The Court members enjoy the same privileges and immunities as the members of the Supreme Court of Justice.

The Presidency of the Court is filled by the same appointed members on a rotating basis for a term of office of one year, beginning with the eldest member, and following in descending order of age (Article 271).

The Court has the following powers:

- sole jurisdiction to decide charges against statutes or provisions of a general character, and challenges of partial or total unconstitutionality;
- sole jurisdiction to function as Extraordinary Tribunal in *amparo* actions against the Parliament, the Supreme Court of Justice, the President or Vice-President of the Republic;
- to decide on appeal all *amparo* petitions brought before any ordinary court;
- to decide on appeal all petitions against statutes that charge unconstitutionality in concrete cases;
- to issue opinions on the constitutionality of treaties, agreements, and bills, at the request of State bodies;
- to adjudicate any conflict of jurisdiction in matters of constitutionality;
- to compile the doctrine and constitutional principles that have been invoked for the purpose of resolving amparo proceedings and the unconstitutionality of statutes, and to keep the legal journal or gazette up to date;
- to issue opinions on the unconstitutionality of statutes vetoed by the executive branch alleging unconstitutionality, and;
- to act, render opinions, dictate, or take cognizance of those matters under its competence established in the *Constitution.*

HONDURAS

Under the *Constitution of the Republic of Honduras of* 11 January, 1982, amended on 30 January, 1991, statutes may be declared unconstitutional by reason of form or contents (Article 184).

The Supreme Court of Justice has original and exclusive competence over hearing and deciding such matters, and must render its decisions with the requirements of definitive sentences.

Any individual who considers their direct, personal, and legitimate interests affected may request the review of the constitutionality of a statute and its applicability (Article 185):

- by an action filed before the Supreme Court of Justice;
- by a petition which may be asserted in any judicial proceedings;
- a judge or tribunal during any judicial proceedings may directly request a review of the constitutionality of a statute and its applicability before handing down a decision. In such a case, the proceedings are suspended and the case transferred to the Supreme Court of Justice.

In addition, the system of Honduras adopted *habeas corpus* and amparo proceedings as forms of constitutional guarantees (Articles 182 and 183).

MEXICO

The institution of the, constitutional review is firmly grounded in the legal tradition of the country as *amparo.* This institution dates from the *draft Constitution of the State of Yucatan* of 1840. *Amparo* was further adopted by the *Constitution* of 1857 and without many changes by the *Constitution* (in force) of 1917. After the enactment of the *Constitution of 1917, amparo* was regulated in detail by the special Act of 1919, which was in force until 1936. Since 1936 the present *Amparo Proceedings Act* has been in force.

Amparo Uuicio de amparo in Mexico is designed for the review of conformity with the *Constitution,* and was introduced not only for the protection of the supremacy of the *Constitution,* but also for exercising and protecting rights guaranteed by the *Constitution. The Constitution* regulated these matters in Article 103. The object of *amparo p*roceedings are always high regulations (statutes) which violate the

rights guaranteed by the *Constitution.* The review of conformity with the *Constitution in* amparo proceedings is in the jurisdiction of the federal judiciary bodies, and takes the form of an *amparo* complaint. Under Article 105 of the *Constitution* in force, the Supreme Court is also empowered to adjudicate jurisdictional disputes between the Federation and federal member states as well as between federal members states and federal member state bodies. The petitioner of such proceedings may be the affected State body.

The *Constitution* of 1847 was adopted under American influence, which resulted in the regulation that federal courts are obliged to protect constitutional rights and freedoms. The same regulation was adopted by *the Constitution* of 1857, which introduced a unique judicial institution, the *judicio de amparo.* At present, the regulation is based on the constitutional text of 1982 (amended from 1989 to 1997), which follows the directives of the 1917 *Constitution. Amparo* is based directly on the *Constitution* (Article 103), which completely reserved such proceedings for the federal courts. The effect of an amparo decision is *inter partes;* it is only of precedence importance for courts.

NICARAGUA

Under the *Constitution* of 19 November, 1986, amended on 4 July, 1995, the Supreme Court exercises constitutional review. The Court is composed of twelve magistrates elected by the National Assembly (Article 163). The Court is composed of several chambers, among them also the Constitutional Chamber. The organisation and membership of chambers is determined by the judges themselves. The full Court takes cognizance of and resolves instances of the unconstitutionality of any law, and conflicts of competence and constitutionality between the powers of the State. The President of the Court is elected from among the judges to a one-year term of office with the possibility of re-election.

Among other matters, the Court is empowered to carry out the following functions:

- to take cognizance of and resolve amparo proceedings concerning the violation of constitutional rights, in accordance with the *Amparo Act;*
- to take cognizance of and resolve instances of the unconstitutionality of statutes;
- to adjudicate jurisdictional disputes between bodies of the public administration, and between them and individuals;
- to adjudicate jurisdictional disputes between municipalities or between them and bodies of the Central Government;
- to adjudicate jurisdictional disputes between the branches of the State;
- to adjudicate jurisdictional disputes between the Central Government and the Municipal Governments and the Autonomous regions of the Atlantic Coast.

PANAMA

Under the *Constitution of* 11 October, 1972, amended in 1972, 1987, 1983, 1993 and 1994, the Supreme Court of Justice guards the integrity of the Constitution (Article 203). The Court in a plenary session tries and rules on cases concerning the unconstitutionality of statutes, decrees, decisions, resolutions and other acts that for reasons of substance or form are challenged before it, by any person.

When during the proceedings of a case, the public official entrusted with the administration of justice considers, or it is observed by one of the parties, that the legal or regulatory provision applicable to the case is unconstitutional, he submits the question to the cognizance of the Court in a plenary session, except when the provision has already been the subject of a decision, and orders a continuance of the case, until the question of constitutionality is decided.

Only the parties are able to formulate such observations at the appropriate moment during the proceedings.

Persons affected by the act, resolution, order or decision in question may request protection by administrative courts; and any individual or legal entity domiciled in the country may file a popular complaint.

The decisions issued by the Supreme Court are final, definitive and binding, and must be published in the Official Gazette. Neither writ of unconstitutionality, nor constitutional guarantees *(amparo)* can be admitted against Court judgements.

PARAGUAY

Under the *Constitution* of 20 June, 1992, the Supreme Court of Justice has the power to declare any legal provision or Court decision unconstitutional (Article 132). In addition, *habeas corpus, amparo* and the *habeas data* proceedings were introduced (Articles 133 to 135).

The Constitutional Chamber of the Supreme Court is empowered to hear and resolve cases involving the unconstitutionality of statutes and other related instruments, declaring inapplicability for each specific case of a legal provision that is contrary to the *Constitution* through rulings that only affect the case in question (Para. 1 of Article 260). Furthermore, the Court is empowered to decide on the unconstitutionality of final or interlocutory decisions, nullifying those that contradict the *Constitution.* Petitions of unconstitutionality may be filed directly before the Constitutional Chamber or by way of defense before any other court and at any moment during a case. In such cases, the respective action is submitted to the Supreme Court.

PERU

Peru has introduced a mixed system. The *Constitution* of 12 July, 1979 followed the tradition of the diffuse system (Article 236). All judges were empowered to exercise judicial review in *incidenter* proceedings with decisions having *inter partes* effect. In addition, by the *Constitution* of 1979, also a concentrated system of constitutional review was introduced. The *Tribunal de Garantias Constitucionales* was established (Articles 296 to 305) composed of nine members; three are appointed by the Congress, three by the executive branch and three by the Supreme Court *(La Cotte Suprema de la Republica).* Court activities were regulated by the *Court of the Constitutional Guarantees Basic Act No. 23385* of 19 April, 1982, amended on 22 August, 1985 *(Reforma de la Casacion Constitucional ante el TGC).* This Court was empowered to exercise the constitutional review of legislation and to review decisions decided by lower courts in *habeas corpus and* amparo proceedings. These two proceedings had a legal basis in the Constitution. In addition, *habeas corpus* proceedings were regulated by the *La ley de habeas corpus y amparo no 233506.*

Direct petition for constitutional review proceedings *(accion de inconstitucionalidad)* was limited to the following petitioners: the President of the Republic, the Supreme Court, the Public Prosecutor of the Republic, a group of 60 members of the Parliament, 20 senators, and 50,000 citizens, whose signatures had to be confirmed by the National Elections Board. The Constitutional Court was not bound by the petition, it was able to extend it *ex officio.* The decisions had *erga omnes* effect and only *ex nunc (pro futuro)* effect, however, in exceptional cases an *ex tunc* effect could be determined.

In the past, constitutional review in Peru was exercised based on the constitutional texts in force. At first, such review was exercised by the Central Chamber (1822), the Protective Chamber - *senado conservador* (1823), the Review Sub-Chamber - *camara de censores* (1826), the National Council (1828), and the Congress (1856, 1860, 1867, 1919). In 1931 the American system of diffuse review was adopted. In 1979 the *Tribunal Garantia Constitucionales* was introduced based on the European model. The adoption of the European model was influenced by similar institutions from other Latin American countries: Guatemala (1965), Chile (1970, 1980), and Colombia (1970). A special desire was present to adopt the Austrian model of constitutional review in parallel with the simultaneous existence of the American system of diffuse judicial review. So as a body of concentrated constitutional review, the *Tribunal de Garantias Constitucionales* was established. It was regulated by Articles 296 to 304 of the *Peruvian Constitution (Constitucion politica del Peru)* of 28 July, 1979. The Tribunal was an independent constitutional body. Its activities were regulated by the *Constitution and* the *Court of the Constitutional Guarantees Basic Act.* The Court was composed of nine members appointed for six years. Three members were appointed by the Congress, three by the executive branch and three by the Supreme Court. Re-election was possible. The candidates had to fulfil the following conditions: 10 years of membership in the Supreme Court or in some other highest court in the country; or 9 years of experience as a law professor; they must have a democratic view of life, and a demonstrated interest in the protection of human rights. The Court had power to decide the following matters: popular complaints containing a request for the constitutional review of statutes; *habeas corpus and* amparo proceedings; the constitutional review

of all statutorial regulations; jurisdictional disputes between the highest State bodies and between bodies on the level of departments and regions; also the preventative constitutional review of draft statutes. Decisions on unconstitutionality had the force of statute and were published in the Official Gazette.

By the *Constitution* of 29 December, 1993, the following constitutional guarantees were introduced (Article 200): action of *habeas corpus;* action of *amparo*, action of *habeas data;* action of unconstitutionality; individual action; *accion de cumplimiento.*

The Constitutional Court is the body that reviews adherence to the Constitution (Article 201). It is autonomous and independent. It is composed of seven members elected for a five-year term.

For membership in the Court, the candidate must meet the same requirements as those mandated for a member of the Supreme Court. The Court members enjoy the same immunities and the same prerogatives as congressmen. They are subject to the same incompatibilities. No immediate re-election to membership is possible. The Court members are elected by the National Congress with affirmative votes of two-thirds of the legal number of its members. Judges of the Constitutional Court, and judges or prosecutors who have not relinquished their position for a year prior, cannot be voted into membership.

The Constitutional Court has the power (Article 202):

- to determine with sole jurisdiction the constitutionality of laws;
- to adjudicate, as the court of last instance, decisions denying *habeas corpus, amparo, habeas data,* or an executory order;
- to adjudicate jurisdictional disputes.

The following are authorized to initiate a constitutional review: the President of the Republic; the Public Prosecutor; the Defender of the People; 25% of congressmen; a petition by 5,000 citizens whose signatures are confirmed by the National Elections Board; the Presidents of Regions in agreement with the Council of Regional Coordination or provincial mayors in agreement with the Council in matters of their competence; or professional colleges in the fields of their specially (Article 203).

Decisions of the Constitutional Court which declare the unconstitutionality of a norm are published in the Official Gazette. On the day following publication, the said norm becomes null and void (Article 204). A decision of the Constitutional Court declaring a legal norm unconstitutional in whole or in part does not have retroactive effect. Once domestic remedies have been exhausted, whoever feels that their constitutional rights have been violated in his constitutional rights may resort to international tribunals or organisations established according to treaties or agreements to which Peru is a party (Article 205).

URUGUAY

Under the *Constitution* of 17 November, 1966, amended on 8 December, 1996, statutes and the decrees of the local governments which have the force of law, may be declared unconstitutional by reason of form or contents, in accordance with the *Constitution* (Article 256). The Supreme Court of Justice has original and exclusive jurisdiction in the hearing and deciding of such matters, and must render its decision in accordance with the requirement for final decisions (Article 257). The declaration of the unconstitutionality of a statute and the inapplicability of the provisions affected thereby, may be requested by any person who considers that their direct, personal, and legitimate interests have been affected:

- by means of a lawsuit, which must be filed before the Supreme Court of Justice;
- by an objection of unconstitutionality, which may be made in any judicial proceedings.

A judge or court heating any judicial proceeding, may also request a review of the constitutionality of a statute and its applicability, before rendering a decision (Article 258). In such a case, the proceedings are suspended and the case is referred to the Supreme Court of Justice.

Decisions of the Supreme Court refer exclusively to a concrete case and have effect solely on the proceedings for which they are rendered (Article 259).

VENEZUELA

Constitutionalisation first began in 1811. However, the *Constitution* of 1961, following the constitutional tradition of the *Constitution* of 1858 (the supremacy of the *Constitution)* established the Supreme Court of Justice as a body empowered to exercise the constitutional review of statutes and other state regulations. At the same time, Article 20 of the *Civil Code* allows all courts in concrete cases to declare all normative acts as void when they are considered unconstitutional. In such a way the diffuse system was introduced. As a diffuse system it has an *incidenter* character and the judges have *ex officio* power. Decisions have a declaratory, *ex tunc* and *pro praeterito* effect (and/or retroactive effect). Despite its nonapplication in a concrete case, a particular regulation is still valid, because the *Constitution* reserved the determination of the nullity of a statute only for the Supreme Court of Justice. Due to the fact that the principle of *stare decisis* is not applied, a concrete decision is not binding on an individual judge or other judges and courts, which may change their opinion at any time.

To avoid eventual conflicts between judgements concerning constitutional matters, a concentrated system of constitutional review was introduced in parallel by the *Constitution* of 1858. This *Constitution* even introduced a popular complaint on the basis of which the then Supreme Court could declare provincial legislative acts null and void. This power of the Supreme Court was preserved also after the constitutional reform of 1864, despite the extraction of the popular complaint and that the member states of the then federative state received the status of petitioner in such cases. The mentioned power was preserved by the *Constitution* of 1893 until the *Constitution of* 1961 (amended on 16 March, 1983), which is still in force. On the basis of *this Constitution,* the activities of the Court are regulated in detail by the *Supreme Court of Justice Basic Act* of 1976. However, the jurisdiction of the Supreme Court was extended to all state regulations. By the same *Act,* the legal basis of the popular complaint was created. The *Constitution* does not require that a particular petitioner have an individual legal interest; the *Supreme Court of Justice Basic Act* has limited such a wide formulation with the condition that the disputed statute must violate the rights and interests of the petitioner. The popular complaint is not bound by a particular term and does not fall under the statute of limitations. Proceedings before the Supreme Court following such a complaint have an objective character. Complaints may be refused by decisions, which have *erga omnes and res judicata* effect. Decisions declaring statutes as null and void also have *erga omnes* effect and an absolute character *res judicata.* In such cases review is repressive. Furthermore, the Venezuelan system has featured a preventative review since 1854 exercised by the Supreme Court on the request of the President of the Republic before the promulgation of the relevant statute. The effect of decisions is different depending on the kind of proceedings. If the proceedings are of a diffuse character, the decisions have *inter partes and pro praeterito and/or ex tunc* effect. Decisions in the concentrated Venezuelan system have *erga omnes* effect. They are constitutive, *pro futuro,* as well as with *ex nunc* effect. *The Supreme Coutl of Justice Basic Act* of 1976 did not regulate such matters and determined that the Supreme Court alone has to determine the effect of its decisions.

In addition, the system of Venezuela also includes *amparo* proceedings *(derecho de amparo),* which was introduced by Article 49 of *the Constitution* of 1961 with the aim to protect basic rights and freedoms. However, even the former *Constitutions* of Venezuela included *habeas corpus* proceedings (limited only to the protection of personal freedom). Amparo proceedings are now regulated by the *Ley Organica de Amparo sobre derechos y garantias constitucionales* of 22 January, 1988.

THE FORMER BRITISH COLONIES OF LATIN AMERICA (THE WEST INDIES)

These countries (Barbados, Guiana, Jamaica, and Trinidad and Tobago) did not adopt the English legal system, which does not include a special institution for constitutional review.

Therefore, in the mentioned countries constitutional review is exercised by the highest judicial body in the country: the High Court, the Court of Appeals, and the Privy Council. Constitutional review was introduced concerning the implementation of the principle of separation of powers, which prevents the usurpation of the judicial function by the legislature.

In contradistinction with the English system, most of the British Commonwealth countries, in particular in the West lndies region, adopted the diffuse system of judicial review. The system of constitutional review in these countries mainly follows the general trends of the diffuse system. However, concerning constitutional matters, in these countries the Supreme Court has the jurisdiction of final appeal. Some countries explicitly empowered courts to exercise constitutional or judicial review, sometimes this power was explicitly assigned to the Supreme Court, e.g. Trinidad and Tobago. There the High Court of Justice is empowered also to interpret the *Constitution.*

Systems of Constitutional Review in Countries with a Federal State Structure

Constitutional review in the proper sense of the word, taken, however, from the theoretical point of view, can develop only when instead of the principle of the sovereignty of Parliament[77], there prevails the idea of the supremacy of the *Constitution*[78], and when constitutional review is performed by a special body, independent of the legislative and executive power[79]. Such approaches were characteristic of development after World War II. On the other hand, constitutional review also involves the principle of the vertical separation of powers. It emerged in federal states, whereby constitutional review was supposed to exert supervision over the, federal legislature in relation to member states. In Austria and Switzerland, countries with a tradition in the field of constitutional review, the respective body empowered to perform constitutional review was introduced only on the federal level. In Germany constitutional review was introduced on the federal level as well as on the level of provinces. A similar system was introduced in the former Yugoslavia (1963), as well as in Slovenia and other constituent republics of the former Yugoslavia (1963). After the introduction of constitutional review on the federal level, constitutional review has been adopted in Russia since 1990 also by the federal entities of the Russian Federation. The structure of constitutional review on the federal as well as on the level of member states is still preserved in the present Federal Republic of Yugoslavia and in Bosnia and Herzegovina. A certain special position is accorded to Argentina, where the democratic transformation process in a Federal State first developed in its units, marked by the gradually increasing introduction of elements of constitutional review of different intensity by the individual provinces (Tucuman).

Such a structure of constitutional review was not adopted in the former Czechoslovak Republic; there the Constitutional Court was established only on the federal level. In spite of the efforts in

Kwazulu-Natal, constitutional review was created only on the level of the South African Federal State.

Some other federations did not adopt the constitutional review on the level of member states, e.g. Brazil, Canada, Comoros, India, Malaysia, Nigeria, Togo, and the USA, where the respective function has been provided by the Supreme Court or by the Constitutional Court.

In Hong Kong, as a special Administrative Territory of China (after 1 July, 1997), a specific system of constitutional review was introduced, where the function of constitutional review is performed predominantly by the Parliament (the National People's Congress) and/or a certain parliamentary body (the Constitutional Committee).

In Switzerland, the Federal Court cannot evaluate federal statutes, generally binding resolutions and ratified international treaties, and in cantons the constitutional review was not introduced. The only federal legislative decisions subject to constitutional review are orders issued by the Federal Executive (Federal Council). The Federal Court exercises its constitutional jurisdiction chiefly with respect to legislative acts and decisions issued by the Cantons. Other disputes brought before the Swiss Federal Court are as follows: conflicts of jurisdiction between Federal and cantonal authorities and disputes concerning voting rights.

On the other hand, some *Constitutiona*l Courts are empowered to decide on the conformity of the *Constitutions* of specific State Regions with the (main) State Constitution (e.g., Georgia, as regards the Abkhasian territory and Uzbekistan, as regards the territory of Karakalpakstan). In addition, the local Karakalpakstan Constitutional Court (the Constitutional Committee of the Karakalpakstan Republic) also exists.

a)Germany

The first integral system of constitutional review on the federal level as well as on the level of member states was introduced in Germany. Beside the Federal Constitutional Court *(Bundesverfassungsgericht),* the member states (Laender) established their own Constitutional Courts. Their titles are sometimes "the Constitutional Court *(Verfassungsgerichtshoo",* and sometimes "the State Court *(Staatsgerichtshoo".* All member states except Schieswig-Holstein adopted the constitutional review. At first the Province of Berlin did not establish such a Court in spite of the respective basic provisions in the Berlin Constitution. In addition, the Federal Constitutional Court developed a certain limited system of legal protection as regards the Berlin Province. However, the Constitutional Court of Berlin was finally established by the *Constitutional Court Act of 8 November, 1990.* The Schieswig-Holstein Province, on the other hand, under the Federal Constitution transferred the function of constitutional review to the Federal Constitutional Court. In addition, the *Constitution of Schleswig-Holstein* did not institute a Constitutional Court on the local level[80]. Until 1993, among the five new German member states, only Sachsen, Sachsen-Anhalt and Brandenburg introduced the constitutional review[81]. However, the constitutional review was not introduced in all German member states with the same intensity. One of the most famous Courts is the Cdnstitutional Court of Bavaria, situated in Munich, because of its tradition. As a matter of fact, the constitutional review in Bavaria has its roots in the Bavarian Constitutions of 1850 and of 1919.

Provincial Constitutional Courts were established in the following German Provinces:

- Baden-Wuerttemberg (based in Stuttgart);
- Bavaria (based in Munich);
- Berlin (based in Berlin);

- Bremen (based in Bremen);
- Hamburg (based in Hamburg);
- Hessen (based in Wiesbaden);
- Niedersachsen (based in Buckeburg);
- Nordrhein-Westfalen (based in Muenster);
- Rheinland-Pfalz (based in Koblenz);
- Saarland (based in Saarbrucken).

The powers of the Constitutional Courts did not follow any common model, so there are some differences between present Constitutional Courts. In addition, between the Federal Constitutional Court and Provincial Constitutional Courts powers are separated with regard to the principles which represent the general grounds for the separation of powers between the Federal State and the member states. Accordingly, the Federal Constitutional Court is empowered to decide in all cases of federal constitutionality (concerning conformity with the Federal *Constitution*), while the Constitutional Courts of the member states are empowered to decide in cases of Provincial constitutionality (concerning conformity with their Provincial *Constitutions*). However, both proceedings can be simultaneous and parallel if the same regulation is concerned. In such cases both Courts (the Federal and the Provincial) coordinate their proceedings. As a rule, the freedom to decide on such issues as "foreign" law is limited, provided that the competent Constitutional Court has already decided the case with *erga omnes* effect. Thus, Provincial Constitutional Courts are bound by the decisions of the Federal Constitutional Court concerning matters of Federal constitutional law, whereas, the Federal Constitutional Court is bound by the decisions of Provincial Constitutional Court cases concerning matters of Provincial constitutional law. The relationship between the Federal Constitutional Court and the Constitutional Courts of member state is expressly determined not only in the German system, but also in some other systems (e.g. the FRY).

b) The Russian Federation

Under the *Constitution of the Russian Federation* of 12 December 1993, the Constitutional Court of the Russian Federation consists of 19 judges (Article 125). The Court, on the request of the President of the Federation, the State *Duma*, one-fifth of the members of the Federation Council of Representatives of the State *Duma*, the Government of the Federation, the Supreme Court of the Federation, the Supreme Arbitration Court of the Federation, or bodies of the legislative and executive branches of members of the Federation, resolves cases concerning compliance with the *Constitution* of the Federation of:

- federal statutes, normative acts of the President of the Federation, the Federation Council, the State *Duma* and the Government of the Federation;
- republican constitutions, charters, as well as statutes and other normative acts of members of the Federation published on issues pertaining to the jurisdiction of bodies of State power of the Federation and the joint jurisdiction of bodies of State power of the Federation and bodies of State power of members of the Federation;
- agreements between State bodies of the Federation and bodies of State power of members of the Federation, and agreements between bodies of State power of members of the Federation;
- international treaties of the Federation that have not entered into force.

In addition, the Constitutional Court resolves jurisdictional disputes:

- between the Federal State bodies;
- between State bodies of the Federation and State bodies of the members of the Federation;
- between supreme State bodies of members of the Federation.

The Constitutional Court of the Federation, in proceedings following complaints concerning the violation of the constitutional rights and freedoms of citizens and requests from courts, reviews the constitutionality of the statute applied or due to be applied in a concrete case in accordance with proceedings determined by federal statute.

The Federal Constitutional Court, on the request of the President of the Federation, the Federation Council, the State *Duma,* the Government of the Russian Federation, or legislative bodies of members of the Federation, interprets the federal *Constitution.*

Acts and their provisions deemed unconstitutional do not have force. International treaties of the Federation may not be enforced and applied if they violate the federal *Constitution.*

The Federal Constitutional Court on request of the Federation Council rules on compliance with established proceedings when charging the President of the Federation with state treason or other serious crimes.

Judges of the Federal Constitutional Court are appointed by the Federation Council following nomination by the President of the Federation (Article 128).

The powers of the federal Constitutional Court are established by federal statute.

In the Russian Federation the Constitutional Courts of the following federal entities were established in addition to the federal Constitutional Court: Adigea (based in Majkop); Baskhiria (based in Ufa); Buryatia (based in Ulan-Ude); Dagestan (based in Mahachkala); lrkutskaya Oblast (based in lrkutsk); the Kabardino/Balkar Republic (based in Nalchik); Karelia (based in Petrozavodsk); Komy (based in Siktivkar); Northern Ossetia (based in Vladikavkaz); Tatarstan (based in Kazan) and Tuva (based in Kizil); and Yakutia/Sakha (based in Yakutsk). Subsequently, Constitutional Courts were also introduced in the following federal units: Altai, Chuvashia, lngushia, Khakassia, the Karachaewo-Cherkez Republic, Kalmikia, Marii-El, Udmurtia. Particularities of constitutional review systems of federal entities are presented in detail in *Chapter XIV. Particularities of the Constitutional Reviewin Some Countries/Constitutional Review in the New Democracies.*

c) Argentina

Particularities of the Argentinean constitutional review system are presented in detail in *Chapter XIV. Particularities of the Constitutional Review in Some Countries/Central and South America/The Particular Systems of Constitutional Review/Argentina.*

d) The Former SFRY and Present FR of Yugoslavia

Before 1963 the Yugoslav system for the protection of constitutionality and legality included the review of the constitutionality and legality of rules under the principle of self-review within the parliamentary system. The authors of the project that introduced constitutional review came to the conclusion that this review lacked efficiency because - in so far as it was practiced - it was mainly oriented to the conformity of the policy expressed in some rules and less to legality in its literal meaning. As far as the latter is concerned it was too tolerant, and therefore inefficient. This led to a search for a new solution to these problems. Practice, however, revealed that legislative and executive bodies were, mainly for objective reasons, unable to review the constitutionality and legality of the rules objectively and critically, because they were themselves their authors.

The experiences from elsewhere in the world proved the same - it was a period of many new constitutional review systems. On these grounds it was generally believed that the protection of the constitutionality and legality of rules would favour special autonomous bodies, independent of the legislative and executive powers. In this period more and more countries introduced special bodies of constitutional review, especially Constitutional Courts, whereof the main task was to evaluate the conformity of legal rules with the *Constitution* as well as to abrogate and annul unconstitutional or illegal rules. Such decisions issued by the Constitutional Court actually have the power of Law, because they affect everyone to whom such invalidated provisions refer; as such this encroaches upon the sphere of the legislature or other measure-imposing bodies. Leaving decisions on such disputes to a third, neutral, body which is supposed to issue decisions mainly with reference to reasons based on constitutional law and after certain proceedings before the Constitutional Court, actually entails the depolarisation of such disputes and minimises arbitrariness, which is in the interest of the stabilisation of the legal system. Constitutional review was expected to contribute to the faster and more efficient elimination of unconstitutional and illegal phenomena and negative tendencies; at the same time it should also introduce more democratic methods and flexibility when solving such problems. If such functions were performed by government bodies, they would, according to the then belief, not only deal with the problems of legality, but would also interpose themselves as eager political agents.

Hence, this all led to the introduction of special constitutional bodies, whereof the constitutional review would limit the field of legislative, and partly also executive, power, and which would be, above all, apolitical supervisory bodies of special types, featuring various additional, distinctly judicial, powers, including the basic power to review the constitutionality of statutes. The intention of the Yugoslav constitutional order was that the new Constitutional Courts were supposed to act as a part of the parliamentary system and not as classical judicial bodies such as might be inferred from the name itself. This, however, did not mean that the decision-making process of existing Constitutional Courts could be identified with the legislative function. The then theory on constitutional law, however, did not accept Kelsen's view whereunder decisions issued by the Constitutional Court relating to the constitutionality of statutes is actually a legislative function, but rather considered that in such cases decisions issued by Constitutional Courts should be understood as individual acts rather than general acts. On the introduction of constitutional review, the political aspect of constitutionality and legality was attributed great importance. At the same time Constitutional Courts should have the least possible restriction on the method of their operation, their preparations for decisions, discussions and decision-making process (except for the basic rules of procedure specified by law). In all cases, however, Constitutional Courts depended on applications lodged by petitioners or proponents.

The *1963 Yugoslav Federal Constitution* as well as the 1963 *Constitutions* of former constituent republics introduced the constitutional review on the federal as well as on the level of constituent republics. The *Constitution of the Republic of Slovenia of 1963* (Official Gazette SRS, No. 10/63) envisaged the first former constituent republic Constitutional Court[82].

The constitutional courts were a new institution for the protection of constitutionality and legality that had not existed in the former constitutional system: the Constitutional Court as an independent body with precisely specified powers in the field of constitutionality and legality protection, a special body in addition to the bodies of the parliamentary system in the narrow sense of the word and in addition to the already existing bodies within the system of ordinary justice. At first constitutional review was concerned with discussions on its compatibility with the principle of the unity of powers, as this was the leading principle of the legal system. The actual turning-point in favour of the introduction of the constitutional review into the legal system was brought about by the positive attitude of the leading political structure to the institution of the constitutional review in the proceedings preceding the adoption of the *Constitution of 1963.* In addition to the Federal

Constitutional Court in charge of protecting federal constitutionality, constituent republic constitutional courts were also established in charge of protecting constituent republic constitutionality; they did not represent a different instance in relation to the Federal Constitutional Court[83].

The Constitution of 1974 reorganised the position and the powers of the Slovenian Constitutional Court (Official Gazette SRS No. 6/74); more detailed provisions on powers and proceedings were defined in the *Constitutional Court of the Socialist Republic of Slovenia Act* (Official Gazette SRS, No. 39/74 and 28/76); new *Rules of Procedure of the Constitutional Court* were also adopted (Official Gazette SRS, No. 10/74).

Under constituent republic *Constitutions* of 1974 the jurisdiction of their Constitutional Courts was based on the separation of jurisdictions between the Federation and the constituent republics and Autonomous Provinces; each of these Constitutional Courts acted with due institutional independence in compliance with the powers specified in the constitution of the appropriate level, whereby the Constitutional Courts were in no hierarchical relation to one another and the Federal Constitutional Court was not an instance above other Constitutional Courts, nor was the constituent republic Constitutional Court an instance above provincial constitutional courts. However, the Federal Constitutional Court was empowered to decide on jurisdictional disputes between the Constitutional Courts of constituent republics and/or Autonomous Provinces. The proceedings before the Constitutional Courts followed the rules of procedure adopted by the Constitutional Courts themselves, pursuant to the idea that the proceedings before the Constitutional Court should omit formality and any bureaucratic approach to the benefit of efficiency and promptness. Therefore, elements of traditional and contradictory judicial proceedings were omitted from the rules of procedure.

Accordingly, the Constitutional Courts were established and their powers were specified in compliance with the *Constitution.* In individual constituent republics and autonomous provinces their position and the respective proceedings were also specified in detail in *Constitutional Court Acts* or even in internal regulations that, as a rule, regulated only their organisation and internal operation. Individual Constitutional Courts had different numbers of members. The Constitutional Court Judges were elected by the Parliaments, their term of office was eight years without the possibility of re-election to the same Court. The President of the Constitutional Court was elected from among the judges for a shorter term of office, most often for a period of 4 years, without the possibility of re-election to the same office. The judges enjoyed parliamentary immunity.

On one hand, stress was laid on the autonomy and the independence of the Constitutional Court, on the other hand, the courts stressed the need for cooperation with government bodies and the protection of constitutionality and legality, because the Constitutional Court could not be an isolated and closed institution.

This initial period was characterised by a small number of applications lodged with the Constitutional Courts (also due to the relatively low normative power of the constituent republics), and individual petitions prevailed. In spite of the rare notion that the powers of Constitutional Courts should be extended, in particular to electoral cases, impeachment, the constitutional review of referenda, the preventative constitutional review of international treaties, or even to the constitutional review of the then citizens' associations, officially the opinion was adopted that the usefulness of the constitutional judiciary should be preserved in the legal system, without extension of its powers. The Constitutional Courts should limit themselves to constitutionality and legality, whereas all other questions relating to the individual belong to the sphere of other bodies outside the Constitutional Courts.

The present constitutional review in the FRY has been carried out by the Federal Constitutional Court and the Constitutional Courts of the Republic of Serbia/the FRY and Montenegro/the FRY. The *Constitution of the FRY* (Official Gazette FRY, No. 1192) and the *Federal Constftutional Court Act* (Official Gazette FRY, No. 36/92) regulate the organisation, proceedings, as well as the powers of the Federal Constitutional Court. The *Constitution of the Republic of Serbia* (Official Gazette, No. 1/90) and the *Proceedings Before the Constitutional Court of Serbia and the Legal Effect of its Decisions Act* (Official Gazette, No. 32/91), the *Constitution of the Republic of Montenegro* (Official Gazette, No. 48/92) and the *Constitutional Court of Montenegro Act* (Official Gazette, No. 44/75) regulate the organisation, powers and the proceedings before the Constitutional Court of both constituent republics. The Constitutional Courts of the constituent republics are independent of the Federal Constitutional Court[84]. The Federal Constitutional Court does not have the position of the highest court, or even the position of a "Supreme Court". The Federal Constitutional Court is composed of seven members (Para. 1 of Article 2 of the *Federal Constitutional Court Act)* with a tenure of 2 years. The Powers of the Federal Constitutional Court under Article 124 of the *Federal Constitution* reflect the relation between the Federation and constituent republics. The Federal Constitutional Court decides on:

- the conformity of the Constitutions of constituent republics with the *Federal Constitution (in meritum);*
- the conformity of laws and executive regulations with the *Federal Constitution* and with ratified international treaties (the unconstitutional law/executive regulation can be abrogated);
- the conformity of the laws and executive regulations of constituent republics with Federal Law (the illegal law/executive regulation can be abrogated);
- the conformity of other federal regulations with Federal Law;
- the conformity of acts and activities of political parties with the *Federal Constitution* and Federal Law;
- constitutional complaints in relation to violations of constitutional rights by individual acts;
- jurisdictional disputes between Federal bodies and constituent republics and between constituent republics themselves;
- appeals in relation to violations of rights concerning Federal elections.

e) Bosnia and Herzegovina[85]

According to the *Dayton Agreement,* the Constitutional Court (Annex 4, Article VI) has appellate jurisdiction over constitutionality issues arising out of a judgement of any other court in Bosnia and Herzegovina (Article VI, Para 3 (b); this may include human rights disputes (cf. Article 11).

The Court is to have jurisdiction over issues referred to it by any court in the country on whether a law on whose validity its decision depends, is compatible with the *Constitution,* with the *European Convention for Human Rights and Fundamental Freedoms* and its *Protocols* or with rules of public international law pertinent to the court's decision (Article VI, Para 3 (c)).

It also has jurisdiction to decide any dispute between the entities that arises under the *Constitution* between the Entities (the Federation of Bosnia and Herzegovina and the Serbian Republic of Bosnia) and the Central Government, and between the Entities themselves, or between institutions of Bosnia and Herzegovina including the question of the compatibility of an *Entities' Constitution* with the *Constitution of Bosnia and Herzegovina* (Article VI**,** Para. 3 (a)).

The Court is composed of nine members: four from the Federation of Bosnia and Herzegovina, two from the Serbian Republic of Bosnia and three non-citizens of Bosnia and Herzegovina from countries selected by the President of the European Court of Human Rights.

The *Constitution of the Serbian Republic of Bosnia:* The Constitutional Court (Article 120 - Article 125) decides on:

1. the conformity of laws, other regulations and general enactments with the *Constitution;*

1. the conformity of regulations and general enactments with the law;

1. conflicts of jurisdiction between agencies of legislative, executive and judicial authorities;

1. conflicts of jurisdiction between agencies of the Republic, and regions, cities and municipalities;

1. the conformity of programs, statutes and other general enactments of political organisations with the *Constitution* and the law.

In accordance with *Amendment XLII*, the Constitutional Court monitors constitutionality and legality by providing constitutional bodies with opinions and proposals for enacting laws to ensure the "protection of the freedoms and rights of citizens".

The Constitutional Court may initiate proceedings on constitutionality and legality itself. Moreover, anyone can initiate such proceedings.

The Court is composed of 7 Judges with a tenure of 8 years, after which they cannot be re-elected. The President of the Constitutional Court is elected by the National Assembly for a three-year term, after which he cannot be re-elected. Its proceedings, the legal effect of its decisions and other questions of its organisation and work are regulated by law.

The *Constitution of the Federation of Bosnia and Herzegovina* (proposed in the *Washington Agreement* of February 1994): The primary functions of the Constitutional Court (Chapter IV, Section C, Articles 9-13) are to resolve disputes between Cantons; between any Canton and the Federation Government; between any Municipality and its Canton or the Federation Government; and between or within any of the institutions of the Federation Government.

It also determines, on request, whether a law or a regulation is in accord with the *Constitution of the Federation.* The Supreme Court, the Human Rights Court or a Cantonal Court has the obligation to submit any concerns of whether an applicable law is not in accord with the *Constitution* to the Constitutional Court. Decisions are final and binding.

According to the *Federation Constitution* (Chapter 11, A, Article 6) "all courts... shall apply and conform to the rights and freedoms provided in the instruments listed in *Annex to the Federation Constitution*" (this includes the *European Convention for Human Rights and Fundamental Freedoms).*

The Court is composed of nine Judges.

International Associations of Bodies Exercising Constitutional/Judicial Review

The international integration processes, global problems of sustainable human development, the need to consolidate the democratic elements in interstate relations, as well as the current problems of improving the mechanisms and systems of constitutional review require further invigoration of international cooperation.

In the institutional dimension the specific steps in this field have been made within the past 30 - 40 years. However, what has been done is far behind what is required for the sustainable human development and establishment of an efficient system of state administration or the implementation of guaranteed systemic constitutional review within the new millennium. At the same time individual constitutional courts increasingly share more common elements regarding organisation, proceedings, and rationales for their decisions and opinions. An important stimulus is provided also by the integrational tendencies in constitutional justice.

An example of such a semi-official conduit is the **European Conference of Constitutibnal Courts** established in 1972 in Dubrovnik in the former Yugoslav Federation, which includes almost 40 European and non-European countries[86]. This is possible due to the already existing similar functional principles, common to all constitutional systems. The Conference exists as a forum for the international exchange of opinions in the field of constitutional review. These are meetings of "pure" Constitutional Courts and other corresponding institutions of constitutional review. The work of constitutional courts are, in many respects, of far-reaching importance. They contribute to the strengthening and better articulation of constitutional case-law.

The chronicle of Conferences to date:

I. Dubrovnik, from 17 October to 20 October, 1972
II. Baden-Baden, from 14 October to 16 October, 1974
Ill. Rome, from 20 October to 22 October ,1976
IV. Vienna, from 16 October to 18 October ,1978
V. Lausanne, from 26 October to 28 October, 1981
VI. Madrid, from 23 October to 25 October,1984
VII. Lisbon, from 27 April to 29 April ,1987
VIII. Ankara, from 7 May to 10 May, 1990
IX. Paris, from 10 may to 13 May, 1993
X. Budapest, from 4 May to 9 May, 1996
XI. Warsaw, from 16 May to 20 May, 1999

Since 1972 Constitutional Courts have been cooperating within this informal Conference of Constitutional Courts. Such periodical working meetings are important from many points of view. The Conference entails a certain wider form than traditional bilateral and informative contacts between Constitutional Courts, and provides an extension and deepening of such contacts. Following a period of development, constitutional case-law became stronger and deeper. The courts established working contacts and exchanged opinions, which finally resulted in a loose association.

The initiators of the first meeting of the Conference of Constitutional Courts in Dubrovnik were the Federal Constitutional Court of the former Yugoslav Federation and the Constitutional Courts of Italy and the Federal Republic of Germany. Subsequently the Constitutional Court of Austria, the French Constitutional Council and the Swiss Federal Supreme Court also joined. It was decided that the courts would meet every three years, and that a particular preliminary preparatory meeting of presidents and secretaries would be held in the country of the particular court which was next due to host the Conference.

The participants of the first Conference underlined first of all the general importance of professional meetings for the development of international cooperation between the Constitutional Courts, as well as for a better understanding and protection of constitutionality and legality irrespective of all the differences between various social, economic and political systems. The Conference is the sole international forum where basic questions on constitutional review can be discussed on a comprehensive comparative basis.

The first contact committee of the Conference was composed of the Constitutional Courts of Austria, Germany, Italy and Yugoslavia. The international cooperation resulted from an initiative by the Federal Constitutional Court of Yugoslavia. Following this initiative, the first Conference was held from 17 to 20 October, 1972, in **Dubrovnik.** The Conference discussed the powers of the Constitutional Courts as well as the effects of their decisions. The first Conference was attended by the following Constitutional Courts and other institutions exercising constitutional review: Austria, France, Germany, Italy, Romania, Switzerland and Yugoslavia.

This group (or association) of Constitutional Courts is not an institutionalised body; it works if necessary on the request of one of its members. Its competencies are the preparatory activities for the conference, and the determination of conference topics. This lax association is mainly guided by the mentioned Constitutional Courts as well as by the Swiss Federal Court, which also has a long tradition. Subsequently, some other courts joined this leading group, e.g. the Constitutional Courts of Spain and Portugal, as well as the French Constitutional Council.

The Conference is an instrument which has promoted the usefulness of constitutional review, including the constitutional protection of human rights and freedoms. The Conference has supported the introduction of the constitutional review in particular countries where such an institution had not been known before. In addition, the Conference has contributed to the strengthening of the status of the Constitutional Court within the national legal system of every country hosting the Conference.

The location and topic of the next Conference are decided during the previous Conference. The official language of the Conference is the language of the country (of the Constitutional Court) hosting the Conference. Reports on the Conference have been predominantly published in the European Human Rights Magazine. The Conference has not adopted its own permanent rules of procedure; every Conference has adopted new rules of procedure, but the respective text has remained unchanged.

The activities of the Conference are closed to the public. However, the public is informed of the ceremonial opening and of the final official report of the Conference. No formal conclusions of the Conference concerning proposed and/or discussed topics or questions have been reached, but in any case a final official report has to be accepted and published. The body which initiates and reaches decisions in practice is a select group of presidents and secretaries general of various Constitutional Courts. The President of each Conference is the President of the Constitutional Court hosting the Conference. In principle, the decisions of the Conference are issued by consensus.

The organisational costs of the Conference are divided between the members. Each delegation covers its own travel and accommodation expenses. The Constitutional Court organising the conference covers the main part of the organisational costs.

The number of delegation members is limited to 4 judges and a secretary, however, this number is often exceeded. Participation in the Conferences was mainly limited to European countries, along with some observers, or associated members from other parts of the world. Furthermore, the Conference has not been attended by the Constitutional Courts of the member states of federal countries.

The Conferences are meetings of "pure" Constitutional Courts and other state institutions exercising constitutional review. The Conference participants are the Constitutional Courts which have already been organisers of Conferences, as well as Constitutional Courts which have been accepted as members of the Conference on the basis of written requests and submitted reports concerning the activities of their Courts. The Conference does not have a permanent Secretary, it works only as a

select group and in plenary sessions (the assembly of the officially participating Constitutional Courts).

The main problem is that the Conference has no explicit standing orders or system of its operation. The mechanisms of cooperation within the framework of this Conference need a further improvement and itemisation. However, the first Conference Standing Orders were adopted by the Warsaw Conference (from 16 May to 20 May, 1999),

The Commission for Democracy through Law (the Venice Commission) of the Council of Europe, established in 1990, includes almost 50 European and non-European countries; The Commission homepage[87] includes many links to Internet sites with information on constitutional courts or equivalent bodies of member states, associate members and Commission observers[88].

The first attempts to establish the Venice Commission were made at the European Conference of Constitutional Courts, which was held in 1987 in Lisbon. The greatest supporters of this idea were the presidents of the Constitutional Courts of Italy and Germany. The Commission was formally established at the Conference of European Foreign Ministers of January 1990 in Venice. Therefore, the Commission was called the Venice Commission. In May of 1990 the Charter of the Commission was adopted on the basis of a special agreement, and closed with the Council of Europe. The member states of the Council of Europe are not members of the Venice Commission automatically. It is necessary to apply for membership on the basis of an appropriate document.

The first session of the Commission was in 1991 in Italy. The Venice Commission also has some subcommissions, which have been dealing with theoretical and practical problems related to the constitutional systems in the member states. The Commission includes 37 full members, five associated members and eight observers. The members of the Commission are mainly European countries, however also some non-European countries are represented[89].

The main task of the Commission is to promote the principle of the Separation of Powers, the principle of the Rule of Law and a State of Social Welfare, support the development of the judicial review of constitutionality as well as to promote the development of the information bases of bodies exercising constitutional review in member states. Beside the countries with constitutional review systems with a long tradition, there are member states where this institution is still in the process of being adopted and developed.

The aim of the activities of the Venice Commission is to implement the principles of the European legal heritage in national constitutional and legal systems. The seat of the Commission is in Strasbourg, the permanent meeting place is in Venice. The members of the Commission are mainly lawyers and experts in constitutional law. An important form of the Commission's activities are specialised seminars, the so-called *UniDem* seminars, where global problems are discussed which concern all constitutional systems, e.g. human rights protection, referenda, the federal structure of states, constitutional review, etc.

The results of the Commission's activities are as follows:

- the establishment of a common documentation center;
- a collection of data concerning the activities of Constitutional Courts, in English, French and national languages;
- the CODICES database (case-law, systemic legislation, literature);
- a CD-ROM containing case-law, *Constitutions and Constitutional Court Acts,* as well as the text of the *European Convention for the Protection of Human Rights and Fundamental Freedoms;*

- the Bulletin on Constitutional Case-Law;
- a systemic thesaurus in French and English, which is implemented as a standard in the preparation of different documents for a common database;
- a Network for the cooperation of bodies exercising constitutional review on the lnternet;
- E-mail conferences between member states of the Venice Commission;
- a connection with the database of the newly established Association of French speaking Constitutional Courts;
- *the UniDem* seminars and workshops in the member states, in which complex topics concerning constitutional review are discussed following the proposals of host countries;
- comparative analyses of particular institutions of constitutional review (the composition of Constitutional Courts, their powers, the elections of judges, the term of office, etc.).

Considerable attention of the Commission is dedicated to studying the mechanisms of judicial protection of constitutional human and civil rights and freedoms in systems having different organisations of constitutional jurisdiction.

One of the latest UniDem seminars was organized with the cooperation of the Constitutional Court of the Republic of Armenia, October 14 - 15, 1998 on the subject: "Constitutional development: separation of powers".

The tree-year-old cooperation of the Constitutional Court of Armenia with the Venice Commission shows that this organisation plays a very considerable role in the development of constitutionalism, attestation of reliable guarantees for the protection of human rights and freedoms, establishment of a true local self-government, formation of legally operational institutes of judicial constitutional review. The Venice commission also plays an active role in data support and exchange of experience among the Constitutional Courts.

The CIS Conference of New Democracies was founded in October 1997 in Yerevan, Armenia[90]. The first meeting of the newly established Conference was held in Minsk in June 1998.

The Conference of the Bodies of Constitutional Review of the Countries of Emerging Democracy is an aggregate advisory body, established and acting based on principles of voluntary participation, equal rights and openness. The purpose of the Conference is to promote the consolidation of democratic processes in the New Independent States by activating the consulting cooperation of the Constitutional Courts, systematic study and generalization of the experience of the New Independent States in the domain of constitutional review and oversight, uncovering the basic features stipulated by the transitional period, organising the topical discussions on the issues of common interest, defining the tendencies of development of the operational systems of constitutional review and review.

The Conference exercises its activity guided by the generally accepted principles and standards of international law, the respect of legisiations of the countries whose Constitutional Courts are participants of the Conference.

The conference work is organised in the form of a session (by plenary sessions), which is the highest authority of the Conference. The Conference can generate committees as applied to the issues on the agenda.

The sessions of the Conference are open.

In its work the Conference can accommodate the representatives of international, intergovernmental and non-governmental organisations, representatives of Constitutional Courts of states not

participating in the Conference, as observers or invited participants, by the resolution of the Conference. The Constitutional Court convening a regular session of the Conference, can extend invitations to representatives of other organisations or the media.

The official languages of the Conference are Russian, English, and French, the working languages are Russian, English and the state language of the home country of the Constitutional Court hosting the Conference.

All that shows that the Regulations of the Conference actually provides all the necessary conditions for the open-minded, interested, business-like and constructive cooperation.

Also not devoid of certain interest are the organisational forms of the Conference's activities. The Coordinator of the Conference is the Chairing Constitutional Court, while at inter-sessional periods coordination is done by the Constitutional Court that had hosted the latest session of the Conference. The Conference's auxiliary bodies are the Secretariat and the Editorial Council.

At inter-sessional periods the Constitutional Courts taking part in the Conference can introduce changes in the draft agenda of a regular session of the Conference, applications to that effect should be submitted to the Constitutional Court coordinating the Conference with at least 3 months' notice.

The Documents of the Conference are adopted by open voting.

At the request of any delegation of the Constitutional Courts participating in the Conference, the voting can be a roll call voting with a subsequent recording in the protocol.

The Conference in the process of its activities can adopt acts, to be legally classified as follows:

- Decision - a document adopted on procedural issues;
- Resolution - a document having an advisory nature;
- Closing act or a communique - a document describing the results of the Conference sessions.

The decisions are adopted by a simple majority as voted by delegations, while the resolutions, closing acts, or a communique - by consensus.

Resolutions, closing acts, communique are to be signed by all heads of delegations.

The Conference is a publisher of a special Bulletin "The Constitutional Review", the editorial board of the Bulletin has been established.

The working experience within the last two years shows this type of cooperation to have a big potential for further development, mainly in the following directions:

- exchange of experience and information;
- joint discussion of current problems;
- virtual processes on defining common principles and approaches to evaluating the constitutionality of regulatory acts and to the protection of human rights and freedoms;
- joint study of common and global issues, research of international law-enforcement practice;
- personnel training and skill enhancement, etc.

Implementation of those assignments is possible only if an adequate comprehension is demonstrated of the common problems and issues of cooperation, that would not be evolved to the level of sovereignty of the New Independent States.

The Constitutional Court of Armenia attaches great significance to activating the international links on a systematic basis. The substance of the latter consists just in insuring the continuance of data flows, a complete coverage of the system, operational efficiency in providing assistance to the members of the Constitutional Court when preparing and examining individual cases, studying the common approaches and specific features of the manifestation of the constitutional review in different countries, as well as providing the active participation of the Constitutional Court of Armenia in discussing the current issues of constitutional review. This objective is schematically resolved in the following way (see Diagram 4).

The operation of this system is realised only when actively using the contemporary technical capabilities.

The experience of the bodies of constitutional review of the countries of emerging democracy graphically shows that the consolidation of international cooperation becomes an erogenous factor in comprehending the role and insuring the independence of the Constitutional Courts. Moreover, the real cooperation is becoming a crucial factor in consolidating the international stability and the sustainable human development.

The South American Group of Constitutional Courts was founded in 1992 in San Jose, Costa Rica, where the first conference of this group of countries was held, and includes 10 countries. The first conference of this group of countries was also held there. In addition, a **Group of Spanish Speaking Constitutional Courts** was established (the **lbero-American Conference of Constitutional Review),** composed of such countries as Costa Rica, Guatemala, Paraguay, Venezuela, Mexico, Nicaragua, Peru, Brazil, Spain, Portugal. The first conference of this Group was held in Lisbon (constitutional review in general), the second in Madrid (the individual complaint before the Constitutional Court), but the third one in Guatemala City in 2000.

The Arab Group of Constitutional Courts and Constitutional Councils was founded on 25 and 26 February 1997 in Cairo, Egypt, where the first conference of this group of countries was held, and comprises 11 countries[91]. The first conference adopted the Charter of the Group regulating its organisation and activities.

In addition, the **West African Association of the Supreme Courts using the French Language (A.O.A.-H.J.F.)** was established on 10 November, 1998 in Cotonou (Benin). The Association supports cooperation between institutions that promote the development of the role of the judiciary concerning the consolidation of democracy and the principle of the Rule of Law.

The Association of Constitutional Courts using the French Language - A.C.C.P.U.F., established in 1997 in Paris, includes 49 European and non-European countries[92].
The first conference of this Association was held in Paris in 1997, the second in Beirut in September 1998.

Other more recent features tending to integrate **information systems** are (1) the information system of European and some non-European constitutional/judicial review bodies, managed by the Venice Commission of the Council of Europe since 1991, and (2) the recently developed lnternet connection of the constitutional courts. Furthermore, the mentioned associations, particularly the A.C.C.P.U.F., are also more or less supported by a computerised documentation service or a respective center.

The International Association of Constitutional Law (IACL). The objectives of the Association are: development and elaboration of the constitutionalist network, creation of a knowledge base and data for development and comprehension of constitutional systems; examination and comparison of common constitutional principles and problems; offering consultations and advice that could be helpful in resolving specific issues.

Diagram 4

Why was it that Europe did not adopt the American model? Many attempts have been undertaken to provide an answer to this question[93]. In one case the answer was sought within the dimension of the differentiated perception of the concepts of "Law" and "Constitution". In another, the emphasis was made upon the peculiarities of the judicial system and activity of judges (with a particular focus upon the degree of court independence and the ability of the judges to provide a solution on constitutionality of law). In the third case the emphasis was on the type of objectives set by the society of a particular country and on the peculiar features of their resolution.

Anyway, for more than a century the function of constitutional review has been carried out by the ordinary courts throughout the world. However, the stormy changes of social life in early 20th century under the conditions of separation of powers confronted the specialists with a number of problems:

1. It was becoming feasible, by using law, to achieve a greater centralisation of power up to its usurpation[94].

1. With the rapidly changing social situation and the relevant legislative field, the review of only specific cases was clearly insufficient for an effective constitutional review.

1. Under separation of powers, the role of major detonator for destabilising the society came over to the strike of different branches of power to seize the powers.

Beside the above mentioned, we think that there was also a change of approaches. Coming to the foreground was not only the Resolution of the issue associated with the interests of a specific person relevant to him or her alone, but also the problem of social stability and dynamic development of society by ensuring the constitutionality of the whole legislative system. Advanced to the foreground was actually the slogan: "Stability of the state, dynamic development".

The European system contains three basic priorital objectives:

a) providing the constitutionality of regulatory acts so as to retain the constitutionally stated functional equilibrium of the autonomous branches of power;
b) a distinct regulation of resolving the disputable issues emerging between different bodies of authority in respect of powers;
c) creation of a most integral and reliable system for protection of the constitutional human rights.

Another question is in what way those problems found their solutions early this century. To our mind, in actual reality, the implementation of constitutional review using the new specialised and centralised system provides a gradual stage-by-stage resolution of those issues, this trend today resting in the basis of the internal logic of the system's development.

A characteristic feature of these systems is not only in that the review is carried out by a specialized body. Particularly important is the fact that a substantial change is taking place of both the forms and character of review[95].

In particular, only this system has inherent forms of preventive, abstract and mandatory review. By virtue of this approach the constitutional review acquires an integral, complex character and can be implemented in a consecutive and effective way.

This system, with the fundamental feature of the centralised review implemented by a specialised body, has at the same time important peculiarities, both structure-forming and functional. It should be noted here that those features manifest themselves in the way of recruitment of the bodies of constitutional review, in its composition and structure, in who and in what way can apply to these bodies, in what is the type of review (abstract, concrete, preliminary or *ex post facts,* mandatory or elective), what is the object of review, and who is the subject, what type of decisions are adopted by the bodies of constitutional review, etc. Those are the questions that we tried to respond both when examining the individual problems and the features of operation of constitutional review as performed in different countries.

Chapter II. Constitutional Review and Social Experience

Any society, including the pre-constitutional period, had written and unwritten laws of social iife, an integral system of their preservation and review (or deterrents) with regard to the authorities. The important components of that were faith (church), standards of ethical behavior, traditions (social and familial), rules of conduct stipulated by the particular features of big and small systems, etc.

At the same time, the adoption by a state of the Basic Law prompts a new approach essentially demanding that the corresponding constitutional institution or a special organisational reviewing structure be formed pursuant to the objectives of the constitutional review. This, however, does not mean that the previously operating forms are completely interrupted. On the contrary, the question is that any country should use the multiple features to harmonize all components with the purpose of retaining the legal system, common law, the way of life and traditions, retain the spiritual and

moral values. Only in this case a multifaceted consideration of the basic characteristics of a particular social system is possible, to establish an operational immune system for its continuation and functioning.

a) The Character of Public Relations and the Constitutional Review

The experience of constitutional adjustment of public relations accumulated within the last two centuries shows that the main purpose of adopting state Constitution is regarded to be the discovery and maintenance of fundamental characteristics of public relations with the purpose of establishing a favorable environment for a full-fledged implementation of natural human and civil rights and freedoms. Apart from the fact that the constitutions of many countries characterise a particular state[96] as secular the countries that legalised the principle of separation of powers, thus basically directly or indirectly established the provision that they are democratic, states governed by the Rule of Law and/or States of Social Welfare[97]. What is suggested by this feature, is how much is that regarded as a principle, purpose or a directly acting legal standard, and what tasks are posed before the constitutional review in the currently emerging legal systems?

The answer can seemingly be found by a multi-faceted analysis of those concepts as the categories determining the basic qualitative features of public relations, as well as by determining their manifestation in the trinity.

The meaning of any philosophical concept is in that it reflects the properties of a particular phenomenon (subject under study) each of which is necessary and, in its integrity, sufficient for the qualitative determination of the integrity of the particular phenomenon (subject), its recognition or distinction. The concept of CATEGORY is the generalisation of the highest degree, an abstract characteristic of the integrity of the particular phenomenon.

Independent of the level of our cognition, those relationships, in the presence of the necessary prerequisites, either do exist already or they emerge and act. How large is our knowledge of them, do we model them or provide them with the prescribed shape? The answer is dependent upon our knowledge, freedom of action and the capability to review objective processes. With regard to the measure of awareness and regulation of relationships, it can be perceived by the community as a mandatory rule of behavior. In other words, a legal standard is a characteristic of adjusted, somewhat regulated public relations. Since, however, those relations exist dynamically, the legal standard cannot manifest itself exclusively as a factual statement. It expresses the degree of potential cognition of these relations, the movement or target, the type of behavior in a variable situation, which has to be correlated with the system of constitutional review, its forms and methods.

This fact is of a special significance, since the social practice of a number of countries (in particular, Hungary, Croatia, Russia, etc.), in the transitional period, shows that if it is not seriously considered, it may result in serious in-depth controversies or deadlocks. It is essential here to adopt the truth that any constitutional standard, particularly in the course of radical reforms of public relations, is a fundamental principle, a guiding development factor. The constitutional review, in turn, at a constitutionally defined course, has to become an incentive for the development of society, rather than its break.

Guided by this methodological approach, let us try first to comment on the democratic, legal, and social character of the constitutionally established system of public relations.

Democracy, as a characteristic feature of public relations and as a method of administration, is perceived and commented differently, and is subject to frequent change, up to anarchy and total permissiveness (the problem is not only in perceiving the essence, but in the measure).

Democracy, as one of the greatest achievements of civilisation, bears witness to the formation of civil society, where each person becomes valuable as an intelligent being, as a social subject, as an equal member of the society[98], where the relations are clarified and regulated, with an established order and rules of its maintenance, and the boundaries for civil liberties and autonomous behavior. That is the way of development for the state, having a way of state administration, structure and operation conforming to the will of the nation, as well as to the generally recognised standards of human and civil rights, where the nation is the power holder, wielding it through its collective will and its right for self-review, effected by the principle of equal rights of the members of society. That has to be enacted by the Constitution, guaranteed by the laws and by the substantive institutional systems.

Of major importance is the fact that on the part of the people, authority is exercised on the basis of the principle of continuity, under conditions of review over the activity of the representative and executive bodies, with a provision of feedback.

The major characteristics of this type of state are: a true representative democracy (legality, accountability, the status of feedback when implementing state authority by the population through elected bodies, guaranteed continuance of wielding the power by the people, as well as guaranteed protection of human rights (as a social value) and civil rights (with a citizen posing as the subject of law for the particular social formation). It follows that a state may be considered democratic where the society is built or is being built upon legislatively adjusted relationships, with guaranteed boundaries of natural self-expression and self-government of the personality, and where each person, without whatever selection, as a social subject, has public value, where, taken as the basis of social development, are the mutually settled interests of individuals, their state-coordinated groups and the society at large[99].

A social system of this type is bound to be legal, while its democratic values are bound to have a guarantee of legal protection.

Characterised as a state governed by the Rule of Law is the state where all its activity is based upon the law, and its primary objective is a guaranteed protection of human and civil rights.

The concept of a "state governed by the Rule of Law" emerged at the turn of the 18-th century. However, the idea was there well before[100].

The state governed by the Rule of Law primarily assumes a certain legal orderliness of public relations and their reliable, fail-safe, guaranteed operation. Only in this case the law subjects can be free. Only the awareness of the objective public relations, their legal regulation and knowledge enables a person to act freely (We have to be slaves to the law to be free - Cicero).

For the basic principle of a state governed by the Rule of Law is just the harmonic combination of subjective rights of the citizens and of objective prerequisites for their implementation.

Another characteristic feature of a state governed by the Rule of Law is that the state should bear responsibility for the actions of the officials, a guaranteed system of responsibility and review of the realisation of rights.

The mandatory features for the state to be described as legal are: separation of powers, legality of administration and supremacy of law[101], independence of court, guaranteed protection of human rights, an integral operational system of constitutional review, etc.

Those qualities, being fundamental and essential, have to be absorbed by every cell of regulating the public relations, to be reflected in each step taken by the state, to become an inalienable component of the way of life for each member of society. It has to be transformed into the national state reasoning and manner of action. In other words, they have to find their reflection in each standard of the Constitution and in the mechanism of its application, as well as to make an adequate manifestation in social life.

The constitutional declaration of a state governed by the Rule of Law is primarily a testimony of the features of the character of the state and social relations; it is a manifestation of the organisational attributes of the state, evidence of the fact that this society has laid the law in its foundation of interrelations. This type of state confronts an objective to put the social behavior of the state and the society at the service of this principle, to clearly define for each individual the rules of behavior in a civil society and the confines of his or her freedom, as well as to guarantee this freedom.

It is indisputable that the Constitution of any country is regarded primarily as a fundamental legal document based upon social consensus. It is a certain generalised authentication of the forms and methods of approach, aims and principles. For any country, the Constitution becomes a source of law making, its embedded principles being not only statement of facts, but rather the fundamental rules of the manner of action. Those rules are related not only to the authorities, but also to each subject of the law, representing the state (whether it is a citizen or a group), becorrling their semblance, image and their contents of self-expression.

In a state governed by the Rule of Law, the social totality adopts a regulated image characterised as public order, while a person becomes a subject of the law, with its relations to other members of society assuming a character of legal relationships regulated in a certain way.

A society like this should inevitably also have a constitutionally adjusted system providing for a continuous review of legal relationships, which as has been noted, performs a role in the social organism of a specific immune system.

A great divergence in opinions is manifested in the comments to the concept of "a State of Social Welfare", particularly in the New Independent States. Serious problems emerge in the practice of constitutional review of the protection of human rights within the social sphere. Thus, we shall dwell upon them in more details[102].

The concept of a State of Social Welfare emerged at the turn of the 19th century. It signifies the emergence of a state of new quality, a state that would undertake an obligation to take care about the social protection of its citizens. This type of quality is not typical of a liberal state governed by the Rule of Law, with its preferences to the manufacturing and to market freedom. However, from what has been said so far, it does not follow that in the liberal-state governed by the Rule of Law no social issues are advanced or resolved by the state.

The matter is that constitutional registration of the social character of state provides the whole social system with other contents[103].

With regard to different interpretations of the term "social", when using the term "a State of Social Welfare", often suggested is the state that assumes responsibility for the dynamic development of society (in the particular case *social* means *public*)[104]. However, using the expression "welfare

state" commonly suggests a form of the interaction with the mutually agreed human relations, where a commitment is made to help the needy, to affect the redistribution of worldly goods, on the strength of the principles of justice, so that everyone should receive the guarantee of a dignified life.

We think that to pronounce itself as a welfare state constitutionally, a state has not only to commit itself to harmonising the interests of persons, their groups and the whole society, to exclude their opposition and subjugation of one to another, but also to take measures for their consecutive implementation.

The highest attainment in manifesting the social humanism and the progress of civilisation is the establishment of the welfare state with the members of society defining the aim of their development through constitutional consensus, clarifying the correlation: objectives prerequisites - means. This is an elevated level of human interaction. A welfare state can be created over an established integral operational system of guarantees for the protection of human rights, where the whole system of state administration is based upon the principle of harmonically organised public interests.

A State of Social Welfare suggests an elevated level of harmonising the relationships between a person and the society, a person and the state. That has to find recognition, has to be perceived and protected by each cell of the society, it has to become a mandatory rule of behavior, so as to exclude all that is illegal, unjust and unfit to the humane principles of the common human existence.

This approach will make specific demands upon the system of constitutional review of a State of Social Welfare. Disregarding this situation can result in uncoordinated approaches by different bodies of authority to complex issues of communal development, and indirectly, in an unconstitutional situation. However, we think it noteworthy that State of Social Welfare needs a very flexible and complete system of constitutional review. That is corroborated in particular by Germany.

Often, the social function of the state is confronted with the function of ensuring the freedom of members of society, which, to our mind, is unjustified. Democratic liberties will also assume a guaranteed social protection of a member of society, which is one of the main characteristics of human society. Civil liberty is distinguished from the natural freedom by that the individual activity within the society should not be opposed to the right of freedom to other members of society. At the same time, as noted by Professor G. V. Maltsev, in a society, the interests of a personality are always variable. Not all of them can be mediated in special subjective rights: first, because the possibility associated with the subjective right to legally claim certain goods, actions of other persons, can be currently provided with regard to nearly none of the human interests; second, the capabilities of the legal system are limited in the sense of detailed regulation of individual interests: had the law expressed and regulated all interests of persons in special standards and rights, it would have been an extremely complex, vast system, quite unusable for practical applications. Therefore, subject to the legal regulations are only certain interests of personality, being crucially significant for all members of society[105].

The civil society must have a harmonic system of free self-expression for its members. However, the latter is impossible without providing a state-secured protection of the members of society. That, in turn, means that a personality in a society cannot feel isolated, the natural state of its existence is mutual interconnection, interaction and responsibility before the present and the future society. Meanwhile, E. A. Lukasheva, Doctor of Law, rightly states that the currently existing vacuum is also theoretical: the post-Soviet society lacks the basic positions of relationships between the citizens and the state[106].

This type of situation commonly results in the absence of clarity not only in today's responsibility of the state with regard to a member of society, but also for a citizen, in turn, it is unclear whether the state is capable to satisfy his or her aspirations, whether his demands and expectations are legitimate and substantiated[107]. That in turn, on the one hand, results in serious complications in the practice of constitutional review (all the more so when the citizen is not the subject appealing to the Constitutional Court), on the other hand, it is a powerful and perilous insinuative generating social dissatisfaction. Thus, while defining the priorities in state politics in a transitional period, a particularly important place should be allocated to the development and introduction of a very clear and accessible system of relations between the state and the citizen. The pivotal fact is that for the welfare state, the center of all those decisions is a man with his rights, state-recognized, constitutionally registered, necessarily guaranteed and protected, as well as with his responsibilities before the society.

It is our belief, that of the basic characteristics of the welfare states, the following have to be singled out:
a) to provide the legislative guarantees of social protection and welfare of the people;
b) to establish the necessary institutional systems of state and non-state social protection (in particular, what is meant is the system of social security touching upon the fateful cases like disability, disease, loss of the breadwinner unemployment, insecure old age, etc., as well as the operational system of social security adjusting the social risks);
c) to guarantee the minimum living standard;
d) to provide guarantees for the free development of personality, implementation of the freedom of faith and interests, as well as the rational self-expression;
e) to guarantee irreversibility of the implementations of this principle;
f) to provide constitutional review for protecting the human rights and freedoms, etc.

It is to be noted that in the transitional period exceptional significance is given to the issue of protecting the socio-economic and cultural human rights as an important function of a State of Social Welfare. The matter is that in a transition to the market relations, when the market infrastructures have not yet been completely established, there is no distinct system of social protection, the rule of monopoly is going on in all spheres, serious in dept structural reforms take place, there is a feeling of traditional and psychological inertia, so that the inadequate market relations augment the potential of trampling the social and economic human rights. That is why the state has to take an active part in resolving the transitional objectives and to generate the necessary system of securing the protection of human rights, so that people with equal rights become carriers of new economic relations.

In the transitional period such a social-psychological situation is created, when the activity of any subject of law sanctioned by the state is identified with the state activity, and the attitude to that is regarded as the attitude to the state, with all the ensuing consequences.

Many thousands (in many countries - millions) cheated testify to that. One more testimony to that is that the state does not pay due attention to the issues of the ability of the review of transitional relations, no necessary system has been created to monitor the subjects of law, nor a system of human rights protection. The unfortunate situation is that such events not terminated in time are bound to become the origins of disease for the society. The blank spaces of the past, having inertial or dwindling character, are not so much unfavorable for the state but rather the lawlessness, that has manifested itself and found fertile soil in the new reality. The latter is very promptly entering into the pathway of irrational reproduction, so that it can be cured only by surgery. Unfortunately, that situation was in former times underestimated by many new independent states. The outcome is that in any situation, the state primarily takes care of preventing the immune -deficiency of the society, the important precondition whereof is systemic approach to the substantiation of administration

mechanisms. We fully agree with the statement by prof. G. V. Atamanchook, that "efficiency of administration (any!) is not at all in advancing new problems all the time, nonetheless in an acute, dramatised, counteracting form currently practiced by the power holders and contenders. It is rather the contrary, for the very fact of the emergence of a specific problem, even not yet entering crisis, as shown by history, not always follows from the regular processes of development (development can also go on without tragedies), most frequently because the new needs, or interests, conditions or factors of social life had not been noticed in time"[108].

Returning to the basic characteristics of a State of Social Welfare, it may be necessary to also note the principle of social equality, that during last two centuries is the core of revolutionary struggle. This quality has been perceived and interpreted from diametrically opposed positions. Frequently, the primitive, mechanical interpretation of the principle of social equality and its perception as the best measure of social justice results in a coarse and perverted interpretation of regularities, character and development of social relations. The indisputable truth is that, to produce social equality, the Socialist State fought against wealth for 70 years. A State of Social Welfare cannot eliminate the principle of equality of the members of society, however, this principle should not be considered absolute, but rather regarded as a right of each member of society, so that the state would produce the needed preconditions for the realisation of this principle. It also assumes that the state's duty is to guarantee groups an unbiased attitude to each member of society and to social and other groups. Actually, a State of Social Welfare, on the one hand will provide a certain environment of social protection, setting "the benchmark", on the other hand it has to establish a necessary environment, so that each individual, having equal rights, could obtain a relevant field of activity for a legal realisation of his or her capability and application of intellectual powers. Those are the provisions for the harmonic coordination of freedom and equality.

The basic principles of human coexistence - freedom and equality are fully combined in the trinity of democratic, legal and Social Welfare state. Any isolation or unilateral absolute prioritising or contradistinction of these qualities would be a methodological blunder and can result (as bitterly witnessed by history) in radical, distorted and, as a rule, inaccurate findings.

A State of Social Welfare, by assuming the commitments on the social protection of personality, has in the first place to be concerned with providing the premises for the self-cognition and self-expression of the rational being or the individual. However, the complexity of the issue is in trying to determine the limits of state interference into the economic relations of the society, so as to, on the one hand, guarantee the realisation of the state's social function, on the other hand, not to impede the natural development of market relations. This equilibrium should be ensured on the basis of a multilateral evaluation of each specific situation in each individual country. That is where the art of administration is. That is a basic measure of evaluating the activity of the government. The common features are that the State of Social Welfare has to take an active and programmed part in the system of social rehabilitation. That is related to production, and to turnover, and to distribution. The latter fact was particularly significant for Germany when it declared itself a state governed by the Rule of Law and a State of Social Welfare. As underscored by Hess Conrad, the State of Social Welfare not only implements a special preprogrammed policy in resolving individual social problems, but rather it is a managing, manufacturing and distributing state[109].

The social character of the state is the principle, the objective and a directly acting legal regulation, that describes the substance of the varying social relations, and in those dynamic interrelationships it becomes the rule for the behavior of subjects in society.

The substantiation of a State of Social Welfare is a permanent continuous process demanding an adequate approach in any new, changing environment. It is a mistake to think that a state can be considered social only when the needed economic prerequisites have been created, so that the time

has come to think about the social needs of the people. The issue of rightful combination of the people's needs and the abilities for their satisfaction is a dynamic phenomenon that is always present. Another point is that with different available capabilities resolutions can be made of different objectives for social contents. This does not, however, mean that within time and space, the method can be severed off the target, nonetheless to be opposed to it.

As to transitional periods, particularly in situations involving crises of administration, the issue of social protection in a state becomes a priority. Moreover, the European experience shows that the social function of the state has become more emphasised and constitutionally registered in the process of systemic reforms, since the top priority of those reforms is the man, the satisfaction of his needs, and, as figuratively noted, "the humanisation of society". Therefore, the basic objective of the state in a transitional period is counterbalancing the amplitude of transition to market relations using a reliable system of social protection. Otherwise, there is a danger of malformation, a threat to any economic reform, if the latter is aimed at creating a normal market economy based on sound competition.

Interesting in this sense is the German experience. Germany was the first to register constitutionally that it was a democratic and social federative state (Art. 20), and as such, it set the aim of the initial stage of developing the statehood to guarantee the cost of living to every citizen, assuming that each adult person had to work to provide for its needs. If that was impossible because of his or her working disability, the state assumed care for this person. Meanwhile, the state provided for the preconditions for self-expression of personality, mutual assistance, associations and joint activity.

Not a single state in the world can yet make a definite statement that it has become a full-fledged State of Social Welfare. That is a way to go or not to go, the state either assumes this function or it does not. If it does, then the aim of the state is, on one hand, to provide an establishment of a guaranteed system of social protection, on the other hand an establishment of a relevant environment for normal self-expression of a personality as a social subject. This will naturally require a special approach to the sphere of labor-management relations and to the sphere of distribution.

If a state does not consider itself social, the aforementioned issues are resolved by other ways and means in the society. They mainly become the product of self-adjusted relationships.

In other words, it is important to identify the character of social relations as a constitutional standard, primarily aimed at uncovering the qualitative characteristics of relationships, revealing their substance and their inherent logical development. The state regarding itself as a State of Social Welfare cannot but show a programmed approach to the social development, cannot be a passive observer of the consequences of self-regulated relations, leaving everything to the discretion of the omnipotent market.

The substantiation of the State of Social Welfare also assumes putting forward the reasonable expectations and demands.

The awareness of the expectations by the members of society, their rational shaping and the relevant need for the new system of values of social existence will demand not only the systemic and programmed economic, but also political and even moral approaches. The matter is that the situations inherent to the transitional period, like the demolished system of rehabilitation, demanding radical reconstruction and having no structural basis of its own economy, the factor of indeterminacy, the deformed social consciousness, the demolished system of values, etc. prompt the need to form novel principles of relations between the individual and society. Without that it is impossible to overcome the extreme polarization of approaches and the uncompromising

opposition, to mitigate the social stress, to secure the harmonic development. Moreover, there is an increase of probability of the emergence of political and other incentives capable of plunging the whole society into a stressful situation and of maintaining that situation for a long time, meanwhile if no remedy is found to rationally overcome this situation, the destructive consequences are possible.

The state considering itself a State of Social Welfare, cannot disregard those issues. Moreover, the problem of adjusting the expectations and concerns of a member of a civil society is becoming one of the basic functions of the state. It is not by accident that this fundamental issue is considered one of the crucial ones in social science, in 1995 Robert Lucas, a widely known US economist was awarded the Nobel Prize for this contribution into the theory of rational expectations.

For the transitional period in particular, the most important function of the state is the reviewed transition to market economic relations.

There is no alternative: whether we accept it or not, whether we are aware of their necessity, the real live is going in that direction, and only showing vain resistance, the state structures are often forced to overcome the imaginary obstacles of their own creation. Contrastingly, one care of the state should be the relaxation and overcoming of the social stresses, however, their artificial comouphlagling, independent of who does it and in what way, should result in certain legal consequences.

The legal, social, democratic characteristics of the state (See: Diagram 5), beside expressing certain qualitative features, properties, public relations, produce also new quality in their integrity. It assumes that typical for this state is the following:

1. The system of reproduction operates after market laws, with free entrepreneurship and competition, all chances of monopoly domination has been overcome, as guaranteed by the state.
2. A need arises for the orderly legal effect to be rendered by the state upon the relations of distribution.
3. Assumed countrywide is a combination of the effects of economic decisions with the social consequences (using the measuring techniques of the socio-economic efficiency of social production).
4. A problem is posed for optimising the dispersion of the economic, administrative and political efforts.
5. A need arises for the state-guided definition of development priorities.
6. Development and deployment is done for the mechanisms providing the supremacy and stability of the Constitution.

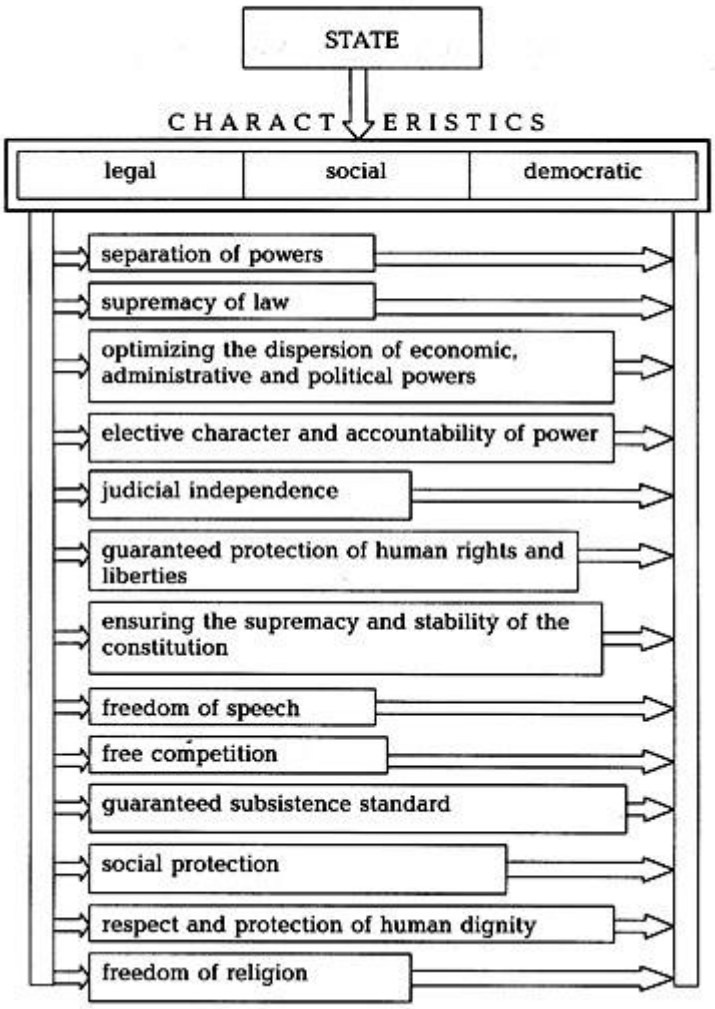
Meanwhile, remaining unanswered is the question: what is going to be the practical attitude, from the position of constitutional review, particularly as regards the first Article of the Constitution, to the regulations determining the character of new public relations.

The US experience is of great interest. Following the adoption of the Constitution, major issues remained: those of the Federal Government and the legality of slavery in that country.

The key to the resolution of all problems was however sought not in the letter as so much in the logic of the Constitution. That approach became visible in the years 1865 - 1933, when the relationship between government and economics came to be the main focus of attention. The said fundamental issue also emerged in the countries of Western Europe in the postwar period[110].

Diagram 5

BASIC CONSTITUTIONAL CHARACTERISTICS OF A STATE



In the transitional period, the old-time dispute of whether the letter of the spirit of the *Constitution* is to be followed seems to arrive at a simpler solution.

The acceptable option is the one in which the evaluation, the radical reforms of public relations is aimed at the fact that the adopted legal regulations or actions of the bodies of authority are generated by the fundamental principles determining the constitutional character of the new relationships thus facilitating the substantiation of a democratic, State of Social Welfare, state governed by the Rule of Law. To be also reflected in that mirror are the decisions of the Constitutional Court, they all have to be oriented so that the society would not turn away from the way of development defined by the Constitution.

This problem has also deep philosophical and legal roots directly touching upon the theory of natural and positive law. Without going deep into examining the essence of those theories, we deem it necessary to underscore that the fundamental basis of the constitutionalism should belong to the theory of natural law. The principal objective of the *Constitution* is to recognise the fundamental human rights and freedoms as the highest priority, to create reliable guarantees of their respect and protection.

The fact of the primacy and priority of the natural human rights has been unambiguously recognised and distinctly registered in the constitutions of many countries as the original principle. In particular:

The Constitution of Georgia, Article 7:

The state recognises and defends generally recognised rights and freedoms of the individual as everlasting and the most high values. The people and the state are bound by these rights and freedoms as well as by current legislation for the exercise of state power.

The Constitution of Russia, Article 2:

Man, his rights and freedoms shall be the supreme value. it shall be a duty of the state to recognise, respect and protect civil and human rights and liberties.

The Constitution of Moldova, Article 1, part 3:

The Republic of Moldova is a democratic, law-governed state where the dignity of a citizen, his liberties and rights, the free development of a human being, the justice and the political pluralism represent the supreme values and are guaranteed to everybody.

The Constitution of Slovakia, Articles 11 and 12 - part 1, Article 11 [Human Rights]:

International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.

Article 12 [Equality]

(1) People are free and equal in dignity and their rights. Basic rights and liberties are inviolable, inalienable, secured by law, and unchallengeable.

The Constitution of Ukraine, Article 8, part 1:

The principle of rule of law is recognised and is effective in Ukraine.

Examples of this kind can be continued. However, the main issue is that the foundation of constitutional principles should be based upon a methodologically correct approach. Therefore, this approach has to be placed at the basis when examining the constitutionality of a legal act in the practice of the constitutional review. A law (or its provisions) cannot be constitutional if it tramples the human rights and freedoms. A law cannot be constitutional if it is used to trample the fundamental human rights, to establish the regulations enforcing the submission to a dictatorial authority. This, incidentally, is also a problem of ideology.

Pursuant to one of the cornerstone statements of the communist society, the public interests were placed above the personal interests. Inviability of this type of ideology was proved by life. This approach is the first step to a dictatorial rule, independent of whether this rule is imposed by a personality or by a party. Unfortunately, in the legal literature, the apologists of the positivistic theory continue to counter the simple truth of the primacy and priority of the natural human rights and freedoms. We think that in evaluating the constitutionality of a legal (positive) act, the Constitutional Court has to be guided by the constitutional principle of the supremacy of law, thus facilitating the implementation of a correct legislative policy.

With regard of the constitutional review being closely associated with social life, it is essential that in its implementation consideration should also be afforded to the particular features of the system of values of a particular society. This condition in turn will necessitate a comparative analysis of the principal constitutional concepts with regard to combining the national features with the general humanitarian values. To achieve this goal with regard to the contemporary capabilities of

information and technology, we have developed and proposed an efficient and practically tested system <VORONUM>. The basic nature of this system is that a comparative analysis of using the basic constitutional concepts in different countries helps to uncover the general principles and regularities as well as the essential differences prompted by the systems of values in a particular country. This technique will allow not only to realise the cognitive and informational objectives, but, what is even more important, to achieve an analytical purpose, to uncover the origins, the logic of formation and functioning of the system of constitutional review throughout the world[111].

A functional diagram of this system can be presented in this way (Diagram 6).

It is indisputable that the constitutional review has a huge effect upon social experience and is becoming a valid instrument of providing a sustainable and dynamic development of the social system. Besides, the social experience, in turn, can substantially determine the character and degree of a full-fledged manifestation of the functional system of constitutional review. A question arises: what is the possible functioning efficiency of the mechanism of constitutional review in a malformed society within a transitional period?

b) Features of Constitutional Review in a Transitional Period Constitutional Justice and Practice:
The Character of Social Relations and the Constitutional Review

For the implementation of constitutionality, proper social circumstances and political and legal guarantees (remedies) must be provided[112].

The particular social conditions that are important for the implementation of constitutionality and are essential for a democratic political systems are as follows:

- social stability. This involves material stability for the protection of a particular constitutional system against eventual sudden changes which could be caused by social powers that do not favor the present political system. From the point of view of formal legal stability, the *Constitution* should be the factor which stabilises the political system and its institutions. However, the socio-political system is not dependent only on the strength of the *Constitution*, but also on the socio-political basis of the *Constitution.* The socio-political basis is the cause and consequence of the strength of the *Constitution*. Generally we can speak about the social (material and formal) stability when the social and political sphere does not change too often and there are not any too big and sudden changes. Both elements of social stability, i.e. material and formal stability, are close to each other and both influence the implementation of constitutionality. However, social instability requires a more active role of organised subjective powers with the implementation of constitutionality for social stability.

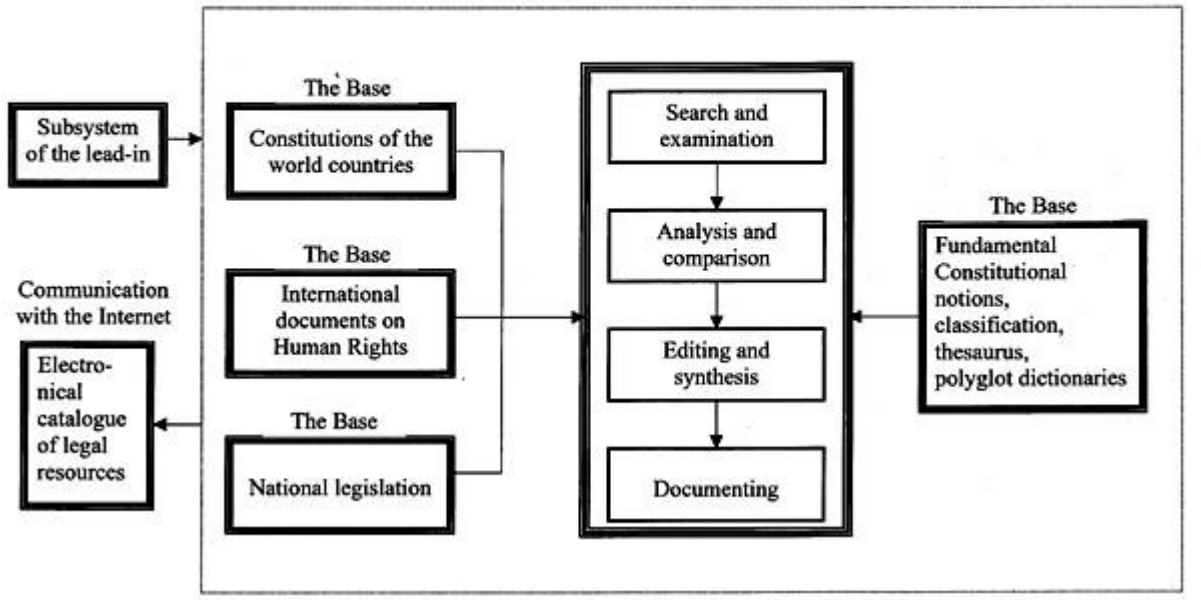
- social homogeneity or heterogeneity. This involves the social group composition of society. If the society is more homogeneous concerning social position and social consciousness, there are advantages for implementing constitutionality and legality. The social structure of the society is the basis for determining the framework of the political system as well as the contents of the constitutionality. Social homogeneity and social peace are interwoven. All current societies are

more or less heterogeneous (differentiated, structured). Therefore, their social structure influences the implementation of constitutionality.

- social consciousness and public opinion. Consideration of constitutionality and legality is dependent on social consciousness and public opinion and involves the understanding that the constitution and statutes must be considered. Such a democratic consciousness is dependent on the duration of the tradition and existence of democratic institutions. Within a concrete society, the belief must be stabilised that consideration of constitutionality and legality is a benefit and the goal of everyone. A developed social consciousness is one of the most important elements needed for the integration of a certain political system. A real democratic system also assures the creation of public opinion and guarantees its affirmation. Such public opinion may support the implementation of constitutionality and legality. Public opinion is also an important political factor for the limitation of power, and entails the condemnation of the violation of constitutionality and legality. Public opinion as a form of social consciousness became a very important political power within the social system and in such a way also a factor for the consideration of constitutionality and legality.

Diagram 6

STRUCTURE OF THE COMPUTER SYSTEM "VORONUM"
FOR COMPARABLE CONSTITUTIONAL ANALYSIS



Constitutionality may be exercised within a certain political system only by the wilful endeavour of those social powers who have adopted the *Constitution*. Social stability as well as social heterogeneity influence the implementation of constitutionality. The creation of material conditions is an imperative of a stable social and political system, which in turn affects the contents and stability of political institutions.

The protection of the basic political relations determined by the *Constitution* is guaranteed by the different guarantees or remedies (political and legal) for the protection of constitutionality and legality of a democratic political system. Constitutionality and legality can be exercised only within appropriate social circumstances. There are socio-political and legal remedies that guarantee the implementation of constitutionality and legality.

Socio-political guarantees include institutions and instruments that implement constitutionality and legality which are at least partially dependent on human will. The most important remedies are the

following: democracy, the separation of powers, and reducing State power and State bureaucracy. The appropriate organisation of power (the separation of powers) is one of the most important remedies. Socio-political guarantees ensure the objective circumstances necessary for the functioning of the political system that assure that constitutionality and legality function more efficiently. Within a State governed by the rule of law, socio-political remedies only consist of guarantees of the efficient functioning of the political system (the prevention of a concentration of power).

In a contemporary State governed by the rule of law, the first legal remedies are the judiciary and constitutional justice. The judiciary as a legal form of the protection of constitutionality and legality was developed through many steps: civil, criminal, and administrative judiciary. The judicial protection of constitutionality, *i.e*. the constitutional review (exercised by constitutional justice), however, was introduced following the realisation that regulations of State bodies can also violate the *Constitution*, and was established with the introduction of written *Constitutions*, and is the highest form of the legal protection of constitutionality.

The concentration of power can be limited only by the separation of powers into legislative, executive and judicial branches. The principle of the separation of powers is an essential component of constitutionality. It is a basic principle of democracy. The result of the introduction of the judicial review of constitutionality was a qualitative change as regards the principle of the separation of powers. Where it was introduced it has become increasingly important in the political field, and it has become an increasingly essential component of the mechanism of State authority as its decisions actively intervene in political and social life.

The political guarantee for the implementation of constitutionality is the right of individuals to participate in public affairs. This requires debureaucratisation. The institutionalised guarantee against the bureaucracy of political functions is a multiparty system and general and equal souffrage, which assure the relatively quick change of political structures.

Constitutional review is also a remedy against anomalies concerning the concentration of powers within executive bodies. In particular, an excess of State legislative activities oppresses individuals within the political system. Constitutional review is a remedy for balancing processes which could lead to State intervention into certain fields of human activity.

The legal guarantees and/or legal remedies for the protection of constitutionality and legality are as follows:

The principle of the rule of law (the principle of legality) means that all State bodies must act on the basis of the *Constitution* and statutes. A self-interest imposed on the principle of expedience is, as a rule, excluded. The principle of the rule of law or the principle of legality is closely bound with the legislative function of a contemporary State. Because a statute is the most direct reflection of sovereignty, the activity of the administration and the judiciary must be subordinated to a statute; within this scope, the principle of legality and the rule of law are reflected. The principle of legality is bound with the idea of basic rights as well as with the separation of powers. In addition, the mentioned principle also has a certain other meaning: the request for the conformity of lower regulations with higher regulations. The principle of legality also reflects the desire to limit power and its political liability (the principle of the political liability of authority). Authority is limited, in particular, by legal norms. This principle of legality regulates the relationship of the executive-administrative and judicial power by statute. The principle of constitutionality means that all other general legal acts must be in accordance with the *Constitution*, because the *Constitution* has the position of the supreme act. Constitutionality has a formal (the process for adopting an act must be in conformity with the *Constitution*) and a material character (the contents of all other general legal

acts must be in conformity with the *Constitution*). The principle of legality reflects the formal and material conformity of executive or individual acts of the administrative and judicial bodies with statutes.

At all times in human history the changes of social system were compared with earthquakes, since more often than not a qualitatively novel situation emerges characterised with indeterminacy, uncontrollability, disbandment of institutional systems, confusion of thought, unpredictability of processes, indistinct actions and social tension. This is essentially an all-embracing social stress, with an initial period of a typical shock situation transgressing into a situation of alarm and indeterminacy, which are overcome to start a period of stabilisation and development.

Appearing in this situation were nearly all post-communist countries. That was particularly visible in the republics of the former Soviet Union. The matter is that they had lived through a double collapse: that of the system of public relations and the state structures. If the former assumed a transition of the economy to the market relations and embedding the public relations characteristic for a democratic state governed by the Rule of Law, in some New Independent States also a State of Social Welfare, based on the principle of separation of powers, the latter rather prompted urgent action to form an autonomous state system, *i.e.*, to make a whole out of a part.

The implementation of the objectives thus noted demanded primarily an actuation of the whole range of instruments for crisis management, to achieve a reviewable transition, to mitigate the inevitable negative aftermath of the system transformation, to overcome the political, economical, psychological indeterminacy, as well as the indeterminacy of the entire system of values, to distinctly earmark the new rules of social life, to establish new structures replacing the ones demolished and to resolve a multitude of other problems without delay. It was needed to apply enormous efforts to preserve the rhythm of life, to get new bearing in time and space.

With regard to the public administration and to the subject under study in particular, answers to the following questions are of crucial significance, particularly for the countries of the former USSR:

1. How did the transition occur? Was it an unprepared transition or a collapse?
2. Was the target of transition clear?
3. What was the substance of the transitional period, its duration, phases, its start and termination?
4. Does the transitional period require a special approach to the state and public administration, and to the constitutional review in particular?

Both for the former communist countries of Europe and for the Republics of the former USSR, the period following April 1985 was perceived as a period of active reforms.

The political evaluation of the emerging situation by the West was as follows: they had interacted with the "Evil Empire" and an irrational economic system, and so, the efforts by Gorbachev at its transformation were qualified by them as heroic.

However, the Gorbachev reforms at the very beginning were doomed to failure for a variety of reasons. Firstly, they mainly encompassed the sphere of economy with almost no concern to the political system. Secondly, the societal processes became unreviewable, overstepping the boundaries of the sought and imposed decisions. Moreover, not only they could not make room for the new reality, but rather assumed the role of the detonator for the in-depth social transformations. The best example is the New-Ogarev process, the referendum of March 17, 1991, the short-sighted reaction of the Union's center to the processes taking place in the Baltic States, Armenia and other regions. Thirdly, there was an erroneous perception and evaluation of the international factor. On

one hand, there was an underestimation of the geopolitical interests of the West, a possible effect of the external factors, on the other hand, there was a prevalence of dizziness and an unsubstantiated inspiration.

To be also added is the unavailability of a distinct idea on what was to be done, as well as a distorted perception of the actual environment, the picture will be complete.

All that shows that the "maturation" of the actual environment took place with no regard to the will of the rulers and within a "hidden period".

Quite naturally, the reforms had to be of explosive character, with all relevant consequences. Actually, the historical reality is such that the system collapsed with the subject nations unprepared. Moreover, all efforts by the Moscow authorities and the international circles were intended to confuse the public opinion, as well as to create distorted ideas of the events to come. Naturally, in this type of situation there were inevitable psychological stresses and distorted outlook that enhanced enormously the difficulties of the transitional period.

Coming to the foreground in a similar situation are the approaches to crisis management to resolve at least two objectives. First: to prevent chaos and to exit this situation with minimal losses using an organised and reviewed means. Second: within the shortest time possible to identify the priorities, to prepare the state machine to work in the mode of functional administration, to establish a legal field pursuant to the new social relations and an institutional system of administration. The resolution of those problems for the European (former communist) countries had a peculiarity that on one hand they had a clear idea of the future, their social consciousness, mind had still retained the values to be reinstated, with their carriers being in the majority. On the other hand, there was an integral national-state system that had a relatively autonomous economic structure with a certain structure that created vast opportunity for integrating with the advanced European systems of values, as well as a most favorable geopolitical situation.

For the Republics of the former USSR significant was not only the factor of inertia, the problems silenced for years, and therefore manifested with special acuteness, but also the situation that the autonomous action was far more complicated. That was on one part explained by the fact that the economic links and their interaction were relatively independent compared to the political processes, and still under inertia. On the other hand, the conflicts of interests were manifested because of uncleanly formulated prospects, new solutions and the ways of their achievement. It was an enactment of the old slogan "save yourselves as you can". It was not by accident that after the formation of the Commonwealth of Independent States the jointly adopted resolutions mostly remained as good intentions, and remained unaccomplished.

All that is largely stipulated by the fact that for most of the New Independent States it had been for a long time unclear, what the direction of transition is and what in-depth transformations are needed for that (the best testimony to that is the referendum carried out in March 17,1991, in nine republics of USSR).

The transitional period may be provisionally divided into the following periods of time.

1. The period prior to the transition to new social life. Theoretically that can be a reference to the entire 70 years (for many of those years were the years of exile, political persecution and hopeless struggle). In actual life it was motivated by half-measures of economic reforms, and following the unsuccessful trials of 1953, 1965, 1979 and 1985 received an all-embracing public character after 1987, when the Perestroika got into an obvious default. That period can be classified as a hidden period of a ripening collapse, since, as noted, implementation of a transitional program was

replaced by belated efforts to impede with social reforms and to mislead the society. It can also be considered the period of lost opportunity, since almost no preliminary work has been done to keep it going within the new reality.

2. The period of the actual collapse of the USSR and the subsequent shock. This period embracing 1991 - 92 is characterised as follows:

- after the shocks following the collapse, with the continued disbandment of the existing systems;
- domination in many countries of erogenous rather than endogenous effects;
- the threat of uncontrollability and a weak gleam of a changing,situation;
- perplexity of the society, indeterminate actions, uncertainty and fear of tomorrow;
- agonizing search for economic and political formation of new systems and the initial resolute steps;
- absence of the new systems of values and lack of new feeling of space and time;
- a syndrome of the old way of thinking, lack of habits to free and independent life;
- emotional and sometimes amateur approach to the problems of a further development of society, etc.

With regard to the public psychology, the anxiety of the people prior to December 1991 and after was somewhat different. In all, 1991 became the year of great shocks: March 17 - a referendum aimed at retaining the Union (Armenia did not participate), an abortive coup (August) and then collapse (December) and many other events, each bearing upon the crucial interests, both current and future.

It is to be added, that the independence, having received the political, moral, and psychological recognition, had become a *fait accompli* and demanded an economic and social compensation.

It was at that time that a decision was pending for two crucial problems: first, to overcome the anxiety of the transitional period; second, to clarify the basic positions with relation to the process of a further development of society and their legislative adjustment.

3. For many New Independent States the subsequent years, until the adoption of the new Constitution became the years of discrete transformations and some stabilisation. There was a considerable consolidation of the legislative basis with regard to the new public relations, mainly arranged was the establishment of the institutes of state administration, the independent economy acquired new features, particularly by introducing the national currency and the financial-banking relations, establishment was made of the operational international connections that also adjusted the character of economic reforms. Meanwhile, the search for certain solutions had to be accompanied by the correction of mistakes.

That phase enclosed inherent pitfalls and dangers.

Most perilous for the society were not so much the chronic ulcers as the newly emerging phenomena that stepped into the phase of irrational reproduction. One of the significant derelictions in the state administration (incidentally this was typical for many republics of the former USSR) was that there was no deployment of a planned and efficient effort to overcome the negative processes and to ensure an anticipatory character of the positive results of the reforms being undertaken. Moreover, within a short period of time the social polarisation attained a level that the society was not yet ready to accept. In turn, many of those who initially entered the race moved by the ideals, ceded to the temptation of corrupt practices, thus devaluating both themselves and the ideals in the eyes of society.

No due attention was paid at this phase to reforming of the judiciary and legal system, to establishing an operational and efficient system of constitutional review in particular.

4. There followed the post-constitutional period of significant distinctions when the New Independent States embarked on systemic reforms. This period will last until the legal and democratic relations gather a sufficient critical mass to become the principal catalysts of social life, until the market relations embrace all productive processes.

The difficulty thereof is, however, in the need to prevent the negative phenomena and to spur the positive shifts so that the negative trends would not prevail or block further development. As to the rapid positive changes, they can be expected only in case of complex, mutually coordinated active steps with care taken to secure the immune system of society.

International experience shows that justifiable in such situations is the formation of a relatively active system of constitutional review, rather than a wait-and-see approach. There is an opinion in the literature that the emergence of specialised institutes of constitutional review in Germany, France and in a number of other European countries was conditioned by resolving specific problems prompted by systemic reforms[113]. We think that the constitutional review is rather characteristic to a society *embarking* on a path of dynamic and stable development, where democracy was transformed from a slogan into the vital need and the substance of activity, primarily for the state authorities. In the meantime, the constitutional review is a powerful means to change the society in this way. Naturally, the transitional period in certain countries (*e.g.* in Armenia) is manifested in some peculiar way: a fairly restricted set of objects and subjects of review is established which appeal to the body of constitutional review, with insufficient focus afforded to the issues of official interpretation of the *Constitution* or to resolving the *litigations* in respect of jurisdictional disputes and to efficient use of implements for *ex post facto* abstract review that in the transitional period capable to largely facilitate the overcoming of internal controversies of the legislative system and to ensure the supremacy of the *Constitution.*

It is to be noted that in the transitional period the cornerstone is the formation of an acting system of constitutional review, so that the principal condition of its implementation is the establishment of a specialised Constitutional Court endowed with sufficient powers and possessing the preconditions necessary for the activities. The best example of the aforementioned are certain countries of Eastern Europe.

Beside a stronger position of the Slovenian Constitutional Court within the scope of national system and beside deciding upon constitutional complaints regarding violations of human rights, the most important novelty in comparison with other respective systems of the New Democracies is a conspicuous cessation function of the Slovenian Constitutional Court with reference to the statute. This means that under *Constitution* 1991 the Constitutional Court may abrogate a statute. In some other systems of the New Democracies such a concentration of power in one and only institution (the Constitutional Court) could be even limited with the power of review of statutes the Parliament.

The Slovenian Constitutional Court acquired the status of a independent institution for providing constitutional review in relation to the Legislature characterised by the explicit power to abrogate the statute adopted by the Legislature. The former function of the Constitutional Court, (due to the Principle of Unity of Powers and Supremacy of the Parliament) focused on assessment of unconstitutionality of a statute, changed into an active relationship not only involving the cessation of the statute, but also the guidance of the Legislature in its legislative activity. However, the concession by the Constitutional Court to the Legislature is still possible, which means that the Court does not abrogate the disputable statutory provision, but rather enables the Legislature to reconcile the disputable statutory regulation with the *Constitution* within a due period of time,

pursuant to the guidelines of the Constitutional Court in a specific decision (see Article 48 of the *Constitutional Court Act).*

In this period the Constitutional Court played a more important role based on its new extended powers. In the sense of contemporary trends, the Slovenian Constitutional Court, too, has assumed the role of a **negative Legislature**[114]**.** In the period of transition the Legislature is not always able to follow the development nor to impose standards for all shades of the legal system and its institutes. This results in the so-called interpretative decisions taken by the Court or the appellative decisions[115] or certain declaratory decisions that include certain instructions by the Constitutional Court to the Legislature on how to settle a certain question, or a specific issue (Article 48 of the *Constitutional Court Act).* However, in compliance with the Principle of Judicial self-restraint, a clear limit has been imposed on the Slovenian Constitutional Court due to the fact that the Court has actively been creating the legal rule both negatively (*e.g.* the abrogation) and positively (e.g. the appellative, interpretative, the declarative decisions), a function theoretically reserved for the Legislature. On the other hand, there arises the question whether the Constitutional Court, in deciding on the existence or non-existence of a specific provision, actually creates the law, because it carries out a review of legislative activity. In any case, the Legislature cannot avoid the existence of constitutional case-law in its activity.

At the same time the Slovenian Constitutional Case-Law, arising from a certain tradition, could serve as an example of presentation of knowledge and techniques of a national legislative practice. On the other hand, the comparison of certain topical views could as well add to the promotion of a national democratic process and culture. Accordingly, it could have direct applicative value in the search for the systemic solutions in some other countries.

In the transitional period, the central issues of constitutional review, as noted, is the competence to interpret the *Constitution*, as well as to overrule the legislative contradictions.

The right to the abstract interpretation of the *Constitution* belongs to the Constitutional Courts of 29 countries, including Russia, Azerbaijan, Bulgary, Kirgizstan, Moldova, Slovakia, Uzbekistan et al. However, the competence to abstract interpretation of the *Constitution* can engage the Constitutional Court into a political process and weaken its mitigating role. It is also essential, particularly in the transitional period that the litigations in respect of jurisdictional disputes of the bodies of authority be resolved in a legal way, at least by interpreting the *Constitution*, rather than would go into a stalemate or be decided in a confrontation. In this regard one of the best solution is the competence of the Federal Constitutional Court of Germany stated in Art. 93, clause 1 of the *Basic Law:*

"(1) the Federal Constitutional Court will resolve cases:

1) on interpretation of the present *Basic Law* in the event of disputes concerning the extent of the rights and duties of the supreme federal organ or other parties concerned who have been endowed with independent rights by the present *Basic Law* or by *Rules of Procedure* of the Supreme Federal organ."

As to the laws adopted prior to the *Constitution,* certain rules are established in their regard, so that they remain valid to such a measure that they do not contradict the new *Constitution*. Is this formulation sufficient? Clearly not. The matter is that it is necessary to identify the fact of contradiction and to ensure the harmonic condition of the legislative field. The constitutional courts of certain countries simply do not accept for hearing a case on the constitutionality of this type of laws. Particularly hard is the situation in the countries where such laws fall under the jurisdiction of the Constitutional Court, however the subjects of appeal do not exercise their right to appeal, while

the legislative body has no distinct position on this issue. A typical example is Armenia. The analysis carried out by the staff of the Constitutional Court of Armenia has shown that *2/3* of the examined laws contain provisions contradicting the *Constitution*. These materials were dispatched to the President, the Government (as the Subject of a Legislative Initiative) and the National Assembly. During a year there was no shift, and those regulations are still acting.

We think that an interesting solution of this problem is found in the *Constitution of Romania* (ss. 79 and 150), providing an institutional system resolving the problem as a complex within the time set by the *Basic Law*.

Another feature of the transitional period is the lack of guarantee for independence and stability of the constitutional review. That is testified by the experience of Russia, Belarus, Albania, Tajikistan. Any interference into the activity of constitutional review contains a boomerang effect and can trigger extremely irrational processes. Therefore, the major objective is ensuring the independence of the judicial constitutional system and establishment of the necessary, sufficiently functional, institutional, organisational, logistical and social guarantees of its operation.

Moreover, it is essential to establish an efficient mechanism of resolving the disputes between the *Constitution* and politics. In countries of developed democracy this objective is resolved by public consensus, with no political shocks. Meanwhile, frequently, in collisions between the new political realities and the *Constitution*, the latter is sacrificed[116]. As to the post-communist countries, resolving this type of controversies often results in constitutional coup.

To avoid this type of situations, the constitutional courts should contribute maximum effort to lend the constitutional and legal character to the political division.

There is also a problematic issue emerging when the constitutional changes lag behind the real life and the logical development of social process. In this kind of situations, irrationality appears even in the constitutional courts' decisions. As emphasized by Andrash Shayo, the social and political *aftermath* of the Hungarian Constitutional Court decisions taken in 1995 (on the socio-economic rights) show that the supremacy of law and the constitutional procedures played an obstructionist role, preventing the reformation of the inherited social system[117].

We think that the outcome of this type of situation should be sought in improving the *Constitution* itself and by overcoming the intra-constitutional controversies, rather than in limiting the functions of the body of constitutional review.

Chapter III. Relationships between Constitutional Courts and Other Institutes of State Authority. Guarantees of Independence for the Constitutional Justice

Relation of Constitutional Courts to Other State Institutions

- Concerning the Legislature:

The influence of the constitutional bodies upon the appointment or elections of the members of the Constitutional Court differs from system to system. In the election based systems as a rule Parliaments exercise greater influence upon the elections of Constitutional Court Judges as compared to the elections of judges of the ordinary courts. In those systems[118] Constitutional Court Judges are exclusively appointed by the legislative body. The same principle is followed by Portugal where Constitutional Court Judges, appointed by the Parliament, co-opt a certain number

of other Constitutional Court Judges. In case these systems involve the participation of the executive power, its role is limited to the recruitment of candidates.

The nature of the relation between the Parliament and the Constitutional Court is that the Parliament as a legislature adopts statutes whose conformity with the *Constitution* is evaluated by the Constitutional Court. Beside this, the Parliament regulates by statute the important questions of the status and functioning of the Constitutional Court and the status of the judges of the Constitutional Court. The Constitutional Court has an important influence on the activities of the Parliament, as it is bound to consider and implement the decisions of the Constitutional Court.

- Concerning the Executive branch, the Head of State and the Government:

Appointment Based Systems (without the Participation of a Representative Body): In France three members of the Constitutional Council are appointed by the President of the Republic, three by the President of the National Assembly and three by the President of the Senate. In Japan, Sweden and in many African countries with constitutional/judicial review, judges (of the Supreme Court) are appointed exclusively by the Government. In Burundi, Cyprus, Denmark, Ireland, Senegal, South Africa, Turkey and the USA, Constitutional Court Judges are exclusively appointed by the State sovereign or by the Head of State. In the Argentinean Province of Tucuman one part of Constitutional Court Judges are appointed by an electoral body composed of the judges of the Supreme Court and the rest of the judges are appointed by the executive power.

Mixed systems (appointment and election): In Andorra the appointment of Constitutional Court Judges is subject to the influence of the Head of State (the executive) and the Parliament. In Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgary, Cambodia, Canada, the Czech Republic, Georgia, Kazakhstan, Romania, and Slovakia one part of Constitutional Court Judges are elected by the Parliament or are appointed by the Head of State or by the President of the Parliament, and the rest by the executive power. In Italy, Peru and Spain one part of Constitutional Court Judges are elected by the Parliament, one part is appointed by the Government and the remaining part by the senior judicial officials. 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.

On the other hand, the Constitutional Court is empowered to decide the Proceedings before the Constitutional Court for Establishing the Responsibility of the President of the Republic, the Prime Minister or Ministers (Impeachment proceedings). It is necessary to emphasize criminal liability and civil liability beside the political responsibilities of a Minister. The individual criminal liability of a Minister is made evident through a special procedure. In the case of civil liability, a minister is liable for material damages.

Furthermore, there is the possibility of discovering the responsibility of the Prime Minister and Ministers as regards violations of the *Constitution* and statutes in the performance of their duties which result in charges of Impeachment against the Prime Minister or against any Minister of State. The Parliament (*e.g.* the National Assembly in Slovenia) may summon the Prime Minister or any Minister of State before the Constitutional Court to answer charges relating to breaches of the *Constitution* or of statute, committed during the performance of office. Any such charge is determined by the Constitutional Court.

- Concerning the Executive or Administrative Branch:

Constitutional Court decisions are final and binding. There is no legal remedy against a decision issued by the Constitutional Court. However, some systems allow the Constitutional Court to change its decisions (e.g. Belarus, Latvia, Ukraine).

- Concerning the Judiciary:

In particular systems the composition of the Constitutional Court is predetermined and is composed of top judicial officials. Since the body competent for constitutional/judicial review consists of representatives of the highest national courts in Greece and in some other countries (Hong Kong until 1 July 1997, Mauritius, Rwanda, Sudan) neither the Parliament nor the government exert direct influence on the appointment of Constitutional Court Judges (See Chapter V).

- Concerning State bodies in general:

In most systems only the Constitutional Court is entitled to decide on disputes concerning jurisdiction between State bodies.

In addition, all State bodies have in principle the status of a legitimate (privileged) petitioner in proceedings before the Constitutional Court.

The Constitutional Court and the Judicial Branch

The following relations between the Constitutional Court and the judicial branch are possible:

- One of the powers of Constitutional Courts may be a concrete constitutional review; the European system did not adopt a judicial review system - it is obligatory for ordinary courts to present a case of potential unconstitutionality to the Constitutional Court; In the event that a court, in deciding a concrete case, concludes that a statute which it must apply is unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision.

- The Constitutional Court may also decide on jurisdictional disputes between ordinary courts and bodies of State administration.

- The Constitutional Complaint is a special subsidiary legal remedy before the Constitutional Court. The Constitutional Court is limited in its decisions on constitutional matters, and violations of constitutional rights. However, if a violation is determined, the decision may have a cassatory effect as a rule *inter partes (and erga omnes* if the subject-matter of the decision is a legislative act). The Constitutional Court here retains the position of the highest judicial authority. These courts can be referred to as superior courts of cessation, because Constitutional Courts reviewing decisions of ordinary courts act in fact as the third and the fourth instance. Although the Constitutional Court is not a court of full jurisdiction, in specific cases it is the only competent court to judge whether an ordinary court has violated the constitutional rights of a plaintiff. It involves the review of micro-constitutionality and perhaps the review of the implementation of a law, which, however, is a deviation from the original function of the Constitutional Court. Cases of constitutional complaint raise sensitive questions of defining constitutional limits. In any case, the Constitutional Court is limited strictly to questions of constitutional law. The Slovenian system is specific in that the Constitutional Court may, under specified conditions, make a final decision on constitutional rights or fundamental freedoms themselves (Para. 1 of Article 60 of the *Slovenian Constitutional Court* Act, Official Gazette RS, No. 15194).

The protection of fundamental rights and freedoms is an important function of the majority of Constitutional Courts, irrespective of whether they perform the function of constitutional judgment in the negative or positive sense. Whenever a Constitutional Court has the function of a "negative legislature", constitutional review is strongest precisely in the field of fundamental rights. Even in other fields (the concretisation of State-organisational and economic constitutional principles) in which the legislature has the primary role even in principle, Constitutional Courts insure that fundamental rights be protected. Precisely in the field of the protection of rights, the Constitutional Court also has the function of the substitute "Constitution-make" (a "positive function"), which means that in specific cases Constitutional Courts even supplement constitutional provisions.

The Constitutional Court is not a part of the judicial branch.

Guarantees of the Independence of Constitutional Justice

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

Most constitutional/judicial review bodies have an independent budget[119] 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 previously established Courts , *e.g.:*

Bulgary: 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 *Organisation, 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, in practice the Court has its own budget, 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 *Organisation 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 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 is managed by the Court autonomously. Spending estimates of the Court may not be reduced as compared to a preceding financial year[120]. 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, organisatorial, 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 organisatorial guarantees secured by law (Article 5-1.1 of the *Constitutional Court Act No. 1-67 of 3 February, 1993, as amended by Act No. 1-1475 of 11 July, 1996).* The Constitutional Court is financed by 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, organisatorial, 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 by 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 organisation 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 procedure determined by law.

Romania: Under Article 50 of the *Organisation 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 Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the Status of Judges, of 20 January, 1993).*

Turkey: The Constitutional Court, within the framework of the general budget, administers its own budget (Article 56 of the *Law of the Organisation 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).*

Armenia: Under Article 7 of the *Constitutional Court Act,* the President of the Constitutional Court shall present to the Government for inclusion in the State budget the projected expenses of the Constitutional Court.

The budget of the Constitutional Court shall be part of the State budget.

Slovenia:

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).*

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. 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 of 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 Organisation 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.

C. 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 cessation 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 cessation, and the so-called positive decisions issued by constitutional Courts are gradually gaining importance:

- One of these forms involve **appellate decisions** (Germany, the 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" authorisation 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 authorisation 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 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, characterised by the so-called creative decisions with which the Constitutional Court may even change or add wording to the regulation in question.

- Another factor in the decision-making process is 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 superlegisiative 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 (**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 ail government bodies to act in compliance with any decision issued by the Constitutional Court)[121].

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, ie. there is no direct amendment or modification of the provision by the Constitutional Court.

D. lmmunities, lncompatibilities, Material Independence, and Protocol Rank

Most systems recognise the immunity of constitutional court judges and certain systems recognise explicit parliamentary immunity (e.g. Bulgary, 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 elections (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.

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 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).*

Armenia:

Guarantees of the independence of the Constitutional Court:

A Member of the Constitutional Court shall be independent and only subject to the law (Article 97 of the *Constitution*). Any exerting of influence on a Member of the Court in relation to his/her activities is prohibited and shall be persecuted by law (Article 10 of the Constitutional Court Act).

A Member of the Constitutional Court may not hold any other public office or be engaged in any other paid occupation, except for scientific, educational and creative work. A Member of the

Constitutional Court may not be a Member of any political party or engage in any political activity. (Article 98 of the Constitution, Article 3 of the Constitutional Court Act).

A Member of the Constitutional Court may not be an author or co-author of legal acts that are envisaged by Sections 1 and 2 of Article 100 of the *Constitution* (Article 3 of the Constitutional Court Act, an amendement adopted on December 9, 1997).

A Member of the Constitutional Court shall be irremovable and may hold office until the age of 70. A Member of the Constitutional Court may be removed from office on the grounds and by the procedures specified by the *Constitution* and the Constitutional Court Act (Article 11 of the Constitutional Court Act).

A Member of the Constitutional Court shall have personal immunity.

A Member of the Constitutional Court may not be detained and subjected to administrative or criminal prosecution through judicial proceedings without the consent of the body that has appointed him/her and a decision of the Constitutional Court. In case of the arrest or search of a Member of the Constitutional Court, the President of the Constitutional Court and the body that has appointed him/her must be immediately informed. A Member of the Constitutional Court may be arrested or searched only with the warrant of the Prosecutor-General of the Republic of Armenia. The security of the Court and its Members is ensured in a manner prescribed by the law. (Article 12 of the Constitutional Court Act).

In order to ensure the activities of the Member of the Constitutional Court, the state provides the Member with adequate living and working conditions. The level of compensation of the President and Members of the Constitutional Court shall be determined by law (Article 13 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. 33191). A new *Constitutional Court Act* (Official Gazette RS, No. 15/94) specified in detail the provisions of the powers and proceedings. New *Internal Regulations of the Constitutional Court* are in the process of being adopted.

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

- office in government bodies;
- local government offices;
- office in political parties;
- other offices and activities deemed incompatible with the office of a judge of the Constitutional Court, in accordance with the c*onstitutional Court Act.*

With regard to 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 a 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 Co*nstitutional 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 a 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 fulfill 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 a 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 in 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).*

E. 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, Tuva/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, Komy/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 experience 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).

F. Public Control/the Public Nature of the Activities of the Constitutional Court

The public nature of the activities of the Constitutional Court are declared by the *Constitution,* but mainly by the *Constitutional Court Act.* This principle may be realised 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 of 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 statutorial 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 Court[122].

- 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 regulations[123]. The Constitutional Court applies this principle by publishing its decisions in official publications (Official Gazettes, see Article 42 of the *Constitutional Court Act* and Article 46 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 *Odlodbe in sklepi Ustavnega sodisea* (Official Digest of the Constitutional Court; Slovenian full-text version, including dissenting/concurring opinions, and English abstracts);

- in the *Pravna Praksa* (Legal Practice Journal; Slovenian abstracts, with the full-text version of the dissentinglconcurring opinions);

- since 1 January, 1987, via the on-line *STAIRS database* (Siovenian full text version; English full-text version since 1992); for this purpose a special English-Siovenian glossary was created containing terms on constitutional law;

- the first original CD-ROM containing the Slovenian Constitutional Case-Law (in Siovenian) was issued in May 1998;

- since 1992 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 (Siovenian and English fyii-text versions and summaries in English and French);

- since August 1995 on the lnternet (Siovenian constitutional case law of 1994, 1995, 1996 and partially 1997 as well as some important cases prepared for the Bulletin of the Venice Commission from 1992, full text in Slovenian as well as in English "http://www.sigov.si/us/eus-ds.html"); since 1 January, 1997, also on a mirror site in the USA: "http://www.iaw.vill.edu/us/eus-ds.html";

- 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 lnternet (http://www.bwp-mediagroup.com/bookworld/eecrcl.htm).

- the circulation of information through several computerised 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 *(jurisdiccion voluntariea):* only a permanent inflow of petitions to the Constitutional Court actually justifies the existence, function and activities of the Constitutional Court.

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, Official Gazette RS,* No. 15/94; Article 5 and Articles 53 to 55 of the *Rules of Procedure of the Constitutional Court, Official Gazette RS,* No. 49/98). 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.

The Independence and the Autonomy of the Organization of the Constitutional Court

Most systems of constitutional/judicial review allow for the organisational 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 organisation. Special services of the Constitutional Courts are organised 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[124].

Unless Constitutional Court Acts especially provide otherwise, general labor 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 Couit Act;* Latvia - Articles 38-39 of the *Constitutional Court Act);* Japan - Articles 50-51 of the *Court Organisation Act No. 59 of 16 April 1947,* Turkey - Article 59 of the *Law of the Organisation 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 Organisation 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 organisational 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 statutorial provisions on the research consultants and assistants of judges of the Constitutional Court of Ukraine (Article 25 of *the Constitutional Court Act),* and the Organisation and activities of the Constitutional Court of Ukraine (Articles 30-37 of the *Constitutional Court* Act), which involve: organisation (Article 30), financing (Article 31), the Secretariat (Article 32), standing commissions (Article 33), temporary commissions (Article 34), the archive (Article 35),the library (Article 36) and the bulletin (Article 37). The organisation of the activities of the Court are determined by the *Constitution,* by the *Constitutional Court Act,* as well as by internal acts of the Court.

Armenia: The Government shall provide the Constitutional Court with its own building and with necessary equipment to ensure its normal functioning (Article 7 of the Constitutional Court Act).

The activities of the Constitutional Court shall be ensured by its staff in accordance with its regulations (Article 74 of the Constitutional Court Act).

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). The Rules of Procedure* were adopted on 26 May, 1998 *(Official Gazette RS,* No. 48/98).

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: the Legal Information Center with the legal library; legal advisers and clerical staff. 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).*

The discussion on what branch of authority is the one harboring a specialized body of constitutional review is going on. In a number of countries, as has been mentioned, constitutional review is constitutionally included into the system of judicial authority (Germany, Turkey, Russia, Georgia, Armenia, etc.), in others it is identified as an individual body (France, Italy, Spain, Poland, etc.).

In some cases the constitutional review is regarded as a legislative function. The object of constitutional review is the law itself, rather than an application of the law. In this regard it seems

that the functional character of Constitutional Court is an approximation of the Parliament. In actual truth, however, this type of classification is quite irrelevant.

In certain viewpoints, the constitutional review is classified as an individual branch of power, the review power, which is clearly an exaggeration[125].

Incidentally, in some countries the issue of clarifying the placement of the Constitutional Court has even become a subject of examination at a court hearing. Thus, in the Czech Republic, in spring 1995, the Constitutional Court has ruled on that point that the Constitutional Court is not a body of the judicial system, but rather is placed outside it.

An antique legal formula reads: "*Justitia est fundamentum regni"*.

What is then the constitutional review and what are its place and role within a state governed by the Rule of Law?

Inasmuch as the constitutional review is in the center of the whole system of the watch over legality, in the same way the constitutional review is in the center of the system of bodies of constitutional review. The introduction of constitutional review into the state legal system shows that the state would rather delegate the competence on taking decisions on constitutional and legal issues to specialized institutes standing above the ordinary courts, since the decision of such questions can be beyond the power of ordinary courts[126].

The specific character of judicial authority as compared to the "political authorities" - the legislative and executive, is in its relative permanence and neutrality[127], therefore the body of constitutional review is the main body of constitutional oversight. The Constitutional Court as the body of state authority, possessing all its characteristic features, nonetheless has a particular legal nature.

Firstly, it is a body of justice, specialized in deciding the constitutional and legal issues. Those are primarily the constitutional and legal disputes: the true core of those disputes is formed out of the interpretation and implementation of the Constitution, as well as the litigations in respect of jurisdictional disputes. In this regard, many scholars see the constitutional review just from the position of limitation of power and resolution of conflicts on constitutional powers[128].

Secondly, the Constitutional Court ensures the supremacy and direct action of the Constitution on the whole territory of the state as applied to all subjects of law[129]. That is just the principal responsibility of the Constitutional Court, while for most state bodies the observance and respect of the Constitution is sufficient.

The unique character of the mission of the Constitutional Court is that it is the only body of state authority with a direct responsibility to subordinate the politics to law, the political actions and decisions to the constitutional-legal requirements and forms.

The role of the Constitutional Court in the political process is enormous[130]. Meanwhile, the Constitutional Court has to resolve exclusively the problems of law, and under no circumstances give preference to political expediency, try to evaluate actions of some specific people outside their legal forms[131]. The Constitutional Court is featured not only as an arbiter of political powers, but as a guarantor of existential rights of the social union organized into a state. Meanwhile, this function of the Constitutional Court is not ensuing from the will of some institute of power but rather is directly placed upon the Constitutional Court by law, by the supreme law of the state, the *Constitution*. The principal concept of the specialized institutes of constitutional review is that the Constitutional Court is instituted and becomes functional with the purpose of protecting the

fundamental elements of the constitutional order, the fundamental human and civil rights and freedoms, ensuring the supremacy and direct action of the Constitution, i.e. the observance and provision of fundamental political and legal values proclaimed and guaranteed by the Constitution[132].

Thus, in countries providing for a special constitutional jurisdiction, exercising the constitutional review ensues directly from the principles and standards of the Basic Law.

The Constitutional Court is called for to disallow the misuse of the state power, to permanently maintain a situation whereby only a limited power is possible.

It can be stated that the Constitutional Court is the basic body of state power, providing the limitation of the state power itself in favor of the principles of law.

It should be noted that the Constitutional Court, formed by the elected authority (the issue of sufficiency of this legitimizing basis for a body of this stature seems disputable), is not accountable or subordinated to it. In the particular case the Constitutional Court is the supreme constitutional body that has, in contrast to other higher constitutional bodies, none of the representative functions. It is an actual fact that even in most democratic countries, where a limitation itself of the parliamentary authority could be seen as impossible, like France, institutionalization is made of non-representative bodies endowed with the right of review (and in the case of preventive review often interference as well) of the legislative activity.

This seems to be one of the main reasons of the often unjustified criticism leveled at many Constitutional Courts. It seems to us therefore that bridging the enormous gap between the status and the continually increasing role of the Constitutional Courts and their legitimizing basis has become an exigency.

It is to be noted that if we deal with a phenomenon like constitutional review, it has to be considered that developing whatever standards when evaluating this phenomenon is not only devoid of perspective, it is also dangerous. Nothing, no dogmatic statements on separation of powers, people's sovereignty, no classical diagrams of judicial power should exert pressure upon an objective, multilateral study of the essence of constitutional review.

Inasmuch as the Constitutional Court implements the function of subordination to law of the political decisions, even if they are expressed in law, it is the Constitutional Court that stands guard to the underlying values and interests of society, ensuring a gradual withering away of those that impede the dynamic development of this society. The Constitutional Court implements the function of social stabilization providing guarantees of social and juristic conformity in the formation and application of the political power.

We think that the function of constitutional review is generated by the sphere of relations above the state, since it will register, qualitatively organize and transform into law the original will of the citizens expressed in the *Constitution*, including the will of members of society to the institution or change of the-state itself.

The Constitutional Court, in a certain meaning and to certain limits, makes law by determining the trends of development of the legislation, by creating precedents of interpreting the Constitution and the laws, by filling in the blanks in the *Constitution* itself[133]. For, the only legal act binding the Constitutional Court when examining and deciding cases is essentially only the *Constitution*, being a complex of the general principles of law and abstract standards which are objects of interpretation.

Interpreting the principles and standards of such a universal character and such elevated rank as constitutional, will in turn provide the Constitutional Court with the constitutive power, and lend its acts a constitutional-attributive character. Meanwhile, the association between the interpretation and constitutional review takes place within several dimensions. We deal here not only with the official interpretation of the constitutional provisions on the specific complaints of relevant subjects just on a particular issue, but also a mediated interpretation on all adopted decisions of the Constitutional Court[134]. We also share the opinion of H. Osmokesku, judge of the Constitutional Court of the Republic of Moldova, which reads that in interpreting the legal standards, it is necessary to apply all methods in the aggregate (grammatical, logical, historical, teleological, systemic), rather than in isolation[135].

The society has the right to challenge the forms and contents of the state power, and the methods of their implementation, through the Constitutional Court as well. But the Constitutional Court with its decisions produces an effect upon the constitutional will formation and will determination of the citizens' union. In this regard, it would be more correct to register the definition of the concept "constitutional court" within the *Constitution* itself, as well as the principles of implementing the constitutional review, which is lacking in the *Constitution* of many countries[136].

The activity of the Constitutional Court lends legal competence to constituting state power through the *Constitution*, it ensures its succession, prevents the erosion and atrophy, as well as inertia of the constitutional order which binds the society and the state, subordinating them to the unified constitutional principles of law, the latter being more substantive and legally binding and true than whatever current act of any specific authority. The Constitutional Court, without being the only guarantor of existence and realization of these principles, is nevertheless the supreme and final arbiter in this sphere. Through the Constitutional Court it is possible to challenge any act of any authority having a fundamental meaning, and using the court decision, any serious political action can be declared non-constitutional if it contravenes the principles of Law.

It has already been noted that the character itself of these principles, as well as a vast, practically unlimited right to their interpretation, lend the constitutive power to the Constitutional Court, the constitutive power of the primary order. In this respect, the constitutional review is neither legally nor *de facto* commensurable with common justice. It is a function of the highest order. The acts of the Constitutional Court will directly amend and expand (or contract) the boundaries of the constitutional-authoritative relationships, establish, develop or modify the constitutional-legal doctrine.

All other institutes of public authority (bodies of state authority and local self-government) are subordinated to the entire complex of legal acts. As a rule, the bodies of one branch do not have to right to nullify the acts by other branches. This limitation does not extend to the ordinary courts, though at first sight only, since in the countries having instituted the specialized constitutional review, the most important, constitutionally significant legal disputes are resolved only by the bodies of specialized constitutional review, i.e. in most countries of that group by the Constitutional Courts, therefore, the influence of ordinary courts upon the political process is insignificant.

In contrast with the executive and judicial powers having a responsibility to ensure the priority of law, i.e. the will of the legislator (they do not recognize the category of "illegal *law")*, the Constitutional Courts can adjudicate that the will of the legislator, as expressed in a law, has no legal character, i.e. the regulatory act or law does not ensue from the meaning or contents (spirit) or from the formal requirements (letter) of the *Constitution* and can recognize it as null and void.

We think that there is no eventual uncovering of the placement and role of the Constitutional Court within the system of state authority, when it is stated that, being part of the mechanism of state

authority, the judicial constitutional review carries features inherent to each of the opposing powers, i.e., the process of constitutional-review activity includes the implementation of legislative, executive and judicial functions[137].

The problem is essentially that the judicial constitutional review provides a functional equilibrium in the implementation of the constitutionally stated powers of the bodies of state authority, and thus, it *lends* an integral character to the system of constitutional review.

Thus, the Constitutional Court is the supreme constitutional body of the specialized constitutional review, exercising the judicial authority autonomously and independently in the form of constitutional judicial procedure aimed at constraining the public authority and providing a balance of power, the supremacy of natural law over positive law, *Constitution* over law, the principles of law over the political and administrative *discernment*. Attainment of those goals comprises the substance of activity of the Constitutional Court, i.e., the realization of constitutional review, thus uncovering the legal nature and intents as well as placement of the Constitutional Court within the mechanism of state authority.

As has already been noted, the system of constitutional review embraces quite a vast circle of state bodies (See: Diagram 7), to be noted among them are the following:

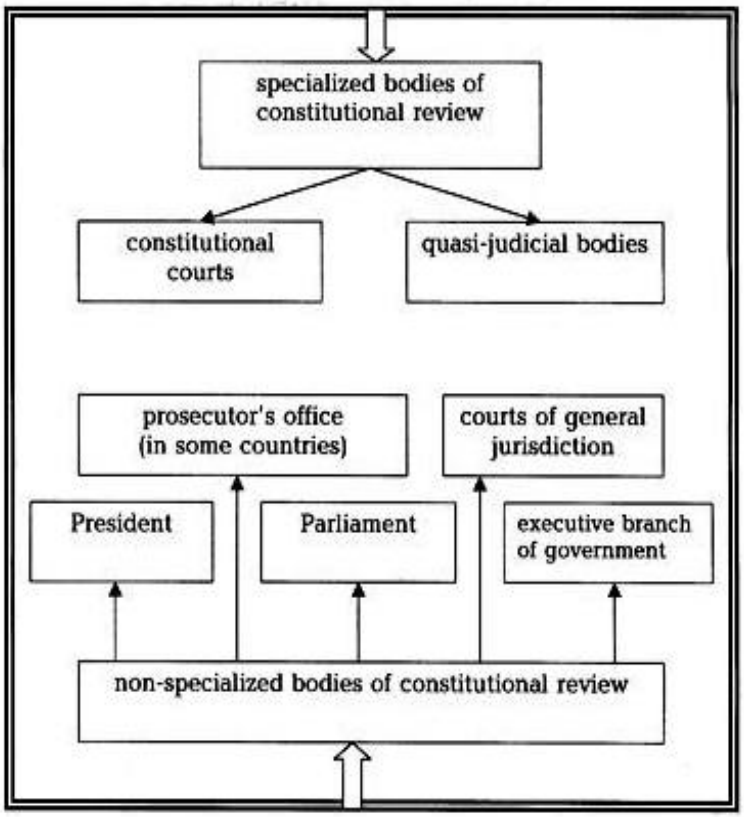
1. Specialized bodies of constitutional review - constitutional courts and quasi-judicial entities;

2. Non-specialized bodies of constitutional review:

    a) head of state;
    b) Parliament - as a rule, with regard to the legislative acts adopted by the Parliament;
    c) government - as a rule, with regard to the acts adopted by the government and to the administrative acts adopted by the executive bodies subsidiary to the government;
    d) courts of general jurisdiction;
    e) in some countries - prosecutor's office.

Diagram 7

SYSTEM OF CONSTITUTIONAL REVIEW



To uncover the features of the bodies of specialized constitutional review (mostly Constitutional Courts), scrutiny should be made of the European (centralized, concentrated) model of constitutional review, since another type of approach would go beyond any one model and would deal with the differences in the models themselves of constitutional review. Our option was also prompted by the fact that in the American-model countries of constitutional review the ordinary courts are not either institutionally, or functionally, set aside as a specific system of constitutional review, with the decisions of specific issues of constitutional law being professional duties of the judge.

Thus, the original character of specialized bodies of constitutional review is manifested in the following:

1. In most countries the electorate has no direct connection with the recruitment of these bodies: the basis for their legitimization is the will of at least two branches of power - legislative and executive;

2. Admitted to the membership of these bodies are not only professional judges, but also other persons, including the ones who are not lawyers;

3. The specialized body of constitutional review, even if it is included into the judicial system, nevertheless, occupies in it an autonomous position;

4. In its status, the body of specialized constitutional review is one of the highest constitutional bodies: the basis of its organization and activities are regulated by the *Constitution* itself and by the constitutional or organic law;

5. The basic function of those bodies is constitutional review;

6. The basic form of its activity is constitutional trial (even the quasi-juridical entities of constitutional review act within the framework of special procedural rules);

7. Specialized bodies possess great autonomy in procedural issues (the Constitutional Court is considered by some law specialists as the "process host"). This autonomy, the strong procedural role of the Court is not inherent to the Courts in the American model, nor to the courts of general jurisdiction in the European system of constitutional review;

8. The jurisdiction of these bodies is extended to the institutes of the legislative, executive, and frequently also the judicial powers;

9. Belonging to them is exclusively the prerogative of taking the final decision, particularly in the sphere of reviewing the constitutionality of regulatory acts, since even the nullification act itself of a non-specialized constitutional review (e.g., nullification by the Parliament of the law by reason of its non-constitutionality) can become the object of the specialized constitutional review;

10. The decisions of those bodies have, as a rule, a weighty legal substantiation which will compensate the weakness of their legitimizing basis, meanwhile, independent of whether the bases of their decisions mandatory or not, the courts of general jurisdictions follow in the wake of the constitutional courts' argumentation;

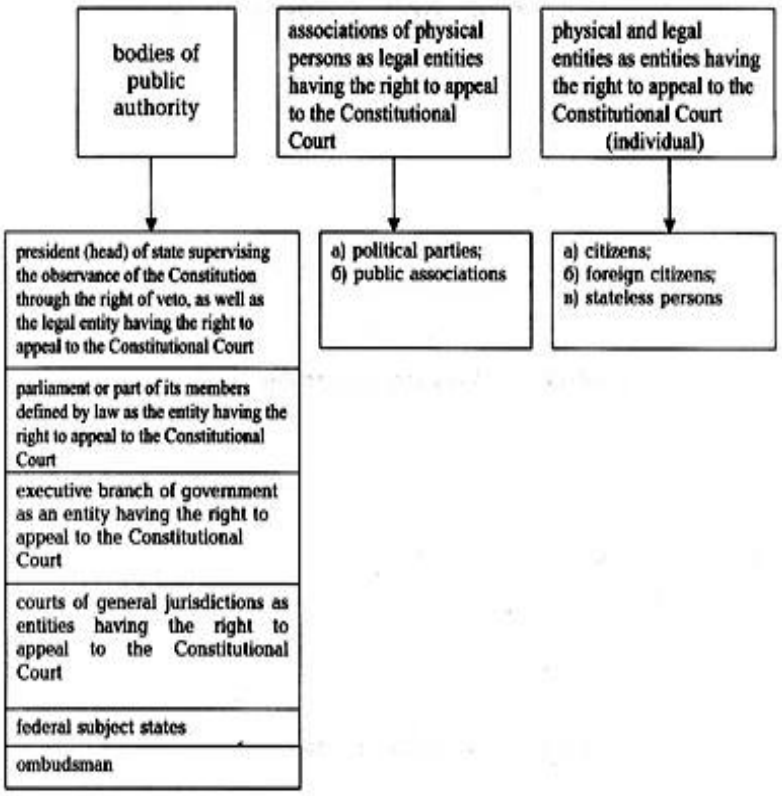
11. The decisions of specialized bodies of constitutional review in most countries are final and binding for all. Their legal effect is equal to the legal effect of the *Constitution* itself.

Thus, the specialized bodies (Constitutional Courts, in most countries) are the principal institutes of constitutional review, in contrast to the non-specialized bodies, the enforcement of constitutional review for the latter being a sideline function ensuing from their basic activities. Realization itself of the constitutional review by non-specialized bodies has an optional, episodic character (except the cases when this responsibility is specially assigned to them by the specialized bodies themselves). Moreover, some non-specialized bodies of constitutional review act as bodies of constitutional supervision (Diagram 8), thus becoming subsidiary bodies of constitutional review.

Thus, in most countries of the European model the head of state does not perform review over the legal acts, however, his other powers (right of veto, signing of laws, etc.) related to resolving the constitutional and legal issues, have a supervisory character (it is to be noted that in the legal publications of certain countries the presidential promulgation of laws is considered a function of review, rather than of supervision, although this issue is quite disputable). It is, however, quite certain that the monopoly of final decision for the most part rests with the specialized bodies of constitutional review. The system of constitutional review, as already noted, also embraces state bodies, non-governmental organizations and citizens - subjects of the right to appeal to the Constitutional Court. To our judgment, these subjects of constitutional and legal relations are the subjects of constitutional review.

Diagram 8

THE SYSTEM OF ENTITIES OF CONSTITUTIONAL CONTROL (Supervision)[138]



[138] To have a rigth to exercise a directing or governing influence over the legislative or executive body.

The system of subjects of constitutional review includes:

1. Bodies of public authority:
- bodies of state authority or their structural subunits or parts of their composition endowed with autonomous rights:
- President (head) of State, supervising observance of the Constitution through the right of veto, appeal to the Constitutional Court, removal of officials, culpable in violations of the *Constitution*, etc.;
- the Parliament or a number of its members defined by law - as subjects of complaint to the Constitutional Court;
- the Constitutional Courts themselves, if they have the right to examine cases by their own initiative;
- the Government;
- courts of general jurisdiction as the subjects of complaint to the constitutional court;
- subject states;
- the ombudsman (human rights defender) or the prosecutor;
- bodies of local self-government;

2. Associations of natural persons as subjects of the right to complaint to the Constitutional Court:

a) political parties;
b)non-governmental organizations.

3. Natural persons as subjects of right to complaint to the Constitutional Court:
a) citizens;
b) foreign citizens;
c) stateless persons.

In most states, having a system of constitutional review, the Constitutions have an individual section or a chapter dedicated to the Constitutional Courts. It is to be noted that independent of whether it is a parliamentary of a presidential republic, this approach is general, so in both cases the placement of Constitutional Court in the system of state authority is regarded as having special importance.

The study of West-European experience shows that the placement and role of the Constitutional Court within the system of state authority is in harmony with the full-fledged system of values of constitutionally registered deterrents and counterbalances and with the guarantee of their application.

The study of the Constitutions of many states also shows that in many sections of the Constitutions defining the counterbalances and deterrents there are distinct definitions of the body having powers in the particular field, with the Constitutional Court.

Nearly all carriers of state authority, to the degree of their contact with the Constitution, also have contact with the Constitutional Court. The contact between the Constitutional Court and the Parliament is of a particularly multidimensional character. This manifests itself not only in the recruitment of the constitutional courts, determining the constitutionality of laws and parliamentary regulations, but also when examining the issues on separation of powers, resolving jurisdictional disputes, implementation of review on the forms of adoption of the legislative acts. In the latter case there is often a deficient understanding between a legislative body and the Constitutional Court, particularly in the cases when the Parliamentary Rules of procedure is not the object of a mandatory preventive review. In many countries of the world the object of constitutional review are the issues of parliamentary procedures of voting for the laws.

The texts of Constitutions in many countries mention the following 6 issues with regard to the parliamentary procedure of voting for laws:

- quorum for sessions;
- the number of votes for taking the decision;
- requirement for name voting;
- requirement to vote personally;
- possibility of proxy voting;
- regulating the voting procedure by a separate act.

As a rule, with regard to law voting only two issues are constitutionally defined: general requirements are established to the session quorum of Parliament and to the number of votes, since that ensures the validity of the adopted acts. With regard to other issues and technical procedural details often a reference is made to a separate act regulating the procedure.

It is to be noted that in most countries the Constitutions establish quorums for parliamentary sessions (this issue is equally undefined in *the Constitutions of Azerbaijan, Great Britain, Ireland, Lithuania, Moldova, Turkmenistan, Ukraine, Finland, France, Sweden, Estonia).*

Other issues making up the voting procedure proper, as a rule, are not constitutionally regulated.

The requirement for name voting is foreseen in the *Constitutions of Belgium, Georgia, Luxembourg, USA, Japan.*

The requirement to vote personally is foreseen in the *Constitutions of Azerbaijan, Belarus, Bulgary, Spain, Kazakhstan, Ukraine, France, Croatia.*

Absentee voting is mentioned in several countries. A direct prohibition of that is mentioned in the *Constitutions of Spain* ("Voting is done by senators and members of parliament personally and cannot be delegated to other persons") and *Kazakhstan* ("Absence of a member without good cause at meetings of Houses and their bodies over 3 times, as well as vote transference will entail sanctions to the member as established by law"). Article 67 of the *Constitution of Armenia* provides that a member of the National Assembly will have his tenure terminated after an absence from half of the voting sessions within one session without good reason.

The *Constitution of France* permits to vote on absentee ballot in exclusive cases, restricting the number of delegated mandates ("The organic law can permit as an exception a delegation of vote. In this case no one can be delegated with more than one mandate")[139].

The Constitution of Turkey permits delegation of vote only to the ministers, elected as members of Parliament, and also restricts the number of mandates delegated ("Members of the Council of Ministers can delegate to a minister the right to vote on their behalf at sessions of the Great National Assembly of Turkey that they cannot attend. However, a minister cannot cast more than two votes, including his own")[140].

Bodies of the judicial constitutional review, as a rule tend to avoid interfering into the issues regulated by the internal acts of parliaments.

Of great interest are the issues associated with parliamentary elections. Article 100 (clause 3) of the *Constitution of the Republic of Armenia* provides that the Constitutional Court resolves the disputes concerning referendum and the results of elections of the Republic's President and members of the Parliament. The disputes on parliamentary elections have yet to be examined by the Constitutional Court, however, other countries' experience shows the placement and role of the Constitutional Court in this regard to be awaiting further clarification. For example, when examining the case on parliamentary elections, the Constitutional Court of the Republic of Slovakia issued a ruling on October 27, 1994 to the effect that the appeals for election results are legally valid only if the cited electoral law violations affect the elections directly. The ruling nullifying the election results of one applicant contravenes the constitutional guarantees of the equal, universal and direct voting rights and secret voting.

The essence of the matter is that on September 30 and October 1, 1994, the Slovak Republic held election to the National Council (the Parliament) of the Slovak Republic, and on October 11, 1994, the Constitutional Court received an appeal from the political party "Movement for Democratic Slovakia", that had won the election. Adjoined to this appeal was another party, the Slovak National Party.

The Constitutional Court is competent to take a decision, pursuant to Article 129.2 of the *Slovakian Constitution,* on whether the election to the National Council were conducted in accordance with the Constitution and Law. The appeals on election, according to the Law on the Constitutional Court *(Law # 38, 1993),* can be of two types: one: appeals submitted by persons indicating violations of their rights as resulting from elections; two: appeals submitted by persons claiming that their rights were violated as a result of electoral fraud. Pursuant to the *Law* # 3811993, the Constitutional Court can: a) invalidate the election; b) recognize the election results as null and

void; c) nullify the decision of the electoral commission and announce as elected the candidate who could otherwise have been elected following the rules, d) repel the appeal.

The appeal in question concerned the election results and included a solicitation to recall the representatives elected using the listings of the political party "Democratic Union". That appeal was based upon the argument that the party "Democratic Union" had failed to collect 10,000 signatures needed for it to be registered in the list of parties taking part in the election, thus making its participation contradictory to the electoral law.

The Constitutional Court ruled that the electoral law violation in question could not serve as a basis for satisfaction of this appeal, meaning that this type of appeal could be examined only in cases with the violation of law should directly affect the electoral results. Another important argument in the motivation of Constitutional Court decision was that the ruling nullifying the electoral results with regard to one participant of this election, would contravene the Constitution, the right of citizens to take part in equal, direct and general election with secret ballot. This right would have been denied a group of citizens if their right to take part in the elections should remain unrealized while the same right of other citizens should be realized. To provide the equal opportunity in carrying out the elections, the Constitutional Court is in its own right to nullify the votes given to all political parties and to nullify the whole election or, on the contrary, to refuse to invalidate the election results.

This example also clearly shows that with regard to election the constitutional review should not overstep the boundaries of defining the constitutionality of a regulatory act, lying in the basis of the election organization and passage, nor the frame of accord between the election laws and outcomes.

While examining the issues of election, often disputes occur with regard to quotas established for political parties. Similar quotas exist in many countries (10% - Turkey; 8% - Azerbaijan; 7% - Poland; 5% Armenia, Hungary, Germany, Georgia, Lithuania, Slovakia, the Czech Republic, Estonia; 4% - Australia, Austria, Bulgary, Italy, Latvia, Moldova, Ukraine, Czechoslovakia (1990), Sweden; 3% - Greece, Spain, Romania, Croatia; 2% - Denmark; 1 % - Israel).

Neither the electoral threshold, nor its specific indicators in most of these countries are established by the Constitutions, commonly defining only the type of electoral system, but rather by the electoral law. In particular, among the countries named, this threshold is constitutionally established only in Georgia and Sweden. Part 2 of Article 50 of the *Georgian Constdution* reads: "2. Mandates of the Members of the Parliament are distributed only among the political associations and electoral blocks that in proportional-system election will receive at least five percent votes of the electorate that had taken part in the election".

Paragraph 7, Chapter 3 of the *Form of Govemance of the Kingdom of Sweden* reads: "Only the party that received at least four percent of the votes statewide has the right to take part in mandate distribution…"[141].

Some other countries have a direct constitutional interdiction to establishing an electoral threshold. Thus, a fragment of Article 155 of the *Constitution of the Republic of Portugal* reads: The Law can set no limit to the number of mandates ensued from the number of votes by establishing whatever minimum percentage of votes to be obtained nationwide[142].

In cases involving the constitutionality of electoral threshold, the Constitutional Courts confirmed the principle of constitutionality of the electoral threshold, however, in one case its measure was recognized as excessive.

The Federal Constitutional Court of Germany (05. 04. 1952) confirmed the constitutionality of the 5-percent electoral threshold, but to ensure the integrity of the electoral system, recognized it unconstitutional to be set at 7.5 percent at the election to the Landtag of Schieswig-Holstein Laender. The Court noted in particular: "if whatever Laender sets a threshold above 5 percent, then the political party will gain importance for the Bundestag but not for the Landstag."

In a later ruling (25. 05. 1955) on the constitutionality of the 5-percent federal electoral threshold, the same Court only gave a reference to an earlier ruling.

The Constitutional Courts of Ukraine (28. 02. 1998) and the Czech Republic (02. 04. 1997) confirmed the constitutionality of the 4-percent and 5-percent thresholds, respectively.

The Constitutional Court of Ukraine restricted itself to a very brief motivation, however it drew attention of the authors of the appeal, the Members of the Supreme Rada, to the fact that denying the political parties having less than 4 percent votes, the right to distribute mandates is a problem of political expediency and should be done by the Supreme Rada itself."

Meanwhile, the Court of the Czech Republic has touched, though hypothetically, upon the issue of a possible unconstitutionality of this threshold, had it been set at another 'height', thus confirming that raising the threshold cannot be unlimited, e.g., a 10-percent threshold can be recognized as a standard creating a threat to the democratic substance of the proportional system.

Meanwhile, in the opinion of the Court of the Czech Republic, "the current threshold has a relative rather than an absolute value, depending upon the actual correlation of political forces in the country and upon the structure of their differentiation". Therefore, the standard on the electoral threshold "is in agreement with the Constitution with regard to the need for the integrity and stability of the political sphere"[143].

In view of the examples cited, the constitutionality of an electoral process cannot be ensured without a constitutional review. However, on the other hand, a clear provision should be made in this issue of the functional role of Constitutional Courts and of ordinary courts.

It was introduced by us, that not only in the particular issue, but in the whole of the constitutional review, of special interest are the relationships between the Constitutional Court and the courts of general jurisdiction.

The experience of other countries as well as our research (the mentioned examples) shows the three types of approaches (See: Diagram 9):

- one (typical for Germany, Austria, Italy, Spain), when the issue of establishing constitutionality of the regulatory acts is an exclusive privilege of the Constitutional Court. Other courts in this regard act as subjects of appeal;

- two, when all courts implement the constitutional review, but in case of complaining or protesting to their rulings, the final word belongs to the Constitutional Court (a classical example is Portugal);

- three, when the body of constitutional review embodied by the Constitutional Court has none whatsoever functional relationships with other institutes of the judicial system. This exclusive example is currently Armenia, which has yet to be justified.

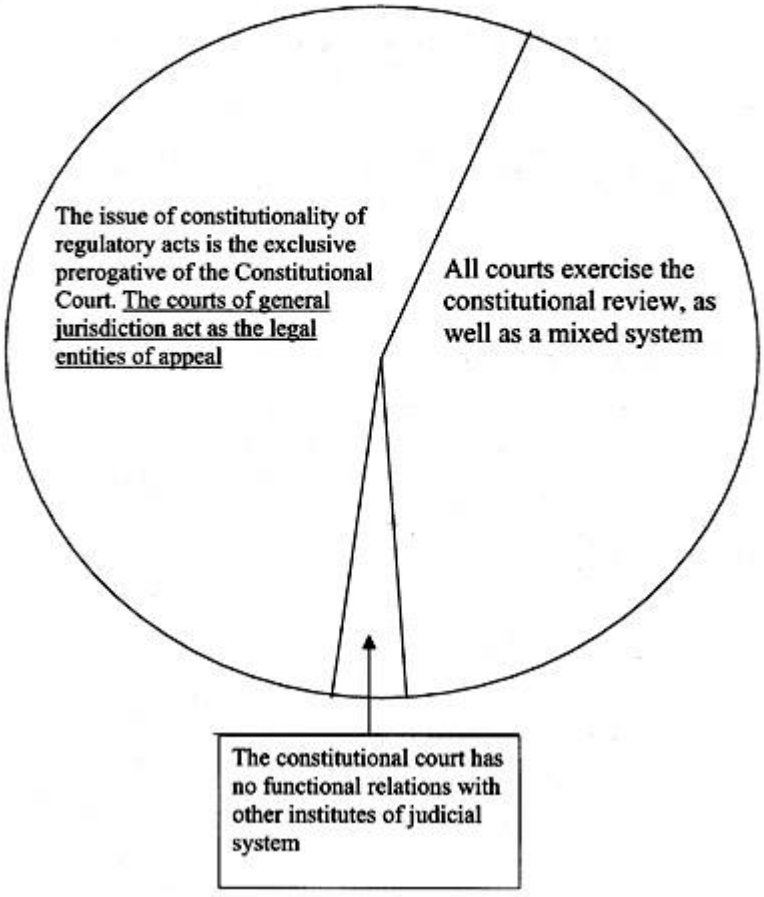
To be noted is the fact that in many countries a direct part in recruitment of the Constitutional Courts is taken by other institutes of judicial power (Italy, Spain, Turkey, Georgia, etc.).

In Austria, the Constitutional Court accepts claims on constitutionality of laws pursuant to Art. 140 of the Constitution, at the presentation of the Administrative or the Supreme Court, or else at the presentation of the court that had been empowered to consider the case as the court of appeals. If however this law is subject to be applied in the Constitutional Court with regard to a legal dispute, then the Constitutional Court can accept this law for examination at its own initiative.

In Germany, the Federal Constitutional Court can exercise serious indirect review functions with regard to the whole judicial system. Its power embraces issues of removing the judges, even those of the Federal Laenders.

Diagram 9

STRUCTURE OF RELATIONS OF THE CONSTITUTIONAL COURT WITH THE COURTS OF GENERAL JURISDICTION



Art. 163 of the *Constitution of Spain* states that if a judicial body regards some regulation having force of law and applied in a particular case, can contravene the *Constitution*, then, without suspending its action, application is made to the Constitutional Court for this regulation to be reviewed (Article 163). If a judicial organ considers, in some action, that a regulation with the status of law which is applicable thereto and upon the validity of which the judgement depends, may be contrary to the *Constitution*, it may bring the matter before the Constitutional Court in the cases, manner, and with the consequences which the law establishes, which in no case shall be suspensive.

Art. 152 of the *Turkish Constitution* states: If a court which is trying a case finds that the law or the decree having force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on this issue.

If the court is not convinced of the seriousness of the claim of unconstitutionality, such a claim together with the main judgement shall be decided upon by the competent authority of appeal.

One essential feature of the Constitutional review in Portugal is that functioning therein is the so-called "mixed-type system", i.e. the power to resolve the constitutionality of regulations in specific cases also belongs to all courts of general jurisdiction, while their rulings on those issues can be appealed to the Constitutional Court. The appellant to an ordinary court can demand the transference of the case on the constitutionality to be decided, to the Constitutional Court. The Prosecutor's office has two permanent representatives in Court. If a specific legal regulation on specific cases is recognized as unconstitutional thrice, then the Prosecutor's representatives in the Court can initiate a procedure of abstract review. In this case the Court ruling has a general character, and the validity of the particular regulation is terminated.

In many countries, the system of individual complaints operates in the following way: the right of appeal to the Constitutional Court is acquired by the person only when other options within the state have been exhausted. In this regard, the constitutional courts and the ordinary courts also have functional links.

The problem is that even in cases when the Constitutional Court is not regarded as a body of the judicial system, all the same, its independent activity is directly associated with other courts, particularly on the issues of concrete review and protection of human rights. We agree to the position of Zh. 1. Ovsepian, emphasizing that "the Constitutional Courts should be related to the judicial authority independent on where they are mentioned in the constitutional texts"[144]. Meanwhile, we think that the discussions of this kind on whether the Constitutional Court is a body of judicial authority oftentimes seem fruitless and artificial. The major question is whether there is an established system in the country of the constitutional review that could at least resolve three problems: to ensure the supremacy of the Constitution and the constitutionality of regulatory acts; to resolve the dispute of the bodies of authority in respect of jurisdictional disputes; to stand up for the protection of the constitutional human rights and freedoms while ensuring the integrity of the system and creating no stalemate situations. All other questions are derivative. The crucial idea is to develop a clearly defined institutional system for resolving the three groups of assignments thus noted. The specific bodies and the way that is going to be done is a second-order issue (not second in importance, however). Meanwhile, the international experience shows that those issues are most effectively resolved by the constitutional courts, being specialized bodies of judicial authority.

Development of judicial constitutional review, particularly in the countries with a federal state structure will also result in the ordinary courts in the adapting to the function of the Constitutional Court in the subject states[145]. If this development can be considered normal and facilitating the formation of a more flexible system of constitutional review, then, to our mind, the process is irrational when the constitutional courts assume the functions of the ordinary courts.

It is often correctly underscored that the Constitutional Court, protecting from unconstitutional law, is a body, in contrast to other courts, that undertakes the checking of standards only, i.e. the review of regulatory prescriptions for their agreement with the *Constitution*[146]. Besides, in the legislature it is necessary to clearly define the place and role of ordinary courts so as to nullify the regulatory acts that are not objects of review for the Constitutional Court[147].

Let's try to summarize also, what are the general approaches and features in providing an independent and unbiased operation of the whole system of judiciary constitutional oversight?

First on the general approaches. They can be referred to the following:

- the existence of a special body of constitutional review (in nearly all European countries it is accepted that the Constitutional Court has become a living incorporation of the Constitution and is placed above the political contingencies);

- in all countries the *Constitution* and laws state that the bodies of constitutional review are independent and subjected to the *Constitution* only, while their activity is regulated by a special law;

- all members of the entity of the judicial constitutional review are appointed or elected by different branches of power and take an oath before assuming office;

- they enjoy immunity, can be relieved from duty only as provided by law, while at the time of election (nomination) they have to meet certain requirements;

- for members of the bodies of judicial constitutional review, the *Constitution* provides a lengthier period than for the representatives of other branches of power who recruit this body. As an additional guarantee, many countries also use the principle of irremovability;

- a member of the entity of constitutional review cannot be a member of any party, go in for political activity (even, to some extent, public activity), do paid work, occupy a seat in parliament or in the system of executive power;

- as a rule, a ruling of this body is final and mainly is not subject to review;

- when implementing abstract review, the Constitution provides such a set of appealing subject that the activity of the Court should not fall under dependence of any one branch of power. In case of a mandatory review, the law clearly defines the set of objects and the procedure of review;

- the bodies of constitutional review enjoy the law-defined autonomous position in their work on organizing the court activities, management of finances, management of personnel;

- an important factor in ensuring the independence is provision of openness of activities.

Beside the above noted, there are noteworthy features creating additional guarantees in different countries for effecting the independent constitutional review.

Evaluated herein are examples when the Constitutional Court itself becomes subject to constitutional review, it has the right of legislative initiative, while the object of preliminary mandatory review is the constitutional amendments. In some countries, independence of the whole judicial system is ensured by the Constitutional Court assuming certain review functions with regard to the latter.

The independence of constitutional review is in need of a continual support and sustainable guarantees. That regards not only the mechanisms of establishment and operation of the system of constitutional review itself. Of fundamental importance is also ' the system of values and the level of democratization of the society, the functional balancing of individual branches of authority, the

type of social environment and the public demand in legal support of the supremacy of law, the visibility and maturity of the civil society.

Chapter IV. A Comparative Analysis of the Mechanisms for Recruitment of the Institutes of Judicial Constitutional Review and of Their Principal powers

Bodies Exercising Constitutional Review and the Particularities of their Organisation

The Composition/Organisation of Constitutional Courts and Similar Bodies

The introduction of modern constitutional review is based on the principle of the separation of powers and the Constitutional Court as the highest body for the protection of human rights. The Court's jurisdiction and proceedings are specified in detail by a Constitutional Court Act as well as in the rules of procedure adopted by the Constitutional Court itself.

In all new systems of constitutional review the Constitutional Court became the highest body of judicial power for the protection of constitutionality, legality, human rights and basic freedoms.

Most systems of constitutional/judicial review insure the **organisational autonomy** of the institution. This means they authorize respective constitutional/judicial review bodies to follow their own rules regarding their internal organisation. Most constitutional/judicial review bodies also have an independent budget as a separate part of the whole State budget, and they are fully independent in its control. Services of Constitutional Courts are organised in a similar way: they consist of clerks and clerical staff, and the head of services generally holds the status of secretary general. Each Constitutional Court regulates its own internal organisation in the exercise of its administrative autonomy and in principle it rules its own funds as part of the State budget. The technical services of the Constitutional Court include the office of the General Secretary (concerning matters of organisation and legal knowledge) and the office of the Head of Financial Services (financial organizational matters). The special services of the Constitutional Court also include the Legal Information Centre with its professional library; legal advisers and clerical staff.

The decision-making process may be organised in different ways:

- on the level of a plenary court (in France always);

- on the level of a plenary court and chambers (e.g. Georgia, Germany, Portugal, Slovenia, Spain, Slovenia, Switzerland, where the reason for deciding in chambers involved mostly constitutional complaints; however, in these systems, too, important decisions are made in accordance with the plenary principle);

- on the level of task forces for individual legal domains (Italy).

The Constitutional Court decides *in camera* sessions or in public hearings.

The normal rule for deciding in the Constitutional Court is by a majority vote of all judges. Exceptions are nonetheless possible. As regards its composition when deciding, usually the Court deliberates in *plenum,* but it sits in chambers when deciding cases of constitutional complaints.

The **number of judges** performing the function of constitutional/judicial review differs from country to country, ranging from four (Andorra) or five (Senegal) to sixteen (Germany). As a rule, the appointment procedure for the members of the Court differs from that for the President of the Constitutional Court. The same applies to the duration of their term of office.

The **term of office of constitutional court judges** lasts between six (Portugal, Burundi), twelve (Germany) or fifteen years (Kyrgyzstan); the average is nine years (which is also the case in Slovenia). The term of office of the members of the Serbian Constitutional Court/the FRY, of the US Supreme Court and of the Armenian Constitutional Court as well as of the Constitutional Court of Tatarstan/Russia is for lqfe. To assure the principle of the (political) independence of Constitutional Court judges, most systems do not allow their re-election. There is a variety of examples of how this is handled: the judges may have life tenure (the USA), they may perform their functions up to a certain age (a maximum of 70 years in Austria, Belgium, Armenia, Bosnia and Herzegovina, Kyrgyzstan and Tatarstan/Russia, 60 years in Tajikistan), or their re-election after a limited term in office is explicitly excluded (France, Germany, Italy). Hungary, Portugal and Switzerland, do envisage the re-election of Constitutional Court Judges, whereas in Spain immediate re-election is forbidden. The reappointment of Constitutional Courts and the frequency of the appointment of Constitutional Court Judges do not coincide; in some countries the term of office of Constitutional Court Judges expires successively, which results in the successive reappointment of a part of the Constitutional Court (Bulgary, France, Romania, Spain). The minimum age acceptable for appointment of a Constitutional Court Judge (40 years) is specified in Germany, Belgium and Slovenia, Georgia (35 years), Armenia (35 years) and Tajikistan (30 years).

The influence of government bodies upon the **appointment or elections of Constitutional Court Judges** differs from case to case (see Chapter VI).

Most systems recognise the **immunity of constitutional court judges** and certain systems recognise explicit parliamentary immunity (see Chapter VI).

A special feature of the office of Constitutional Court Judge is its **incompatibility with certain activities** (see Chapter VI).

The Powers of Constitutional Courts and Other Bodies of Constitutional Review

Powers

From a historical point of view, in many systems constitutional/judicial review emerged in jurisdictional disputes between various government bodies. Due to the fact there are numerous other controversial issues emerging today, constitutional review is no longer concerned only with the distinction of these powers.

The following countries feature the Constitutional Court functions listed:

I. PREVENTATIVE REVIEW:

1. CONSTITUTIONAL PROVISIONS (Moidavia, Switzerland - as regards the canton constitutions, the Central African Republic);

2. INTERNATIONAL TREATIES (Albania, Algeria, Andorra, Armenia, Azerbaidjan, Belarus, Bulgary, Burkina Faso, Burundi, Buryatia/Russia, Cameroon, Cape Verde, the Central African Republic, Chile, Comoros, Congo, Dagestan/Russia, Estonia, France, Gabon, Georgia, Germany, Guatemala, Guinea, Hungary, the Ivory Coast, Karelia/Russia, Kazakhstan, Lithuania, Madagascar, Mali, Moidavia, Poland, Portugal, Russia, Slovenia, Spain, Tajikistan, Tunisia, Ukraine);

3. STATUTES (Afghanistan, Algeria, Austria - as regards the acts of federal entities, Belarus, Burkina Faso, Burundi, Cambodia, Cameroon, the Central African Republic, Chad, Chile, Comoros, Congo, Costa Rica, Cyprus, Djibouti, Ecuador, Finland, France, Gabon, Germany,

Guatemala, Guinea, Hungary, Indonesia, Ireland, Italy, Ivory Coast, Kazakhstan, Madagascar, Mali, Mauritius, Morocco, Namibia, Niger, Northern Ossetia/Russia, Peru, Poland, Portugal, Romania, Russia, South Africa, Spain, Sri Lanka, Syria, Thailand, Togo, Tucuman/Argentina, Turkey, Tunisia, Venezuela, Zambia);

4. REGULATIONS (Belarus, Burundi, the Central African Republic, Comoros, Congo, Gabon, Madagascar, Namibia, Northern Ossetia/Russia, Portugal, Tucuman/Argentina);

5. ACTS OF THE HEAD OF STATE (Algeria, Guinea, Madagascar);

6. ACTS OF TERRITORIAL UNITS (South Africa);

7. OTHER REGULATIONS: BUDGET ACTS, PARLIAMENTARY INTERNAL REGULATIONS (Belarus, Burundi, Cameroon, the Central African Republic, Chad, Comoros, Cyprus, Djibouti, France, Madagascar, Niger, Romania, Thailand,Togo).

II. REPRESSIVE *(A POSTERIORI)* REVIEW:

1. ABSTRACT REVIEW:

a) Concerning- the Constitution, constitutional amendments, or basic constitutional Provisions (Baden-Wuerttemberg/Gennany, Brazil, Costa Rica, Cuba, Cyprus, Dagestan/Russia (the constitutions of administrative units), the FRY (the conformity of the *Constitution* of constituent republics with the *Constitution of the Federal State);* Kyrgyzstan, Rheinland-Pfalz/Germany, Russia (constitutions of federal entities), Saarland/Germany, Turkey, Ukraine, Uzbekistan (the conformity of the *Constitution of the Republic of Karakalpakstan* with the *Constitution of Uzbekistan);*

b) International agreements (including agreements between the Federal State and federal entities) (Adigea/Russia, Afghanistan, Austria, Azerbaidjan, Bashkiria/Russia, Cameroon, Chad, Comoros, Congo, Costa Rica, Greece, the Kabardino-Balkar Republic/Russia, Latvia, Liechtenstein, Lithuania, Madagascar, Mauritania, Moldova, the Philippines, Russia, Senegal, Tatarstan/Russia, Tuva/Russia, Uzbekistan, Yakutia/Russia);

c) Statutes (Adigea/Russia, Afghanistan, Albania, Algeria, Angola, the Argentinean Province of Tucuman, Armenia, Austria, Azerbaidjan, Baden-Wuerttemberg/Gennany, Bashkiria/Russia, Bavaria/Germany, Belgium, Benin, Berlin/Germany, Bolivia, Bosnia and Herzegovina, Brazil, Bulgary, Buryatia/Russia, Cambodia, Cameroon, Cape Verde, Chad, Chile, Colombia, Congo, Comoros, Costa Rica, Cuba, Croatia, the Czech Republic (and the subsidiary power of the Supreme Court), Cyprus, Dagestan/Russia, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, the FRY, the FYROM, Georgia, Germany, Guatemala, Greece, Hamburg/Germany, Hessen/Germany, Honduras, Hungary, lrkutskaya Oblast/Russia, Italy, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Kuwait, Kyrgyzstan, Latvia, Lebanon, Liechtenstein, Lithuania, Madagascar, Malawi, Malaysia, Mauritania, Mauritius, Moldova, Mongolia, Montenegro/the FRY, Mozambique, Namibia, Nicaragua, Niedersachsen/Germany, Nordrhein-Westfalen/Germany, Northern, Ossetia/Russia, Palestina, Panama, Paraguay, Peru, the Philippines, Poland, Rheinland-Pfalz/Germany, Russia, Rwanda, Saarland/Germany, Senegal, Serbia/the FRY, the Serbian Republic of Bosnia, the Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sudan, Syria, Taiwan, Tajikistan, Tatarstan/Russia, Tuva/Russia, Turkey, Uganda, Ukraine, Uruguay, Uzbekistan, Karakalpakstan/Uzbekistan, Venezuela, Zaire, Zambia, Yakutia/Russia, Yemen);

cl) Resolutions of the Parliament (Latvia, Armenia);

d) Regulations (Adigea/Russia, Afghanistan, Albania, Angola, Austria, Azerbaidjan, Buryatia/Russia, Cape Verde, Comoros, Congo, the Czech Republic, Dagestan/Russia, Ecuador, Egypt, El Salvador, Eritrea, the FRY, Georgia, Guatemala, Hungary, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Kuwait, Latvia, Liechtenstein, Lithuania, Madagascar, Mauritania, Moldova, Mongolia, Montenegro/the FRY, Mozambique, Northern Ossetia/Russia, South Africa, Panama, the Philippines, Poland, Russia, Serbia/the FRY, the Serbian Republic of Bosnia, Slovakia, Slovenia, Sudan, Tajikistan, Tatarstan/Russia, Tucuman/Argentina, Ukraine, Uzbekistan, Karakalpakstan/Uzbekistan, Yakutia/Russia, Yemen);

e) Acts of the Head of State (Adigea/Russia, Algeria, the Argentinean Province of Tucuman, Armenia, Azerbaidjan, Bashkiria/Russia, Bulgary, Buryatia/Russia, Ecuador, El Salvador, Georgia, Latvia, Lithuania, Madagascar, Moldova, Mongolia, Northern Ossetia/Russia, Panama, the Philippines, Russia, Tajikistan, Tatarstan/Russia, Ukraine, Uzbekistan, Karakalpakstan/Uzbekistan, Yakutia/Russia, Yemen);

f) Rules and other acts of national administrative units (federal member states, (autonomous) Provinces, local communities, etc.) (Azerbaidjan, Bashkiria/Russia, Buryatia/Russia, Cyprus, Dages ussia, the FRY, Georgia, lrkutskaya Oblast/Russia, Karelia/Russia, Komy/Russia, Latvia, Northern Ossetia/Russia, Serbia/the FRY, Slovakia, Slovenia, Spain, Russia, Tajikistan, Ukraine, Uzbekistan, Yakutia/Russia);

g) Proclaimed regulatory measures of statutory authorities (Slovenia);

h) The confonniiy of national legal norms with international agreements (Albania, Bulgary, the Czech Republic, the FRY, Hungary, Latvia, Poland, Slovakia, Slovenia);

i) Regional agreements/the agreements of constituent republics closed with the Federal State (Buryatia/Russia, Dagestan/Russia, lrkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia).

j) Other rules (Austria, Bolivia, Croatia, Ecuador, the FYROM, Hungary, the Kabardino-Balkar Republic/Russia, Madagascar, Mali, Northern Ossetia/Russia, the Philippines, Poland, Tajikistan, Serbia/the FRY, Slovakia, Slovenia, Turkey, Uganda);

2. CONCRETE REVIEW - SPECIALIZED CONSTITUTIONAL/JUDICIAL REVIEW BODIES REQUESTED BY ORDINARY COURTS (Adigea/Russia, Austria, Azerbaidjan, Bashkiria/Russia, Bavaria/Germany, Bremen/Germany, Bulgary, Buryatia/Russia, Cambodia, Cape Verde, Congo, Costa Rica, Croatia, Cuba, the Czech Republic, Cyprus, Dagestan/Russia, Djibouti, Estonia, Gabon, Georgia, Germany, Guatemala, Hamburg/Germany, Honduras, Hungary, Iran, Italy, Karelia/Russia, Kazakhstan, Komy/Russia Kyrgyzstan, Lithuania, Madagascar, Malaysia, Malta, Niedersachsen/Germany, Niger, Panama, Paraguay, Poland, Romania, Russia, the Seychelles, Slovenia, South Africa, South Korea, Spain, Taiwan, Thailand, Togo, Uruguay, Zambia, Yakutia/Russia).

III. THE INTERPRETATION OF RULES (as an interpretative function):

1. CONCERNING THE CONSTITUTION (Adigea/Russia, Albania, Azerbaidjan, Bashkiria/Russia, Bulgary, Burundi, Buryatia/Russia, Cambodia, Dagestan/Russia, Eritrea, Gabon, Germany, Hungary, lrkutskaya Oblast/Russia, Kazakhstan, Komy/Russia, Kyrgyzstan, Madagascar,

Moldova, Namibia, Niger, Papua New Guinea, Russia, Slovakia, Sri Lanka, Sudan, Taiwan, Uganda, Uzbekistan, Zaire, Yakutia/Russia);

2. CONCERNING STATUTES **AND** OTHER RULES (Azerbaidjan, Cambodia, Dagestan/Russia (in relation to federal legislation), Egypt, Equatorial Guinea, France, Indonesia, Madagascar, Palestine, Poland, Sudan, Taiwan, Uzbekistan).

IV. THE IMPLEMENTATION OF RULES - DECIDING ON MATTERS RELATING TO THE CONFORMITY OF A RULE'S IMPLEMENTATION WITH THE *CONSTITUTION* (Bashkiria/Russia, Ecuador, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, the Philippines Rheinland-Pfalz/Gerinany, Russia, Tuva/Russia).

V. THE OMISSION OF (STATUTORY) REGULATIONS - LEGAL *GAPS* (Brazil, Hungary, Italy, Portugal, the Seychelles, Uganda).

VI. (CITIZEN'S) LEGISLATIVE INITIATIVES:

1. CITIZEN'S INITIATIVES (Austria, Hungary, Romania, Spain);

2. CONSTITUTIONAL COURT LEGISLATIVE INITIATIVES (Adigea/Russia, Bashkiria/Russia, Burundi, Buryatia/Russia, Dagestan/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Northern Ossetia/Russia, Tatarstan/Russia, Tuva/Russia, Yakutia/Russia);

3. PARTICIPATION IN THE LEGISLATIVE PROCEDURE (the Central Affican Republic).

VII. JURISDICTIONAL DISPUTES:

1. BETWEEN TOP GOVERNMENT BODIES (Adigea/Russia, Albania, Andorra, Austria, Azerbaidjan, Baden-Wuerttemberg/Germany, Bashkiria/Russia, Bavaria/Germany, Berlin/Germany, Bremen/Germany, Bulgary, Buryatia/Russia, Cameroon, the Central African Republic, Chad, Croatia, Cyprus, Dagestan/Russia, Ecuador, El Salvador, the FRY, the FYROM, Gabon, Georgia, Germany, Guatemala, Hamburg/Germany, Hessen/Germany, Irkutskya Oblast/Russia, Italy, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Kazakhstan, Komy/Russia, Madagascar, Mali, Mongolia, Mozambique, Nicaragua, Niedersachsen/Germany, Niger, Nordrhein-Westfalen/Germany, Peru, Poland, Russia, Saarland/Germany, Senegal, the Serbian Republic of Bosnia, Slovakia, Slovenia, Spain, South Africa, South Korea, Taiwan, Tajikistan, Tatarstan/Russia, Thailand, Ukraine, Yakutia/Russia);

2. BETWEEN THE STATE AND REGIONAL OR LOCAL UNITS (Adigea/Russia, Albania, Austria, Bashkiria/Russia, Bosnia and Herzegovina, Brazil, Bulgary, Buryatia/Russia, Cameroon, the Central African Republic, the Czech Republic (and the subsidiary power of the Supreme Court), Dagestan/Russia, the FRY, the FYROM, Germany, Hungary, India, lrkutskaya Oblast/Russia, Italy, Karelia/Russia, Komy/Russia, Madagascar, Malaysia, Mexico, Montenegro/the FRY, Nicaragua, Nigeria, Pakistan, Russia, the Serbian Republic of Bosnia, Slovenia, South Affica, South Korea, Spain, Switzerland, Tatarstan/Russia, Ukraine, Yakutia/Russia);

3. BETWEEN LOCAL OR REGIONAL UNITS (Austria, Bashkiria/Russia, Bolivia, Bosnia and Herzegovina, Brazil, Buryatia/Russia, Cameroon, the FRY, Germany, lrkutskaya Oblast/Russia, Italy, Karelia/Russia, Komy/Russia, Mexico, Montenegro/the FRY, Nicaragua, Nigeria, Peru, Russia, Slovenia, South Africa, South Korea, Spain, Switzerland, Tatarstan/Russia, Tucuman/Argentina, Ukraine);

4. BETWEEN THE COURTS AND OTHER GOVERNMENT BODIES (Austria, Egypt, Greece, Montenegro/the FRY Serbia/the FRY, Slovenia, Tucuman/Argentina);

5. OTHER SPECIFIC JURISDICTIONAL DISPUTES (Austria, Croatia, Cyprus, Hungary, Nicaragua, Tucuman/Argentina, Ukraine, Yakutia/Russia, Yemen);

6. BETWEEN THE CONSTITUTIONAL COURTS OF THE CONSTITUENT REPUBLICS OF THE FEDERATION (the FRY).

VIII. POLITICAL PARTIES - DECISIONS RELATED TO MATTERS OF UNCONSTITUTIONAL ACTS AND ACTIVITIES (Albania, Armenia, Azerbaidjan, Bashkiria/Russia, Bulgary, Burkina Faso, Chile, Croatia, the Czech Republic, the FRY, the FYROM, Georgia, Germany, Moldova, Montenegro/the FRY, Poland, Portugal, Romania, Russia, Serbia/the FRY, the Serbian Republic of Bosnia, Slovakia, Slovenia, South Korea, Yakutia/Russia).

IX. REFERENDA - DECISIONS REGARDING A REFERENDUM'S CONFORMITY WITH THE *CONSTITUTION*(Algeria, Armenia, Austria, Berlirt/Gemiany, Burkina Faso, Cameroon, Chad, Chile, Comoros, Congo, Croatia, Djibouti, Equatorial Guinea, France, Gabon, Georgia, Greece, Hessen/Gen-nany, Hungary, Ivory Coast, Kazakhstan, Madagascar, Mali, Mauritania, Moldova, Mongolia, Montenegro/the FRY, Mozambique, Niger, Nordrhein-Westfalen/Germany, Portugal, Romania, Saarland/Germany, Slovakia, Slovenia, Zaire).

X. ELECTIONS - DECISIONS REGARDING THE CONFORMITY OF ELECTION PROCEEDINGS WITH THE *CONSTITUTION* AND STATUTES (Albania, Algeria, Armenia, Austria, Baden-Wuerttemberg/Germany, Bavaria/Germany, Berlin/Gennany, Bulgary, Burkina Faso, Burundi, Cambodia, Cameroon, the Central African Republic, Chad, Comoros, Congo, Croatia, the Czech Republic, Cyprus, Djibouti, Ecuador, Equatorial Guinea, France, the FRY, Gabon, Georgia, Germany, Greece, Guinea, Hamburg/Germany, Ivory Coast, Kazakhstan, Kyrgyzstan, Lebanon, Lithuania, Madagascar, Mali, Malta, Mauritania, Mauritius, Moldova, Mongolia, Montenegro/the FRY, Morocco, Mozambique, Namibia, Niedersachsen/Germany, Niger, Nigeria, NordrheinWestfalen/Germany, Portugal, Rheinland-Pfalz/Germany, Romania, Saarland/Gerinany, Serbia/the FRY, Slovakia, Sri Lanka, Syria, Togo, Tucuman/Argentina, Zaire, Yemen).

XI. THE CONFIRMATION OF THE ELECTION OF REPRESENTATIVES (Austria, Baden-Wuerttemberg/Germany, Bavaria/Gennany, Berlin/Germany, Bulgary, Chile, France, Georgia, Germany, Greece, Hamburg/Germany, Kazakhstan, Mongolia, Niedersachsen/Germany, Nordrhein-Westfalen/Germany, Saarland/Germany, Slovakia, Slovenia, Ukraine).

XII. THE PROTECTION OF HUMAN RIGHTS (constitutional complaints and similar constitutional remedies):

1. HUMAN RIGHTS PROTECTION (Adigea/Russia, Albania, Andorra, Austria, Azerbaidjan, Bavarian/Germany, Bashkiria/Russia, Benin, Berlin/Gennany, Brazil, Bremen/Germany, Burundi, Buryatia/Russia, Cape Verde, Colombia, Congo, Croatia, the Czech Republic, Cyprus, Dagestan/Russia, Djibouti, Ecuador, El Salvador, Equatorial Guinea, the FRY, the FYROM, Georgia, Germany, Guatemala, Hessen/Germany, Honduras, Hungary, Israel, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Kyrgyzstan, Liechtenstein, Montenegro/the FRY, Mali, Malta, Mauritius, Mongolia, Nicaragua, Panama, Papua New Guinea, Poland, Russia, Saarland/Germany, Senegal, Slovakia, Slovenia, South Africa, South Korea, Sudan, Spain, Sri Lanka, Switzerland, Syria, Taiwan, Tucuman/Argentina, Ukraine, Uzbekistan);

2. CONSTITUTIONAL COMPLAINTS REQUESTED BY COMMUNITIES (Baden-Wuerttemberg/Germany, the Czech Republic, Germany, Nordrhein-Westfalen/GeiTnany);

3. CITIZENS' LEGISLATIVE INITIATIVES (Spain, Saarland/Gerinany);

4. NATIONALISATION(Rheinland-Pfalz/Germany, Saarland/Gennany).

XIII. CAPACITY TO HOLD THE OFFICE:

1. CONCERNING THE HEAD OF STATE (Adigea/Russia, Algeria, Armenia, Azerbaidjan, Bashkiria/Russia, Bulgary, Burundi, the Central African Republic, Croatia, Cyprus, France, Kazakhstan, Kyrgyzstan, Lithuania, Mauritania, Moldova, Mozambique, Poland, Portugal, Romania, Yakutia/Russia);

2. CONCERNING OTHER STATE REPRESENTATIVES (Bulgary, Cyprus, France, Russia, Yakutia/Russia);

3. ACCEPTING THE OATH OF THE HEAD OF STATE UPON ASSUMING OFFICE (Burundi).

XIV. IMPEACHMENT:

1. CONCERNING THE HEAD OF STATE/OR A MEMBER STATE OF THE FEDERATION (Adigea/Russia, Albania, Algeria, Armenia, Austria, Azerbaidjan, Bashkiria/Russia, Bolivia, Bulgary, Buryatia/Russia, Chile, Colombia, Croatia, the Czech Republic, Dagestan/Russia, Eritrea, the FYROM, Georgia, Germany, Hungary, lrkutskaya Oblast/Russia, Ireland, Italy, the Ivory Coast, Karclia/Russia, Kazakhstan, Komy/Russia, Lithuania, Madagascar, Mongolia, Montenegro/the FRY, Namibia, Russia, Rwanda, Slovakia, Slovenia, Tatarstan/Russia, Turkey, Ukraine, Yakutia/Russia);

2. OTHER STATE REPRESENTATIVES (Austria, BadenWuerttemberg/Gerinany, Bavaria/Gennany, Bolivia, Bremen/Germany, Bulgary, Comoros, Dagestan/Russia, Georgia, Italy, South Korea, Karelia/Russia, Komy/Russia, Lithuania, Mongolia, Niedersachsen/Germany, Nordrhein-Westfalen/Germany, Rheinland-Pfalz/Germany, Saarland-/Germany, Slovenia, Taiwan, Tucuman/Argentina, Turkey, Ukraine).

XV. SPECIAL POWERS (VIOLATIONS OF INTERNATIONAL LAW, DECISIONS RELATING TO THE APPOINTMENT OF CONSTITUTIONAL COURT JUDGES AND THEIR IMMUNITY, OPINIONS RELATING TO THE DECLARATION OF MARTIAL LAW, THE IMPLEMENTATION OF DECISIONS ISSUED BY INTERNATIONAL COURTS, PROPOSALS FOR THE AMENDMENT OF THE *CONSTITUTION*, CONSULTATIVE FUNCTIONS, ETC.) (Afghanistan, Algeria, Armenia, Austria, Berlin/Germany (membership in the *Richterwahlausschuss);* Bulgary, Burundi, Cambodia, Chad, Cuba, the Czech Republic, Cyprus, Egypt, France, Gennany, Hamburg/Gemiany (Representafives Rights), the Ivory Coast, Mauritania, Moldova, Russia, Spain, Sri Lanka, Togo, Uzbekistan (concerning the dissolution of the Parliament, or the approval of a Head's of State decision)).

XVI. OTHER TASKS WHICH THE COURT IS CHARGED WITH BY THE *CONSTITUTION* OR STATUTES (Adigea/Russia, Azerbaidjan, Baden Wuerttemberg/Germany, Bashkiria/Russia, Bavaria/Gerinany, Berlin/Germany, the Central African Republic, Chile, Croatia, Dagestan/Russia, Ecuador, the FYROM, Georgia, Germany, Guatemala, Hamburg/Germany, Hessen/Germany, Komy/Russia, Montenegro/the FRY, Nicaragua, Niedersachsen/Gennany, Nordrhein-Westfalen/GeiTnany, Portugal, Rheinland-Pfalz/Germany, Slovenia, South Africa, Spain,

Tajikistan, Tuva/Russia, Turkey, Ukraine, Uzbekistan).

Particular Components of Constitutional Court Powers:

IN PREVENTATIVE *(A PRIORI)* REVIEW of constitutional provisions, international treaties signed by a particular country, statutes and other legislative acts, regulations and some other rules, the constitutional/judicial review body has in fact a consultative function, when on the demand of a petitioner (mostly privileged government bodies) it discusses a rule and issues the corresponding decision prior to the promulgation of a rule or its enforcement. Such power is held by the Constitutional Court of Italy with reference to provincial statutes; by the Constitutional or High Courts of Austria, Germany and Chile; (especially) by African systems following the French model; by Portugal, Ireland, Finland, Cyprus, Hungary, Romania, Syria, Turkey, Poland, Russia (only with reference to certain statutes), and until 1985 also by Spain. On the international level, this form of constitutional review has been subject to much criticism; in particular on the occasion of the abolishment of the preventative review in Spain, numerous weaknesses were pointed out: that the legislature neglects its own constitutional review, that in this way legislative procedure is delayed, that due to the short terms provided for, this review is questionable anyway. The preventative review provided by the French Constitutional Council applies mainly to statutes. Except for France and certain African countries, which are not familiar with the repressive review of statutes and executive regulations, but practice a wide preventative review of statutes, no country has adopted any pure system of preventative review.

REPRESSIVE *(A POSTERIORI)* REVIEW is applicable to the rules in force and has been adopted by most systems. Certain systems, however, tend to combine the essentially repressive review with the preventative review of the international treaties signed by the particular country; a few other systems practice a combination of the preventative and repressive review of other rules (Cyprus, Romania). Repressive review may be abstract or specific. In individual systems both forms may appear individually or jointly. Abstract (direct) review may refer to constitutional provisions, international treaties signed by a particular country, statutes, regulations, presidential decrees, legislative acts and other rules of administrative units as well as to some other categories of rules. It may be introduced independently of the proceedings in a specific case, on the basis of applications lodged by specially qualified petitioners. The abstract review is, in comparison with other forms, less frequent; its importance lies in the fact that it deals with theoretical questions relating to constitutional law. Constitutional Court Judges are concerned only with the question of the constitutionality of the rule as the main dispute; this may require the cessation of an unconstitutional rule or a declaratory dispute. The latter may also be of a preventative character. Cassation itself may have an *ex tunc* effect (annulment, setting aside) or an *ex nunc* effect (abrogation). Hence, cessation (of statutes) involves two versions: from the point of view of the authority of statute and the principle of notice, the cessation of a statute is supposed to take effect only following the adoption of a decision of the Constitutional Court onwards - an *ex nunc* effect (as in Austria). An abrogated statute represented the legal basis for issuing individual acts until its abrogation. From the point of view of the standing of the aggrieved citizens (parties) and the principles of equity and legality, the cessation of a statute is supposed to function retrospectively from the time of the adoption of the rule - *ex tunc* (as in Germany) - an unconstitutional statute cannot have any legal effect at all and it is necessary to "repair" everything that had been done on the grounds of an unconstitutional statute. A decision issued by the Constitutional Court has a retroactive effect going back to the adoption of the rule, as if the rule were erased from the legal system. The nullity of such an act is identified by the Constitutional Court only in a declaratory way. Nevertheless, this nullity cannot negate the fact that the respective statute was in force for a

certain time and that legal affairs were regulated on that respective basis. In both cases individuals have the right to require the modification of individual acts issued on the respective basis.

SPECIFIC (CONCRETE, INDIRECT, ACCESSORY) REVIEW of rules arises out of proceedings in progress before an ordinary court which, however, has to be convinced of the unconstitutionality of a certain rule (Germany), or that the court's doubt about the unconstitutionality of the rule not be obviously unfounded (Italy). This approach envisages judicial review by an ordinary court whereby the Constitutional Court is relieved of its immediate duties (the character of a prejudicial question). The consequence of this review is that an unconstitutional rule (statute) is not applied to a specific dispute. The accessory constitutional review of a statute is rooted in the American system wherefrom it spread particularly into certain countries of the American continent and elsewhere. With a specific constitutional review the Constitutional Court issues decisions concerning the constitutionality and legality of legal measures as a prejudicial question and not a disputed individual act, as is the case with the constitutional complaint.

We have performed a comparative analysis of recruitment and functioning of over 150 institutes of specialized or centralized constitutional review.

The principal institutes are:

- Constitutional Courts (in Europe and most parts of the New Independent States);
- Constitutional Councils (France, Morocco, Mozambique, Kazakhstan, etc.);
- Constitutional Chambers of Supreme Courts (Burkina Faso, Guinea, Costa Rica, Estonia).

There is an interesting feature in Portugal: there is a Constitutional Court, but the functions of constitutional review is also exercised by the courts of general jurisdiction. On cases of constitutional review, the Constitutional Court performs the function of a higher court. That is actually an interesting combination of the two models.

In some countries the institutes of constitutional review have specific characteristics for the relevant country only. A typical example is the system of constitutional review in the Islamic Republic of Iran. Here, according to Art. 91 of the *Constitution,* this function is performed by the Guardian Council, consisting of 12 members: 6 representatives of the clergy and 6 law experts, with a term of office of 6 years. The representative composition is changed once in three years. The forms of review are preliminary and mandatory. That means that all laws are presented by the Parliament to the Council, to be reviewed within 10 days for their agreement with the Islamic rules and *the Constitution,* and in case of a misstatement to be returned to the Parliament for reformulation. Incidentally, the issue of the draft being relevant to the Islamic rules is decided by members of the Council representatives of the clergy.

That body had also received the right to interpret the Constitution: with the consent of three-fourths of its members (Art. 98). It will also regulate the legality of the presidential and parliamentary election (Art. 99).

Of exclusive importance for carrying out an independent and efficient activities of the Constitutional Courts, is the procedure of its recruitment. The following noteworthy issues are to be singled out here:

a) what is the procedure of recruitment of the members of the court?
b) for what term are the members of the court elected?
c) what are the requirements to the members of the court?

The members of the body of constitutional review are mainly appointed (or elected) by different branches of authority. However, in international practice there are different options of approaches. Eg., in Hungary, Poland, Peru, Slovakia, Germany, Latvia, all members of the body of the constitutional review are appointed by the Parliament. In Austria, Albania, Armenia, France, Benin, Kirgizstan, Romania they are nominated by the President and the Parliament.

In Bulgary, Gabon, Italy, Spain, Lithuania, Madagascar, Moldova, Ukraine, Mongolia, Turkey, Korea, they are appointed by the President, the Parliament and the institutes of judicial authority (ie. provision is made for the participation of all three branches of authority).

In contrast to the courts of general jurisdiction, members of the Constitutional Court can be not only experienced judges, but also teachers of law, civil servants, political figures, among them non-lawyers. In some countries, the number of non-lawyers is defined by law: in Gabon 2 of 9 (Art. 89 of *Gabon's Constitution),* in Sweden 113 of the total number of judges. In Uzbekistan, for example, Art. 12 of the law "On Constitutional Court" states that a member of the Constitutional Court is elected from among specialists in political science and law having high moral qualities and the necessary qualification. And, Art. 194 of the *Polish Constitution* states: The Constitutional Tribunal consists of 15 judges elected individually by the Sejm for 9 years from among the persons prominent in the knowledge of law.

There is an interesting feature in Turkey, where both the lawyers and people having certain experience of state-administrative work can be elected.

In some countries, the constitutional review is exercised by the courts of general jurisdiction, and this function can be performed by all those who have qualities for being nominated for parliamentary election. In Switzedand, e.g., Art. 108 of the *Constitution* reads that to be a member of the Federal Court, one has to be a citizen of Switzerland having the right to be elected to the National Council. This is a typical example of a country, where the activity of the body effecting the constitutional review mainly covers the disputes in constitutional law, and, naturally, the issues of constitutional laws and decisions by the bodies of state authority (Art. 110 of the *Swiss Constitution).*

In Belgium, the members of entities of constitutional review can be not only judges and professors of law, but also persons who had been members of parliament.

In France, however, there are no limitations for members of the Constitutional Council along the line of professions.

According to some theorists, engagement of specialists from other fields into the specialized body of constitutional review (in particular from politics, philosophy, social sciences, etc.), as well as recruitment of experienced persons and VIPs having worked in the sphere of state administration, offers great advantages and benefits.

A similar exigency was commented upon by Hugo Bluff, a member of US Supreme Court (he was nominated in 1937 by Franklin Roosevelt, and worked for 34 years, until he died in 1971). He thought that a nomination of a non-lawyer as a member of the Supreme Court gives him a larger charge of freedom, since he had overcome the psychology of dependence prompted by the logic of hierarchical career.

Also important is the argument that here we deal not so much with the technology of the application of law or another legal act, but rather with the philosophy of review and regulation of public

relations, while the situation of law-creation and the ability to master it becomes the primary objective.

From the viewpoints of both institutional and functional independence of bodies of constitutional review, the issues of office term and removability of members should be anaiyzed separately. The practical approaches are different. Firstly, there are countries where the independence of constitutional review is ensured by electing the members of that entity by the principle of irremovability (USA, Austria, Denmark, Armenia, etc.).

Another set of countries think that the term of office should be limited (it is commonly fluctuating between 5 and 15 years). Germany, France, Italy, Spain, Turkey, etc. are among those countries. Envisaged in those countries is a mechanism of rotation (commonly once in three years).

Nearly all countries also have identical solutions in recruitment of their Constitutional Courts. That is primarily in relevance to some requirements to the members of the Court. Firstly, they cannot do any other paid work (with the excepton of research, teaching and artistic activity in some countries). Secondly, a member of a constitutional review entity cannot be a member of a political party or engaged in political activities (in many countries the law forbids the members of a constitutional review body to be a member of a trade-union or another non-governmental organization). Thirdly, even if the nomination is not done following the principle of irremovability, persons over 65-70 or under 35-40, as a rule are not nominated or elected as members of the Court. Besides, in nearly all countries they enjoy the status of immunity, and take an oath prior to entering office. Incidentally, in most countries only the court can dismiss its member from office, as provided by law (Aibania, Bulgary, Germany, Latvia, Portugal, Romania, Switzerland, Turkey, etc.).

In another group of countries, the body that appointed the Court members provides the final solution on the basis of the Court ruling (Siovakia, Armenia, Macedonia, etc.). In Finland, Japan, the USA, Latvia, removal of a judge is done in a special order of impeachment.

A number of countries, when recruiting the institutes of constitutional review, attach a special significance to linguistic competence. Switzerland and Canada, in particular, with the number of the state languages more than one, elect the members of the Supreme Court with regard to the proportions of linguistic groups. In Canada, for example, three judges of the Supreme Court have to be natives of Quebec and have experience of practical work in civil law, and six members in common law.

There are interesting differences in the problem of electing the chair of the entity of constitutional oversight.

The election is done as follows:

a) Court, autonomously (Bulgary, Romania, Benin, Hungary, Italy, Mongolia, Congo, Portugal, Russia, Moldova, Georgia, etc.);
b) the head of state, unadvised (Algeria, Egypt, Morocco, Mauritania, Kazakhstan, France, etc.);
c) parliament (Germany, Armenia, Latvia, Kirgizstan);
d) President, by presentation from the Government (Austria);
e) President, with agreement from the Parliament (Republic of Korea).

To boost the efficiency of constitutional review and with regard to the administrative-territorial structure of the country, particular attention is also paid to the organization structure of the bodies of constitutional review.

In case of multi-chamber courts, the law prescribes the formation of chambers, hearing and decision-making procedures, circumscribes the hearing and decision-making procedures for issues in the exclusive competence of the plenary sessions of the Court.

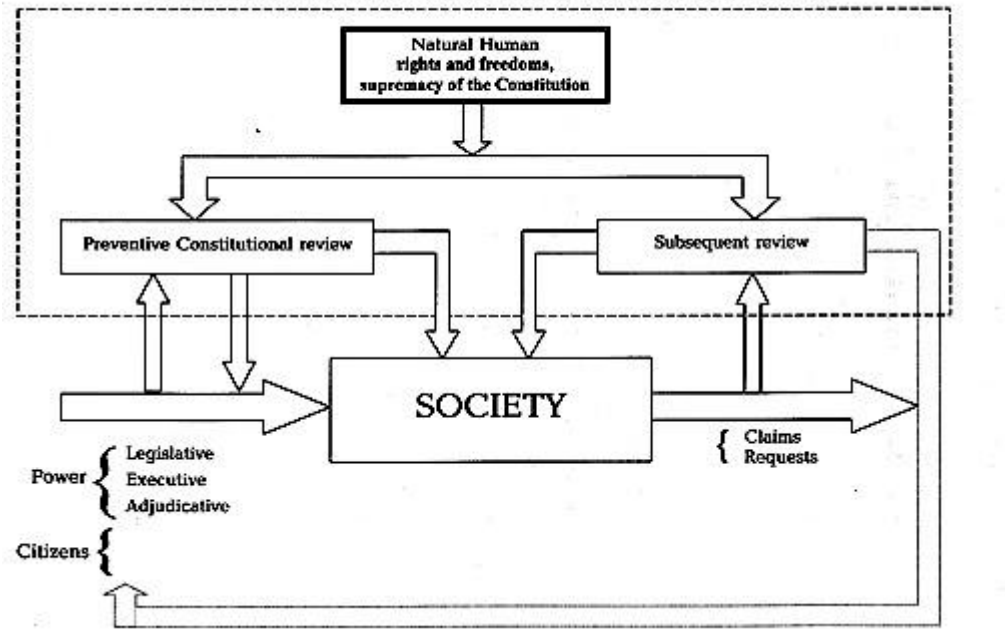
However, this division has also a functional character, enabling to consider and decide individual issues within the constituency of a part of the Court members. This situation is more frequent when the body of constitutional review is provided with powers inherent to a certain degree to the courts of general jurisdiction and is restricted by time frame. In Armenia this issue is not fully resolved and can result in a serious deadlock. The matter is that, on the one hand, the Constitutional Court is bound to produce a decision within a period of 30 days (Art. 102 of *RA Constitution),* on the other hand, it is bound to resolve the dispute in full membership with regard to the parliamentary election results (Art. 100, Clause 3), with their number incidentally reaching several hundred. This type of deadlocks, as will be shown below, is usually resolved either by easing the time-limits, or, even in single-chamber courts, by affording a number of judges (usually 3-5) the right to examine cases and take decisions.

The features of recruitment of the bodies of constitutional review have a common basic characteristic that an objective is set with regard to the character of public relations and the targets of development of any country to establish a body, that would not be politically influenced and have high morality, that would be able to ensure the supremacy of the Basic Law of the country, facilitate a stable and dynamic development of the society with regard to the particular system of values in a particular society (see Diagram 10 for the functioning of the system of constitutional review).

In different countries, the specialized bodies executing the constitutional review, the Constitution and laws are confronted with different objectives, naturally following from the specific functions of the said bodies. These objectives are essentially as follows:

Diagram 10

CONSTITUTIONAL REVIEW: FUNCTIONING OF THE SYSTEM



retaining the balance of separation of powers, prevention of the misuse of power, application of deterrents and counterbalances review of its activities (in many countries, e.g. France, the Rules of Procedure of the Chambers is subject to preventive review);

- facilitating the law-making activity;

- protection of generally recognized values, promotion of their evolutionary development, prevention of revolutions;
- ensuring the supremacy of law, guaranteeing a state governed by the Rule of Law.

In order to achieve those objectives, the Constitutional Courts are afforded the powers:

- to determine the constitutionality of laws and other regulatory acts;
- determining the constitutionality of international treaties;
- interpreting the *Constitution* and other regulatory acts;
- resolving the disputes between different bodies of state authority;
- protecting the constitutional human rights and freedoms;
- protecting the political freedoms and democratic processes in society, particularly: elections, referenda, reviewing the constitutionality of the activities of parties;
- reviewing the constitutionality of the legal acts of the higher judicial bodies and the prosecutor's office (Azerbaijan, Belarus, Moidavia, Tajikistan). In Kirgizstan, the Constitutional Court sanctions arraignment of local court judges to answer the charges of criminal activity;
- other powers provided by the Constitution and by law.

The principal power of Constitutional Court, resolving the issue of constitutionality of laws and other regulatory acts, has substantial features. Firstly, there is a general and limited review. In the case of general review, the object of constitutional review is all regulatory acts. In the case of a limited review, the law circumscribes their set (e.g., in Kazakhstan only laws and international treaties; in France, Morocco, Moidavia, Romania, Hungary, Gabon, Benin also the Rules of procedure of the Chambers of Parliament; in Italy and Spain the acts having the force of laws; in Slovakia all legal acts of the central entities of executive authority including the regulatory ministerial decisions).

The total review as a rule is inherent to the American model, the limited one to the European. However, that is conditional. Meanwhile, in the US the object of constitutional review is any legislative or administrative act disputed within the judicial inquiry of a civil or criminal case.

In many countries of Europe, the round of powers of the bodies of Constitutional Courts is almost all-embracing (Austria, Portugal, Poland, Germany). For example, in Poland the Constitutional Tribunal resolves not only the issues of constitutionality of laws, but also of acts by the central and local bodies.

The objects of constitutional review also include acts by the bodies of local self-government (Slovakia, Slovenia, the Czech Republic).

Many characteristics are also featured in federal and unitary states. In the former case, constitutional review has to ensure the supremacy of federal interests. Therefore, the objects of review are also the regulatory acts of the federal subjects.

In a number of countries, there are laws overstepping the limits of constitutional review. For example, in Turkey the laws adopted at the time of emergence of the republic as well as the decrees having the force of laws and adopted during emergencies or martial law (Art. 174 and 148 of the *1982 Constitution).*

The question of whether the constitutional laws and laws adopted by referendum are objects to constitutional review is disputable.

There is a viewpoint that neither the acts of this type, nor the Constitution can be object of constitutional review. On the other hand, there is an argument that the object of constitutional review is the Constitution, since it contains the regulations having a fundamental significance. For example, Art. 114 of the *Constitution of the Republic of Armenia* provides that Art. 1, 2 and 114 are not subject to change. Moreover, constitutions of many countries contain regulations adjusting the features for applying individual articles or constitutional provisions. It is to be added that any legal document, even if it is not a subject of material or conceptual review, is bound to become such in its form or the subject of formal review.

In a number of countries (e.g. Romania, Kirgizstan), the constitutional amendments prior to be adopted by the Parliament are presented to the Constitutional Court, and only in case of a positive opinion of the latter they can be further promoted (the Constitutional Court of Romania has to provide a ruling within 10 days (Arts. 13 and 37 of the *Constitution).* There is a similar procedure in Moldova: Arts. 135 and 141.

In a number of countries, the Constitutional Court has the right to advance the legislative initiatives (Uzbekistan, the Law "On the Constitutional Court", Art. 10). Most remarkable is the fact that when constitutional amendments are proposed, they are considered by the Constitutional Court within the framework of the system of preliminary mandatory review.

With regard to the forms and methods of review, a distinction is made between the categories of constitutional "review" and "control" (supervision). Those two concepts are frequently confused or considered identical when mentioned in references[149].

We lean to the opinion that in the case of review, e.g., the reviewing subject has the right to nullify the act.

As to the control (supervision), it has a passive character, needed to draw attention or make a proposition, while suspension of the act's validity or its nullification remains within the competence of another body or the one that had adopted that act. Using this approach, the constitutional control (supervision) can be defined as an activity for checking, uncovering and stating the nonconformity to the Constitution of all other legal acts. However, elimination of such non-conformities lies beyond the competence of the body of constitutional control (supervision).

We also disagree with unequivocal statements that the supreme constitutional control (supervision) in all states is effected by the parliament[150]. The parliament mostly exercises the function of mere constitutional review, while the oversight functions are more coherent with the institute of the ombudsman[151].

A typical example within the series of the institutes of constitutional control (supervision) is also the institute of the Chancellor of the Justice in Estonia. However, this question has a wider scope. The matter is that, as has been already noted, the set of subjects of constitutional review is vast, with many of them charged with the function of control (supervision) rather than review towards the legal acts, within their constitutional or law-provided powers.

As has been noted, at the present time in the world, there are over a hundred specialized entities of constitutional review (including the constitutional courts of subject states, in Russia and Germany, in particular). They are charged with over thirty powers, the most prominent being: ascertaining the constitutionality of legislative acts, specific review over the protection of human rights, interpretation of the Constitution, resolving disputes arising between different branches of authority in respect of jurisdictional disputes, determining the constitutional character of official and political organizations, resolving disputes on election results, etc.

With regard to the set of functional range, all constitutional courts can be classified into 3 groups:

1. Those implementing 15 principal powers (a typical example is Austria, Russia and the Constitutional Courts of a number of countries, having an integral system of constitutional review).

2. Implementation of 1 - 15 principal powers (Germany, Hungary, Georgia, Azerbaijan, etc.)

3. Those having up to 10 powers.

Incidentally, Armenia is related to the states leaving beyond the framework of constitutional review such exclusive powers as the preliminary review - of laws (effected in 46 countries), interpretation of the Constitution and of the laws (42 countries), resolution of disputes emerging between different branches of authority in respect of jurisdictional disputes (between central branches of authority - 43 countries, between the territorial and other bodies - 60 countries), the direct protection of human rights (52 countries), etc. In countries having integral constitutional systems, out of the listed ones 1 or 2 powers may be lacking. Besides, omission of the mentioned set of powers will modify the functional role of the body of constitutional review, providing it mainly with the function of a council: this type of body, in turn, will require another structure and operational mechanisms.

The only power effectuated by the constitutional courts of all countries with no exception is the issue of constitutionality of laws (within the framework of preventive or *ex post facto* review).

A comparative analysis of the experience gained by over one hundred countries effecting the constitutional review through specialized bodies, will result in a number of general statements of which the following have to be particularly emphasized:

1. A system of constitutional review cannot be integral or efficient with no specific review and no direct protection of human rights.

2. Beside making the constitutional review unhealthy, no access to powers on the interpretation of the constitution and resolution of disputes emerging between different branches of authority in respect of jurisdictional disputes will result in unavoidable social disturbances, to potential accumulation of unsolved problems and their explosive resolution.

3. There exists an organic link between the powers (or objects of review) and the set of subjects having the right to appeal to the Constitutional Court. If, however, restrictions are extended not only to the powers, but also to the circle of appealing subjects, resulting in the array of available powers becoming practically unfeasible, then the system of constitutional review is not in a position to fulfil its mission.

Chapter V. Priorities of Selecting the Forms and the Problems of Formation of the Objects and Subjects of Constitutional Review

The Objects and Subjects of Constitutional Review

The Objects of constitutional review may be as follows:

- a constitution;
- a constitutional act;
- international treaties;
- statutes (organic or systemic statutes, ordinary statutes);

- legal *lacunas;*
- parliamentary rules of procedure;
- other parliamentary regulations (ordinances, etc.);
- acts of the Head of State (having the force of law or not having the force of law);
- executive regulations of the Government (decrees, ordinances, budget acts, decisions, resolutions, etc.);
- governmental rules of procedure;
- executive regulations of the State administration (rules, orders, decisions, resolutions, etc.);
- individual acts of the State administration;
- rulings of territorial units (charters, ordinances, executive regulations etc.);
- collective agreements;
- judgments;
- interpretation of rules;
- the implementation of rules;
- legislative initiatives *(ex officio* duty of the Constitutional Court, citizen's initiatives etc.);
- jurisdictional disputes;
- the protection of human rights (the constitutional complaint, the popular complaint, other forms);
- election matters;
- referendum matters;
- capacity for offices;
- impeachment;
- other objects.

Subjects/Standing/Legal Interest before the Constitutional Court:

- individuals (citizens, non-citizens)[152]. Some constitutional review systems also allow for a private individual's access to the Constitutional Court (concerning the abstract as well as concrete review, based on a constitutional complaint, or on a popular complaint (actio *popularis)* or on other forms of constitutional rights' protection (see Chapter XI/A);
- legal entities[153];
- associations, trade unions etc.
- State bodies (i.e. privileged, legitimate petitioners):
- the legislature;
- the executive (the Head of State, the Government, the State administration);
- other State bodies or institutions;
- territorial units;
- the judiciary (ordinary courts; special courts; the Public Prosecutor);
- the Ombudsman.

Various Forms of Constitutional Review and their Implementation in Practice

According to statistical data there are 217 different current systems of constitutional and judicial review around the world. Among them there are 116 of a European character, 53 of an American character, 14 of a mixed character, 7 of a French character, 1 of New Commonwealth character, 21 of other forms of Constitutional/judicial review and 5 constitutional systems without Constitutional/judicial review.

The European model is the most widely spread current model of constitutional review in practice. Such a situation is first of all the result of the introduction of constitutional review, supported by the German experience as well as by the respective general models of constitutional systems created within some international organisations and/or associations (e.g. the Council of Europe), in Central

and Eastern Europe, in the CIS as well as in several federal entities of the Russian Federation[154]. In addition, the European model was introduced also as an additional system in some systems in Central and South America, which were based in the past on the judicial review system of the American type.

On the other hand, the introduction of certain models was a result of traditional, historical, cultural, political and commercial links among some countries and/or among several groups of countries, always depending on the specific circumstances in a particular country.

Constitutional Review in the Field of Human Rights Protection

A. The Individual as an Applicant before the Constitutional Court

Proceedings before the Constitutional Court have the nature of proposed proceedings *(juridiccion voluntaries).* In principle, the Constitutional Court cannot itself initiate proceedings; as a rule, the proceedings before the Constitutional Court are based on (restricted to) the corresponding application lodged by a special, duly qualified (privileged) constitutional institution (the so-called legitimate petitioners).

The initiation of constitutional review proceedings on the initiative of the Constitutional Court *(ex officio)* is quite rare. It may most often be traced to some of the constitutional review systems of Eastern Europe; further, it is strictly preserved in Croatia and in Slovenia[155], elsewhere *ex officio* proceedings are not as frequent. The Austrian Constitutional Court, for example, may on its own initiative begin proceedings of the constitutional review of a statute or a regulation only if it refers to a prejudicial question in some proceeding before the respective Constitutional Court. All above cases may be referred to as objective forms of constitutional review.

On the other hand, some constitutional review systems also allow for a private individual's access to the Constitutional Court (concerning abstract as well as concrete review, based on a constitutional complaint, or on a popular complaint *(actio popularis)* or on other forms of constitutional rights' protection. This involves the so-called subjective constitutional review, the violation of individual rights and the protection of individual rights against the State (in particular against the legislature). In the countries with a diffuse constitutional review and in some countries with a concentrated constitutional review, the individual citizen is offered the possibility of requesting the constitutional review of statutes, administrative measures or judgments in special proceedings. Only after the complaint has been lodged with the Constitutional Court do proceedings begin. Even then, as a rule, the complainant may withdraw their complaint in order to thereby terminate the respective proceedings.

The individual's standing as complainant before the Constitutional Court has been influenced by extensive interpretation of provisions relating to the constitutional complaint, as well as by ever more extensive interpretation of provisions relating to concrete review[156]. In some systems the individual's access to constitutional courts has become so widespread that it already threatens the functional capacity of the Constitutional Court[157]. Therefore, the legislature is trying to find some way for constitutional courts to eliminate less important or hopeless proceedings (e.g. the restriction of abstract reviews by standing requirements). All these proceedings envisage the condition that the complainant must be affected by a certain measure taken by the public authority. With a growth in the number of complaints, efficiency decreases. Nevertheless, citizens should have many opportunities to apply for the protection of their constitutional rights[158].

B. Bodies Empowered for Human Rights Protection and the Forms of Such Proceedings

The petition of an affected individual whose constitutional rights are claimed to have been violated is generally the basis for an appropriate proceedings of protection in which the protection of rights by the Constitutional Court is only one of a number of legal remedies. Even the bodies intended to provide protection are different, depending on the specific system.

1. Basic rights may be protected in **ordinary Court proceedings.**

a) Some legal systems provide protection of rights predominantly in proceedings before ordinary courts (general courts); for the most part these are countries which have also adopted the so-called diffuse or American model of judicial review[159].

The following are specific forms of the protection of rights by ordinary courts:

b) The *Habeas corpus* proceedings, i.e. the protection against unjustified deprivation of liberty; an appropriate application is lodged with an ordinary court having such jurisdiction. Such proceedings are characterised by speed, simplicity and openness[160].

c) *Habeas data*, which is a sub-form of *habeas corpus* and was introduced in Brazil by the *Constitution of 1988.* It is a constitutional guarantee of a personal decision about information, in essence the protection of personal data.

d) Further proceedings are recognised mainly by countries which have adopted the American model of judicial review, and include the following[161]:

- *mandamus,* whereby it is possible to annul a mistake of a lower court by order of a higher court;
- prohibition, which prevents a higher court from usurping the jurisdiction of a lower court;
- *certiorari,* which involves the right of a higher court to resolve a case from the jurisdiction of a lower court;
- *quo-warranto,* which prevents a specific person from performing a function of a public nature which they have usurped.

e) *Respondeat superior,* which is a compensation claim by an individual against the State[162].

2. A specific form of the protection of rights which is reminiscent of the constitutional complaint, is the so-called *amparo.* This is a universal and a traditional form of human rights' protection in the Hispanophone legal system: the protection of an individual against violations of constitutional rights by government acts of all categories. Basically, the Supreme Courts of the State in question are responsible for this form of protection. The aim of such proceedings is to restore the violated right to the individual prior to its violation. It is also a characteristically accelerated proceedings. Mexico is the classic amparo country. It is followed by many Central and South American countries[163] as well as by the Seychelles.

3. **Subsidiary** *amparo* is still more similar to the constitutional complaint. This is a particular *sub-species of amparo,* in that the proceedings takes place before the Constitutional Court[164]. This form of protection is also called *accion de tutela. Colombian accion de tutela* is comparable to the constitutional complaint. It was introduced by the *Colombian Constitution of 1991.* It is characterised by the fact that the circle of protected constitutional rights is explicitly defined. It is possible to annul legal or administrative acts (in addition to the popular complaint *(actio popularis)* and proceedings of *habeus corpus* in Colombia).

4. **Brazil introduced a number of specific legal remedies** for the protection of human rights in the *Constitution of 1988,* including:

- *mandado de seguranca,* which is a wider form of protection, for which the Supreme Court is competent, for the protection of rights not covered by *habeas corpus;*
- *mandado de injuncao,* which is a special individual complaint for a case involving the negligence of the legislature.

5. **Chile** introduced a special modified version of ***amparo,*** the so-called *recurso de proteccion* in the *Constitution of 1980.*

6. **Individual complaint** *(actio popularis)* may equally be lodged by an individual, generally without restrictions[165]. It is a special, individual legal remedy for the judicial protection of rights, although intended for the protection of fundamental rights in the public interest (while a constitutional complaint is lodged in the interest of the individual). An individual complaint is normally directed against a general act (usually a statute) which is considered to have violated a constitutional right[166]. The Constitutional Court is generally the competent body for reaching a decision which deals with the disputed act in the sense of an abstract review of rules. Individual complaint is less common in Europe[167]. In Israel individual complaint is common in cases arising within Israel proper, the right to standing is decided mostly by the Court's willingness to grant it. It is most extensive in Central and South America[168]. The individual complaint is a relatively common approach in Africa[169], while in Asia, the individual complaint is only recognised in Cambodia, in Japan, and only in electoral matters (as a *people's action or objective action)* as well as in Iran (a complaint before the Court of Administrative Justice).

7. A specific group of systems of constitutional law guarantees the individual only **indirect protection,** such that the individual does not have direct access to the Constitutional Court or other body of constitutional review. These are systems that consider the protection of the rights of the individual to be satisfied through:

- an abstract review of rules[170]; or
- a specific (concrete) review of rules[171]; or
- a preventative abstract review of rules[172].

C. The Constitutional Complaint and its Extent in the World

A constitutional complaint is a specific subsidiary legal remedy against the violation of constitutional rights, primarily by individual acts of government bodies which enables a subject who believes that their rights have been affected to have their case heard and a decision issued by a Court authorised to provide a constitutional review of disputed acts. Generally, the impugnment refers to individual acts (all administrative and judicial acts), in contrast to the popular complaint *(actio popularis),* although it may also indirectly[173] or even directly[174] refer to a statute.

Is constitutional complaint a right? The Slovenian Constitutional Court has taken the view that it is an institute of judicial proceedings, or a special legal remedly[175].

The constitutional complaint is not an entirely new institute; its forerunner may be found in the Aragon law of the 13th to 16th Century[176]; and in Germany from the 15th Century onwards[177]; while Switzerland introduced a special constitutional complaint[178] in the *Constitution of* 1874 and in the *Statutes* of 1874 and 1893.

The constitutional complaint is very common in systems of constitutional/judicial review. It is most widespread in Europe[179]. In Germany, the constitutional complaint appears on the federal and on provincial levels[180].

In addition to Europe, some Asian systems recognise constitutional complaint[181]. It should also be noted that other Arabic countries, if they recognise judicial review at all, have basically adopted the French system of preventative review of rules, following the model of the French Constitutional Council of 1958, which does not recognise the right of the individual to direct access to specific constitutional/judicial review bodies. In Africa some countries recognise constitutional complaint[182]. The only example of constitutional complaint in Central and South America is the Brazilian *mandado de injuncao, i.e.* an individual complaint in case of negligence by the legislature (under the jurisdiction of the Brazilian Supreme Court) unless we also count the Colombian *accion de tutela* (the jurisdiction of the Constitutional Court), usually considered to be a subsidiary amparo.

The peculiarity of individual systems is that they recognise a **cumulation of both forms, individual and constitutional complaint**[183]. The two forms may compete in their functions. The rationaie for both forms is the protection of constitutional rights: the individual complaint *(actio popularis)* in public and the constitutional complaint in the private interest. In both cases the plaintiff is an individual. As a rule, the subject disputed is different: the individual complaint *(actio popularis)* refers to general acts and constitutional complaints refer to individual acts[184]. The standing of the plaintiff or that the remedy might have a personal effect upon the plaintiff is a precondition for a constitutional complaint. Although it should be possible to exclude the standing of the appellant as a precondition for the individual complaint *(actio popularis)*, individual systems do require it[185], such that for both the constitutional and the individual complaint *(actio popularis)*, the standing or the personal effect on an individual works as a corrective with the aim to prevent the abuse and overburdening of the Constitutional Court or other constitutional/judicial review body. In both cases the same aim may be pursued through the introduction of a filing fee. It is, however, characteristic that in practice the number of constitutional complaints is increasing everywhere. Therefore, many constitutional courts have adapted the organisation of their work following this trend either in the form of specialised individual chambers for constitutional complaints[186] or by narrower units of the Constitutional Court (chambers, sub-chambers)[187] issuing decisions on constitutional complaints.

D. The Fundamentals of Constitutional Complaint

The following are the elements of the system of the constitutional complaint:

- **the preliminary selection of complaints** (the integration of filters into proceedings). This is most highly developed in the German system with the intent to sift out potentially unsuccessful complaints, and as such the maneuvering space of the Constitutional Court in rejecting a frivolous complaint is extended. This, in fact, involves the narrowing of the constitutional complaint as a legal remedy in principle open to everybody. One general problem of constitutional courts is how to separate the wheat from the chaff and at the same time secure efficient protection of human rights in a democratic system. In addition, in certain systems the proposals for introducing the constitutional complaint are recent; some tend to introduce prior selection systems; on the other hand, certain systems tend towards the abolition of this legal institution;

- protection through the constitutional complaint generally refers to constitutional rights and freedoms, and the **circle of rights protected by the constitutional complaint** is less specifically defined in individual systems (e.g. Slovenia, Croatia, the FRY and Montenegro, where "all" constitutionally guaranteed fundamental rights are supposed to be protected), while other systems mostly define the (narrow) circle of protected constitutional rights[188]. Special forms of constitutional complaint may also protect special categories of rights[189];

- as a rule, **acts disputed by constitutional complaint** refer to individual acts, with some exceptions[190];

- those **entitled to lodge constitutional complaint** are generally individuals but in Austria, Germany, Spain, Switzerland, the FRY and Montenegro, legal entities explicitly may do so also, while in the Croatian system legal entities are explicitly excluded as a potential appellant; in some systems, the complaint may be lodged by the Ombudsman (Spain, Slovenia, the FRY) or by the public prosecutor (Spain, Portugal).

- the **standing,** or the personal effect the remedy might have upon the plaintiff is a mandatory element, although in most systems the concept of standing is defined fairly loosely;

- the **prior exhaustion of legal remedies** is an essential precondition, but with exceptions when the Constitutional Court may deal with a case irrespective of the fulfilment of this condition (Germany, Slovenia, Switzerland);

- the **time limit for lodging an application** ranges from 20 days to three months with an average of one month from the day of receipt or delivery of the final, legally binding (individual) judgment or decision or act of the State administration;

- the **contents of applications** are prescribed in detail in a majority of systems: in written form, sometimes with the language explicitly stated (Germany, Austria), along with the particular country, the disputed act, and a definition of the violation of the relevant constitutional right, etc.;

- a majority of systems (but not the systems of Middle and Eastern Europe) envisage the issuing of a **temporary restraining order (injunction) or ruling (of the Constitutional Court)** i.e. an order temporarily suspending the implementation of the disputed act until the adoption of a final decision;

- in some systems the **payment of the costs** of the proceedings is explicitly foreseen in cases of frivolous applications (Germany, Austria, Portugal, Spain, Switzerland);

- the **effects of the decision:** the Constitutional Court is limited to decide on constitutional matters, on the violation of constitutional rights. However, if a violation is found, a decision may have a cassatory effect which is as a rule *inter partes (and erga omnes* in a case in which the subject-mafter of the decision is a legislative act). The Constitutional Court here retains the position of the highest judicial authority. These Courts can be referred to as the "high ranking courts of cessation", because Constitutional Courts reviewing the decisions of ordinary courts ,act in fact as the third and the fourth instance. Although the Constitutional Court is not a court of full jurisdiction, in specific cases it is the only competent court to judge whether an ordinary court has violated the constitutional rights of the plaintiff. It involves the review of micro-constitutionality, perhaps the review of the implementation of a law, which, however, is a deviation from the original function of the Constitutional Court. Constitutional complaint cases raise sensitive questions on defining constitutional limits. In any case, the Constitutional Court in its activities is limited strictly to questions of constitutional law. The Slovenian system is specific in that the Constitutional Court may, under specified conditions, make a final decision on constitutional rights or fundamental freedoms themselves (Para. 1 of Article 60 of the *Slovenian Constitutional Court Act,* Official Gazette RS, No. 15/94).

The protection of fundamental rights and freedoms is an important function of a majority of constitutional courts, irrespective of whether they perform the function of constitutional judgment in the negative or positive sense. Whenever a Constitutional Court has the function of a "negative legislature", constitutional review is strongest precisely in the field of fundamental rights. Even in

other fields (the concretisation of Stateorganisational and economic constitutional principles) in which the legislature has the primary role even in principle, constitutional courts insure that fundamental rights are protected. Precisely in the field of the protection of rights, the Constitutional Court also has the function of a substitute "Constitution-maker" (the "positive function"), which means that in specific cases constitutional courts even supplement constitutional provisions.

E. Various International Forms of Individual Complaint

1. The concept of "constitutional complaint" is usually connected with the national constitutional protection of fundamental rights. However, certain international documents also envisage specific legal remedies for the protection of fundamental rights and freedoms in the form of a complaints[191].

2. The *European Convention for the Protection of Human Rights and Fundamental Freedoms* of 4 November 1950 gives individuals the right to the so-called individual complaint[192]. An individual may lodge a complaint with the European Commission for Human Rights following an alleged violation of rights guaranteed by the *Convention.* It is an explicit international legal remedy comparable to a national constitutional complaint. It fulfills the function of an individual complaint where national law does not guarantee any appropriate protection of rights. Individual complaints are a subsidiary legal remedy (preconditioned on the exhaustion of national legal remedies), it is not a popular complaint *(actio popularis)* and it does not have retroactive or cassatory effect. It differs from the constitutional complaint in the way that, contrary to the latter, it leads merely to a finding *declaratory relies.*

The position of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* in national law specifies whether an individual may refer to the *Convention* or even base a national constitutional complaint thereon. It further narrows the maneuvering space of the Constitutional Court itself in the interpretation of the provisions of the *Convention.* It actually connects the national Constitutional Court to European bodies in cases in which a judicial final national decision becomes the subject of an individual complaint to a European forum[193].

The institution of constitutional complaint and the European complaint and the function of European bodies (above all the European Court of Human Rights) raises the question of national and supranational (final) instance. The national (final) instance would entail that the Constitutional Court as the highest body of judicial authority in a particular country for the protection of constitutionality and legality and human rights and fundamental freedoms[194] would be limited to the investigation of constitutional-legal questions only. The review of the correct findings of the actual circumstances and the use of simple rules of evidence are matters for the ordinary courts. The subsidiary nature of the constitutional complaint lies in the division of responsibility between the Constitutional and the ordinary courts. The gradation of instance could be established as ascending from the national Supreme Court through the national Constitutional Court to the European Commission or European Court. In fact, instance is not the essence of this gradation although it is essential in the role of supplementing, in that the national constitutional complaint supplements national judicial protection while the supranational European complaint supplements the national constitutional complaint.

F. The Core of Judicial Protection of Human Rights

The core of judicial protection of human rights lies in the constitutional complaint, since:

- Human rights are attributes of any democratic legal system;

- Constitutional complaint is (only) one of the legal remedies for protecting constitutions rights;

- Constitutional complaint is an important remedy for the protection of human rights and can be considered a human right itself[195]; *the Constitution* guarantees the constitutional complaint, in the same way as the rights it protects; at the same time, the constitutional complaint is limited by statute to the operational capacity of the Constitutional Court;

- Its effectiveness is disputed, since successful constitutional complaints are in a clear minority, although that should be no reason for its restriction or abolition. Such a number of unsuccessful constitutional complaints is also very often the result of the great number of the same kind of cases filed before the Constitutional Courts;

However, despite the internal contradictory properties of this institution, individuals should still have access to justice or to the judicial protection of their constitutional rights. The very existence of the constitutional complaint ensures a more effective review of violations of constitutional rights on the part of government bodies, especially during the process of transformating the social and legal order.

Comparative analysis enables us not only to uncover the basic nature of the individual forms of constitutional review, but also to pose the question on the optimal combination of those forms. It is shown that the specialized institutes implement the constitutional review in differing ways. Also differing are the character, review procedure, harmonic arrangement of its individual forms and details of their realization.

The conceptual differentiation of the preliminary and *ex post facto* review performed by a special body of constitutional review is also based on factors beside the temporal ones. This differentiation has an informative scope. The Preliminary review assumes that the regulation becomes the object of constitutional review prior to being enacted with the purpose of possible anti-constitutional situations. The two possible options here are as follows: one - the object of constitutional review is a draft regulation, two - a regulation already adopted but not yet signed or entered into legal force.

The first option is most characteristic for the so-called Franco-European model. A characteristic feature of the Constitutional Council of France is a mandatory preliminary review of the draft organic laws.

A characteristic example of constitutional review of regulations within the intermediate stage is Romania. The constitutional review in that country is done at the time when it has been adopted by the Parliament but not yet signed by the President or validated.

The *Constitution of Romania* (Art. 145) provides that if a law is qualified by the Constitutional Court as unconstitutional, it has to be returned to the Parliament for additional debate. A repetitive approval of the law in the same reading will require at least a 2/3 majority in both Houses.

Article 145. Decisions of the Constitutional Court

(1) In cases of unconstitutionality, in accordance with Article 144 subparagraphs a) and b), the law or standing orders shall be returned for reconsideration. If the law is passed again in the same formulation by a majority of at least two thirds of the members of each Chamber, the objection of unconstitutionality shall be removed, and promulgation thereof shall be binding.

(2) Decisions of the Constitutional Court shall be binding and effective only for the future. They shall be published in the Official Gazette of Romania.

In a number of countries the preliminary review is effected with regard to the Rules of Procedure of Chambers, so that through the law there should not be a violation of constitutional balance of separation of powers. Prior to forming specialized bodies of constitutional review their function had been effected exclusively with regard to the validated regulatory acts. The purpose of the *ex post facto review* is to ensure the constitutionality of legal regulations at all stages of their application. A similar task can emerge not only in the case when the subject of examination is some infraction, but also in the case when the subjects having the right to appeal to the Constitutional Court will need to inspect the constitutionality of a specific legal act or its individual provisions.

A peculiar feature of the American system of constitutional review in this regard is that the *ex post facto* review is effected by all courts only when examining specific cases, so that the decisions concern the subjects of particular legal relations, i.e. the parties to the case under examination. Nevertheless, each precedent has a substantial meaning for future examination of these cases.

The European system of *ex post facto* review has a feature suggesting both the presence and absence of timing restrictions. E.g., on issues associated with referendum results, the Constitutional Court can be appealed within one month (in Armenia 7 days) after the official publication of results.

While at the time of preliminary review mainly individual branches of authority interact, the *ex post* facto review embraces nearly all strata of society enabling the opportunity to most profoundly consider the features of law-enforcement practice.

That often becomes a legislative requirement as well. For example, Article 67 of the *RA Constitutional Court Act* provides: With regard to issues determined by Points 1 and 2 of Article 100 of the *Constitution* a decision shall be adopted based both on the literal meaning of the Act and existing judicial practice.

The principal mission of the *ex post facto* review is to ensure the stability of continually variable public relations.

In its character constitutional review can be concrete and abstract. The concrete review constitutes the basic concepts of the American system of constitutional review assuming that the constitutionality of a regulation is associated with a specific case that has become a subject of judicial inquiry. In many European countries, particularly having a system of individual complaints, the constitutional review is also implemented as concrete review.

The concrete review is mainly characterized by the following features:
- review is stipulated by the examination of a specific case;
- the decision on constitutionality of a legal act is extended to the subjects of law, relevant to the particular case;
- the issue of protecting the individual interests is advanced to the foreground;
- the functional relations between ordinary courts and the bodies of constitutional review are clearly regulated.

It is known that abstract review is characteristic only for the European system of constitutional review. It assumes that the issue on constitutionality of a regulatory act can be put forward by a competent person provided by law, independent of whatever specific case.

In case of abstract review, as a rule, the subjects of appeal are bodies of state authority. However, in some countries citizens can also apply not only on specific cases, but also as subjects of abstract review (Brazil, Malaysia). In Brazil, e.g., any citizen can apply to the body of constitutional review if he thinks that the law inflicts damage upon the national cultural heritage, environment or public dignity. In some European countries, where a citizen has the right to directly apply to the Constitutional Court on constitutionality of a regulatory act, there is also a functioning system of abstract review (Spain, Portugal). Incidentally, in Germany, the right of a citizen to apply on an issue of constitutionality is used both at the federal level, and at the level of Lands (Bavaria, Bedin, Hessen, Saar). In Germany, of all decisions by the Federal Constitutional Court adopted in 1953-1984, 82 were on abstract, 2200 on concrete applications. In Italy for the period of 1948 - 1976 those figures were 406 and 5761 respectively.

The role of abstract review acquires far greater importance at periods of systemic transitions, when the legislative system is actively being transformed, a new *Constitution* is being adopted or significant constitutional changes are being introduced. For the New Independent States of great importance are also the problems of integration and international public relations, as well as ensuring the constitutionality of international treaties.

Abstract review contains a large preventive charge, protecting the supremacy of the Constitution at all stages of preparing, adoption and application of regulatory acts. This form of review is becoming a guarantee of retaining the constitutional balance of separation of powers and ensuring its harmonically arranged activity.

One condition for an efficient resolution of this issue is a true selection of subjects appealing to the Constitutional Court within the framework of abstract review.

The objects of abstract review are also differentiated. Today considered classical may be a system of objects of abstract review, having the regulatory acts acceptable by all bodies of state authority.

International experience shows that each country has certain features of applying different forms of constitutional review. Some countries, like Turkey, dedicate particular attention the formal review. According to Art. 148 of the *Turkish Constitution*, the Constitutional Court examines the constitutionality of laws, decrees, having the force of law, and Rules of procedure of the Grand National Assembly of Turkey. The Constitutional Court cannot examine the constitutionality of the legal acts (decrees) adopted during a state of emergency, martial law, or at the time of war.

Verification as to the form may be requested by the President of the Republic or at least 1/5 members of the Grand National Assembly of Turkey. Applications and objections for annulment of legal acts based on formal deficiencies can be delivered up to 10 days since the enactment of the law.

To be recognized in specialized systems of constitutional review are the following characteristic features of applying different forms:

a) preference to a specific form (France, Romania, Kazakhstan prioritize the preliminary review, Germany, Spain, Austria, Portugal, Hungary, Russia, etc. favor the *ex post facto* review);
b) elimination of mandatory review in a substantial number of countries (e.g. Germany, Italy, Austria, Spain, Slovenia, Hungary, etc.);
c) differences in procedures of applying different forms (e.g., *in* Germany one cannot demand the oral hearing of cases on individual appeals, so that individual complaints can be submitted within a period of one month following the adoption of the disputed act or a judicial decision).

In France the objects of mandatory review are not only organic laws and standing orders of the Chambers, but also the laws on human rights and freedoms. As to the common laws, prior to their signing and promulgation, the President, Prime-Minister, Chair of National Assembly, Chair of the Senate, 60 deputies or 60 senators can appeal to the Constitutional Court within abstract elective review. It is typical that in France there is a substantial limitation of the capacity for the *ex post facto* and concrete constitutional review of regulatory acts on the part of the specialized body.

There are certain curious things in Portugal. In that country the Court has jurisdiction to hear appeals against any of the following judicial decisions of the ordinary courts:

a) a court decision on declining an appeal on unconstitutionality of a legal regulation;
b) a decision on altering a decision on constitutionality of a legal regulation, adopted through judicial proceedings;
c) a decision on rejecting by court an appeal on contradictions between ordinances and laws;
d) a decision on rejecting an appeal of a local body on a regulation contradicting a local or a republican law;
e) a decision on rejecting an appeal of a central body of authority on legality of a legal act by a regional body. The Constitutional Court is also competent to hear complaints against the courts' decision with regard to those decisions being unconstitutional or unlawful.

Based upon an appeal by the President prior to signing a law or ratifying an international treaty, the Constitutional Court of Portugal will determine the issue of their constitutionality. The principal feature (same as in Romania) is that the Parliament can confirm its own adopted act or regulation by 2/3 of the votes. A certain set of laws is established (in particular, on elections, referenda, the Constitutional Court, defence, emergencies, etc., that have to be adopted by a qualified majority) on the preliminary review of which the Constitutional Court can receive appeals from the Prime-Minister or 1/5 members. As to the ministers, they can appeal on the preliminary review of acts of regional legislation.

There are interesting features with regard to the procedural order in examining cases. On the issues of abstract review, the decisions are adopted at plenary court sessions, while on concrete review the examination and decisions are made by chambers counting 6 members. There is also a provision for the chair to transfer some specific case to a plenary session.

One of the substantial distinctions of constitutional review of Portugal is the functioning of the so-called mixed-type system, when the competence of determining the constitutionality of regulatory acts on specific cases also belongs to all courts of general jurisdiction. Meanwhile, their relevant decisions can be appealed to the Constitutional Court. A party may demand the transfer of the constitutionality decision to the Constitutional Court. In any case, the specific-case-related decisions extend only to the parties of a particular process.

The Constitutional Court also takes decisions on the relevance of mandates to laws. Commonly this type of review is concrete.

A major issue of constitutional review is the selection of a harmonic system of different forms of review. To this end, a full range of relative advantages and disadvantages of each form of review has to be identified. We shall primarily take a note on the advantages and disadvantages of preliminary (or preventive) and *ex post facto* (or final) forms of review.

The advantages of, the preliminary (preventive) form of review include:
1. Preliminary clarification of the constitutionality of a regulatory act, that enhances the reliability and stability of the legal system;

2. Facilitating a most efficient work of the legislator and enhancing his authority;
3. Preventing complications arising when a long-time law or an individual provision is recognized as unconstitutional;
4. Ensuring a final and authoritative decision on constitutionality of state-assumed international commitments prior to ratification of an international treaty and the assumption of such commitments by the state.

Possible defects of the preventive review:
1. Often the actual and probable after effects of the regulatory acts cannot be fully uncovered at an early stage. At first sight, a constitutionally-looking law or its individual provision when applied to actual life can behave as unconstitutional, when the issue is concerned with a collision of specific interests;
2. It is a difficult task to make a decision, especially the final, on constitutionality of a law (often containing hundreds of articles) within one or several weeks;
3. Both socio-economic and public conditions that had been the original destination of the law can undergo qualitative alterations resulting in the law being applied in an unconstitutional situation;
4. Preventive review of legal regulations can prevent a legislative body from a timely response to the adjustment of many relations, particularly if filing a case in the Constitutional Court will suspend the law prior to the Court's decision.

Those defects can be overcome by combining the two forms of review. It seems to be a mistake to seek the solution in one or the other extreme, selecting one form and rejecting the other. It is very important to realize a positive intrinsic potential of each one form. In view of the fact that basically a negative attitude is manifested with regard to the preventive review, the following is to be noted:

1. It is unambiguous that the Rules of procedure of the Parliament chambers is subject to mandatory preventive review.
2. Preventive review should be done following the Parliament's adoption of the law prior to its signing and its enactment.
3. Standing out as subjects of preventive review appealing the Constitutional Court can be at least 1/5 of the members of the Parliament, the President and the Government.
4. The Constitutional Court, in cases provided by the law, must have the right to review its decisions taken as preventive review.

To be particularly noted is the fact that in emergencies of a transitional period, prevention of possible negative manifestations are more important than tracing their consequences. Of a special importance in this regard is the preventive review.

Combinations of different forms generates new problems. E.g., the entity of constitutional review can, in the way of preventive review, recognize the law as constitutional, however, further on, in case of a concrete review, appear in an unconstitutional situation. It follows that the framework of the preventive and *ex post facto* review have to be clarified in advance.

As noted, it is important to choose the timing of constitutional review prior to the legislator's decision or following it. In the latter case, the advantage is that, a) the legislator can eliminate defects himself, and b) the Constitutional Court will not interfere with law making. Otherwise parliamentary debate becomes targeted, and the legislator gets the possibility to avoid adopting the unconstitutional regulations. Meanwhile, this form will change the functional role of the Court, and in this regard it would be desirable to maximally diminish the frame of reviewing the not-adopted act.

When examining the issue of constitutionality of laws, it is extremely important to take into account the following circumstances:
- what category of regulations are subject to review;
- who is competent to appeal to the Constitutional Court and on what grounds;
- in what way is the case examined: is the appellant present or not;
- who and what institutes beside the appellant can take part in the hearing and plead before the court;
- within what limits will the Constitutional Court consider the issue: only the challenged regulation or the act in its entirety;
- what is to be the form, structure and character of a decision by the Constitutional Court.

All those questions have to be determined in advance and registered in the *Constitutional Court Act,* that has to be an organic or constitutional law.

In this regard it is very important to have a distinct procedural order of examining the issues of constitutionality of regulatory acts. Many countries have resolved this issue by making special Laws on constitutional procedure. The prevailing view is that Constitutional Courts have to develop and approve this *Rules of Procedure*, naturally, within the competence provided by the *Constitution.*

One of the issues still subject to disagreement: what is to be done when an unconstitutional situation is emerging through failure by a body of the state power in its constitutional responsibilities (or failing to fulfil them in time), or through failure to adopt a relevant legislative act at an appropriate time, rather than through failure to apply a specific regulation? In the Republic of Armenia, for example, this type of situation can emerge when the transitional provisions 7, 9, 10 of the *RA Constitution* Article 116 will not be fulfilled.

Situations of this type, also mainly typical for transitional periods, are not clearly formulated in nearly all countries. However, a practical procedure has been developed, when this issue is resolved by the Constitutional Court. Some experience in this regard has been accumulated by the Constitutional Courts of Portugal, Italy, Hungary[196]. In an emerging situation of this kind, the subject appealing to the Constitutional Court, as a rule, happens to be either the President or the ombudsman, (if any).

For the New Independent States it is necessary that this issue become the target of mutually agreed action of all branches of power. In particular, the Republic of Armenia, to avoid similar situations and to accomplish the operations provided by the transitional provisions of the *Constitution*, opted for the so-called "anticipatory" way. A decree by the RA President based on part 1 of Art. 49, *Constitution,* established a state commission on the judiciary-legal reform, including the representatives of legislative, executive and judicial authority. Without this type of cooperation, the solution of such problems can face a deadlock.

There is another problem typical for the transition period. That is, on one hand, a legal vacuum, on the other hand, the inherent contradictions in the legislation. E.g., in Russia, by expert evaluation, 70 percent of federal laws contain unconstitutional provisions[197]. Most New Independent States are in a similar situation. The experience of constitutional review in Armenia shows that the principal role belongs to the evaluation of law-enforcement procedures.

Let us conside a few specific examples. During its lifetime (1996 - 1998), the Constitutional Court of the Republic of Armenia examined over 150 cases including those on determining the constitutionality of laws, international treaties, disputes on electing the President of the Republic. The subjects of appeal to the Constitutional Court were the President of the Republic, one third of the Representatives in the National Assembly, candidates to the President of the Republic.

The cases taken up for examination by the Constitutional Court, mainly concerned the international treaties of the Republic of Armenia. The latter as noted, are the objects of mandatory preventive constitutional review. Three treaties *(Agreement between RA and the Federal Republic of Germany on encouragement and mutual protection of investments, Agreement between the government of Armenia and the government of the Arab Republic of Egypt for the encouragement and protection of capital investment, Agreement between RA and Georgia on extradition of alleged criminals)* have been recognized as unconstitutiolnal.

The Court ruled that in the first and second occasions the provisions of the agreements concerning the alienation of property, do not correspond to Article 28 of the *RA Constitution*, viz.: the provisions of item 2, Article 4 of the *Agreement between the Republic of Armenia and the Federal Republic of Germany on encouragement and mutual protection of capital investments*, providing the confiscation, nationalization or other actions that can be equivalent in effect to confiscation or nationalization of capital investment, are in contradiction to the condition of property alienation envisaged by Article 28 of *RA Constitution*, which states in particular: " The owner may be deprived of private property only by a court in cases prescribed by law. Private property may be alienated for the needs of society and the state only under exceptional circumstances, with due process of law, and with prior equivalent compensation", while according to the *Agreement*, the assessment and payment of compensation could be started not later than the moment of occurrence of confiscation, nationalization or other measures equivalent to the effect of confiscation or nationalization, that could not fully ensure a preliminary compensation.

In the actual constitutional review there are also many examples of examining cases on confiscation of property of specific subjects of law. *E.g.*, in 4 cases the courts decided the issue on whether the confiscation of property was constitutional, in particular whether it was in conformity with the constitutional provisions on inviolability of property. In all the 4 cases the courts (Lithuania, 13. 12. 1993, 08. 04. 1997; the USA, 04. 03. 1996; Croatia, 30. 11. 1994) confirmed that the property confiscation imposed as an additional penalty, and directly associated with the committed criminal crime or administrative infraction, does not violate the constitutional property right which has its limitations.

Of certain interest is the mentioned decision of the US Supreme Court recognizing as rightful the confiscation of a vehicle that had been a joint property of the spouses and in which vehicle one of the spouses had perpetrated a crime, with no compensation to be made to the other spouse of this spouse's share of the automobile cost.

In both cases the Courts declined the examination of constitutionality of legal regulatory acts requiring the confiscation of property. The decision of the Constitutional Court of Czech Republic (08. 03. 1995) which recognized the ruling of 1945 on confiscation of property from the aggressor was recognized "at the moment of its publication not only lawful, but legitimate act". However, 40 years later, "it does not produce any more legal relationships", thereby making an examination of its constitutionality "devoid of any legal consequences". The Constitutional Court of Portugal (08. 10. 1996) did not examine essentially the issue of constitutionality of confiscating the firearms from persons having license for its use, since "there exists no constitutional right to bear arms".

In five cases the Courts (The European Court of Human Rights , 22. 02. 1994, 20.09.1994, 26.04.1995, 05.05.1995; the European Court of Justice, 27. 02. 1997), examining the specific cases related to confiscation of property, in criminal-legal or civil-legal way, have confirmed this measure to be in conformity with the Community law. Of certain interest here is the decision of the European Court of Human Rights (22. 02. 1994) on the Italian courts making use of property confiscation as preventive measure.

Pursuant to the decision of the European Court of Human Rights (09. 02. 1995), the retroactive action of the law demanding property compensation as an added criminal penalty, violates the principle that one cannot appoint a harsher penalty than the one that had to be applied at the moment of perpetrating the offence (Article 7.1 of the *European Convention on Human Rights and Fundamental Freedoms).*

In some cases the situation was dealing with the possibility of judicial complaint of the decisions on confiscation of property. E. g., in accordance with the decision of the Constitutional Court of Austria (02. 03. 1995), the property right includes the right to complaint and to reverse the decision on confiscation when the confiscated property failed to be subsequently used for public purposes provided by law. The US Supreme Court has reviewed a case when a defendant, entering a guilty plea with the prosecutor, in keeping with the American judicial tradition, pleaded guilty in committing a crime and agreed to his property being confiscated. The Supreme Court decided that in this case he declined the procedural right for a jury trial afforded to him by the federal criminal code, and the jury trial could decide, which part of his property was associated with his criminal activity and is subject to confiscation. The Constitutional Court of the Czech Repubiic (22. 06. 1995) confirmed the possibility for persons whose property had been confiscated by the decree of 1945, to file suits to courts on recovering their realty[198].

The cited examples show that not only the issues associated with alienation, but also with the property confiscation, often become subject of constitutional review, thus strengthening the guarantees of property rights has great significance in substantiation of the mechanisms of market economy.

Let us consider one more example on Armenia. While examining the constitutionality of the *Agreement between the Govemment of the Republic of Armenia and the Government of the Arab Republic of Egypt on encouragement and protection of capital investments, the* Constitutional Court established that not only elimination of investors' property was not excluded on the part of the authorities, but also a possibility was admitted of not providing a compensation for the damages inflicted as a result (item 6, point 2, Article 4). Moreover, Article 5 of the same *Agreement* envisaged confiscation, nationalization or effecting other measures equivalent to the nationalization of investments in favor of the society, with regard to the inherent needs of one Party, with a stipulation of a rapid and equivalent compensation further on. The *Agreement* actually considered a possible expropriation in exceptional cases, no provision was made of a preliminary equivalent compensation, and the Parties only entered into commitments to implement further compensation with no meaningless delays.

In the case of the third agreement recognized as unconstitutional *(Agreement between the Republic of Armenia and Georgia on extradition of alleged criminals),* the Court ruled that:

- Item 1, Article 3 of the *Agreement* provides a denial of extradition in the case only if the person under extradition had been convicted by a special court of the appealing Party or is suable by such a court. That is for the case when Articie 92 of *RA Constitution* and Article 83 of *Georgia's Constitution* prohibit the establishment of special courts;

- *The Agreement,* according to its title, concerns the persons having committed crimes, however it will also comprise the relations concerned with extraditing the persons suspected in perpetrating the crimes (Articles 1, 2, 8, 9), which in the law enforcement practice can produce collisions or a violation of Article 41 of *RA Constitution,* stating the presumption of innocence;

- A significant divergence was discovered between the Armenian and Russian texts of the *Agreement,* particularly with regard to the established terms (Article 9).

Especially to be noted are the cases examined by the Court in connection with the constitutionality of regulatory acts with regard to established law enforcement practice. It should be mentioned that those cases had been very visible. One was on constitutionality of Article 17 of *RA Election to the Bodies of Local Self-Govemment Act,* the other was on provisions of Article 22 of RA *Real Estate Act.*

Regarded as basis for examining the first case was an appeal by 65 members of the RA National Assembly.

Pursuant to Articles 39, 40 and 57 of the *RA Constitutional Court Act,* a decision of the Constitutional Court recognized the RA National Assembly as a party to this case, the National Assembly being the body that had adopted the act being disputed in Court.

The appellant party found that the ordinary court decision on summarizing the second round of local self-government elections in Achapniak Region of Yerevan city'on 24 10. 1996 was appealed to the RA Supreme Court, as prescribed by Article 17 of *RA Elections to Bodies of Local Self-Govemment Act* which Supreme Court, within a specified period, in a collegial procedure, carried out the final decision that could not be protested by Prosecutor General to the Supreme Court Presidium, that had, in turn, cancelled the ruling.

The appellant party stated that the controversial enactment practice with regard to similar cases questioned the constitutionality of Article 17 of the relevant Act. Recognizing the relevance of the mentioned Article to the *RA Constitution,* the appellant party found that the Act has excluded the possibility of protesting the collegial decision of the Supreme Court.

The respondent party was also of the opinion that Article 17 of the *Act* in question conforms with the *RA Constitution,* noting at the same time that the fact of the finality of the collegial decision by the Supreme Court pursuant to Article 17 of the above *Act* is exclusively related to the appeal, while the constitutional competence of the prosecutor's office is to effect the supervision by protesting validated verdicts and decisions, having nothing to do with Article 17 of the Act mentioned.

The enactment practice of Article 17, *RA Election to the Bodies of Local self-government Act* has shown that the RA Supreme Court in a collegial setup (3 members) within 16. 12. 1996 to 12. 05. 1997 accepted for examination 41 complaints relevant to the courts' decisions on election to the bodies of local self-government. At each session when proclaiming the case-related decision, the Chair made announcements on the finality of the decision by the Supreme Court Board and on its being not subject to protesting or appeal.

Among 41 similar decisions adopted by the judicial board of RA Supreme Court, the Prosecutor General protested only the above-mentioned decision within a supervisory procedure, meanwhile between 16.12.1996 to 12.05.1997 the RA Prosecutor's Office received 11 complaints on similar cases, which had been examined by courts, of which 2 received answers that, according to Article 17 of the *RA Election to the Bodies of Local self-government Act,* the collegial solution by the Supreme Court is final and is not subject to protesting through supervisory procedure.

The Constitutional Court remarked that while making use of Article 17 of *RA Election to the Bodies of the Local self-government Act* a controversial and multifarious approach was shown to the regulations of this Article with regard to the constitutional provisions registered in Articles 5, 39, 103, 110, items 7, 12, 13 of Article 116, as well as to the statements of chapters 23, 34, 35, 36 of the *Civil-Procedural Code.*

No coherent approach was shown to the issue that the electoral legislation regulates the state and legal relationships targeted at establishing, within the present time-frame, of the electoral institutes of power in the Republic pursuant to the observance of Articles 2, 3, 27, 50, 51, 68, 105 and 110 of the *RA Constitution.*

The RA-Constitution-based RA laws on the Presidential election, the elections to the National Assembly and to the bodies of local self-government have a uniform logical basis (in the former two cases, the decisions of the Constitutional Court, while in the latter case the decision of the Supreme Court adopted by collegial procedure), and are final with regard to the disputes emerging while summing up the electoral results.

The resulting decision by the Constitutional Court was that Article 17 of the *RA Election to the Bodies of Local self-government Act* is in conformity with the *Constitution.*

In case of the *Real Estate Act*, the case was taken to Court on the appeal by the President of the Republic. The issue thereof was the constitutionality of the provisions in Article 22 of the *Act.* The disputable provisions were:

1. The amount of equivalent compensation for the realty to be alienated for the needs of the society and the state is determined by the decision of the Government, based upon the negotiations between the RA Government and the realty owner, as well as upon the written accord of the latter;

2. In case of dissatisfaction of the owner with the amount of compensation proposed by the Government of the Republic of Armenia against the property to be alienated, the Government of the Republic of Armenia can effect the alienation of the property only within a judicial procedure;

3. Before entering into legal force of the judicial decision, the owner of the realty subject to alienation for the needs of society and the state, shall forego inflicting damage to the realty;

4. The procedure of the alienation of realty for the needs of society and the state shall be established by the Government of the Republic of Armenia, based upon the provisions mentioned.

The Constitutional Court ruled that Articles 8 and 28 conform to the first provision and do not conform to the others, stating that the realty can be alienated based on part two of Article 28 of the *Constitution,* while with the consent of the owner lacking, the right of property can be terminated by the state only after passing the law on alienating a specific real estate, containing a substantiation of the exclusive importance and significance of the alienation, with an indication of the specific needs of society and state to be satisfied thereby. The Law will also oblige the Government, with the written consent of the owner, to determine the amount of compensation that can be disputed by the owner based upon the relevant financial-economic calculations, with regard to market prices, results of negotiations between the Government of the Republic of Armenia and the owner of the Realty subject to alienation.

Evaluating the law-enforcement practice and the governmental approaches, the Court ruling stated that the Government cannot establish a procedure of alienating the realty that will empower it to accomplish this type of alienation.

Quite interesting were the results of examining cases associated with international treaties on granting loans (the *Agreement between the Republic of Armenia and the International Fund of Agricultural Development (the North-West Agricultural Services Project), the Agreement between the Republic of Armenia and the International Development Agency (Health Financing and Primary Health Care Development Project)).* The Constitutional Court, although having determined

their conformity to the Constitution, noted at the same time, that in the case of the former *Agreement*, the provisions in the credit agreement can be constitutional not only in the sense that by being applied within the competence of the bodies of state authority, they create prerequisites for implementing its basic principles and objectives, but they also originate from the fundamental human and civil rights.

Pulverising and ineffectively using credit funding not only impairs their payback, but also accumulates unjustified debts for the generations to come.

In the former case, considering that the program under examination contained a high risk of pulverisation and inefficient use of funding, and with regard to the defects occurring in the law-enforcement practice of previous credit programs in agriculture, the Constitutional Court decided that to avoid an unconstitutional situation from the implementation of the relevant agreement, the National Assembly and the RA Government shall, within their constitutional competence, implement special review over the use of funding received with the purpose of realizing "The North-West Agricultural Services Project".

In the latter case, having noted in the decision the conformity to *the Constitution* of provisions specified in the agreement, the Court ruled that the ratification and realization would be expedient under the condition of functioning published targeted state programs based upon the requirements of Article 34 of the *Constitution* and the *RA Medical Help and Service to the Population Act.* In Part two of the same decision, the Court recommended that the RA Government take immediate measures for generating the necessary prerequisites for targeted usage of budgetary and credit resources in the field of health care and an integral and coherent implementation of the requirements of Article 34 of *the Constitution* and the *RA Medical Help and Service to the Population Act.*

Having examined the case on determining the constitutionality of obligations specified in the *Amending Development Credit Agreement (the Highway project)* between the Republic of Armenia and the International Development Agency July 17, 1997 in Washington, and having used Article 67 of RA *Constitutional Court Act* to analyze the established law-enforcement practice of operating the Agreement between the Republic of Armenia and the International Development Agency on the credit for developing the highways (Highway Program) signed October 2, 1995, the Constitutional Court made the following finding:

1. At the stage of implementing the credit program the following faults and failures have occurred:

- arranging tenders for program realization and summing up the results were conducted with violations of the established procedures;
- the agreements were signed by an incompetent body, with violations of relevant requirements. In fact, the conclusion of contracts, management of funds, organization and review over the operations are entrusted to one and the same organization the office on program implementation, thus the resulting conditions do not ensure the required efficiency of review;
- there was no acting system of intermediate accountability, continuous review and feedback, while the system in operation was insufficient and flawed;
- no provision was made for the sufficient openness in using the credit funding, the debtor has not conducted an independent audit;
- the competent state bodies did not take the timely and necessary step to fuifill their competence of reviewing the usage of credit funding with a required coherence and at a proper level.

2. The center of coordination of foreign aid at the RA Ministry of Economy is functioning in efficiently. Expending large amounts of credited funding for payments of wages and procuring technical means, the center did not ensure the necessary prerequisites to use the credited funding with the required efficiency neither at the stage of bidding, nor at the stage of concluding contracts, nor at the stage of procuring technical means and making payments, nor at the stage of submitting the reports. According to an inference by the RA Prosecutor's Office, February 2, 1995, the RA Minister of Economy submitted a report to the Prime Minister of RA requesting approval to open an office on program implementation. On February 17, 1995, the approval was received, however, the Ministry of Economy circumvented this approval and established a center with a completely different status, with the workers of the center being granted a salary equivalent to $930, which after September 1997 was reduced to the amount equivalent to $204. Meanwhile, according to the inference by the RA Ministry of Justice, the Regulations of this Center contain rules in conflict with the RA legislation.

3. The RA Ministry of Transport underperformed their responsibilities provided by item 18 of the *Procedure of Using the Credit Funding*, approved by the decision #577 of December 15, 1994 by the RA Government.

4. Following the ratification of the credit agreement, the RA government did not review the course of its fulfilment with sufficient detail.

The procedure for using the foreign credit funding afforded to the Government of the Republic of Armenia, approved by the RA Government decision #577 of 15. 12. 1994, states: "The purpose of the Procedure herein is to enhance the efficiency of using the foreign credit funding afforded to the RA Government and of effecting the review over tender bidding". In fact, the council established to this effect had inadequately fulfilled its responsibilities with regard to the present *Agreement* as well. Moreover, the majority of the Council members having been transferred to other jobs and because of the structural changes in the Government, the Council for over two years became unauthorized in its status, while continuing to take decisions.

5. Article 77 of the *RA Constitution* states that the National Assembly implements review over the execution of the state budget, as well as over the usage of the loans and credits obtained from foreign states and from the international organizations. The *Rules of Procedure of the RA National Assembly* provides the mechanism of this constitutional competence by Article 145 enabling the deputies, within the framework of a legislative initiative, to suggest putting on the agenda the government report on this issue.

Item "c" of Article 2 of the *RA Control Chamber of the National Assembly Act* states that the Control Chamber, early in each semester (half-year period) presents a reference to the deputies of the RA National Assembly on the execution of the State Budget for the previous six months, on the use of loans and credits, obtained from other states and international organizations. Moreover, item "d" of Article 5 of the same Act empowers the Control Chamber to audit the usage and payback of loans and credits obtained from other states and international organizations. The Control Chamber of the National Assembly has not discussed the issue of the usage of credit funding allocated in 1997 for implementing the program of highways, and, consequently the deputies were not presented the relevant references. As a matter of fact, no due and continuous review had been established over the agreement in question, as provided by Article 77 of the *RA Constitution.*

Article 54 of the *RA Constitutional Court Act* reads: "The Constitutional Court, when uncovering facts of violations in the course of examining the case, shall report them to relevant state bodies and official persons. On this bases the relevant materials have been submitted to the Government and to the Prosecutor's office of Armenia".

However, the principal conclusion is that when selecting the forms of the judicial constitutional review or when examining the procedural features, it is necessary to fully consider both the law-enforcement practice[199] and the consequences of the decision being adopted. It is our belief that the basic provisions of Article 67 of the *Republic of Armenia Constitutional Court Act*[200] can find an extensive application in the countries of emerging democracy.

One of the pivotal and perhaps most sensitive questions, as has been noted, is the issue of clarifying the objects of review and the subjects appealing to the Constitutional Court. Depending on what objects are the ones where review is exercised, the objectives set before the Constitutional Court become more clarified. The viability of the Constitutional Court, however, is clearly visible only when it becomes clear, who has the right to appeal to it.

International experience shows that the countries possessing specialized bodies of constitutional review may be provisionally classified into three groups:

1. The countries with the Constitutional Courts responsible for:

    a) taking decisions on constitutionality of laws and other regulatory acts;
    b) taking decisions on the jurisdictional disputes between the bodies of state authority and the bodies of administration;
    c) constitutional review of the protection of human rights.

2. The countries with the constitutional courts exercising only the powers provided by items "a" and "b".

3. The countries with the constitutional courts mainly exercising the functions provided in item "a".

To be referred to the first group are Austria, Germany, Spain, Portugal, Italy, Russia, Slovakia, Hungary, Slovenia, Georgia.

To be referred to the third group, with the accent upon retaining the constitutional balance of the activity of the Authorities, are Greece, Bulgary, Turkey, Kirgizstan, Lithuania, etc.

The third group, also including Armenia, involves the countries with the range of activities of the constitutional courts substantially restricted by the Constitution. Similar systems exist in France, Romania, Latvia, Moldova, Ukraine, Kazakhstan, Uzbekistan, etc.

It is also to be noted that most countries entering different groups particularly single out the issues of providing constitutionality and legality of the activities of political parties, carrying out elections and referenda, which actions have become the objects of constitutional review. In particular, to ensure the constitutionality of the activities of political parties, a number of countries empower the constitutional courts to check their accounts. Moreover, in Portugal, for example, the registration of political parties is entrusted to the Constitutional Court. In this country, the Constitutional Court also reviews the income of state officials when getting job appointments and releases, by requiring declarations of income and property, which is subject to verification.

Independent of what group the country belongs to and what the range of constitutional review is, the objects of constitutional review have to be clarified with regard to the character of the objectives confronting the country.

The orientation of Constitutional Court activity, as well as its efficiency, are primarily stipulated by the scope of the objects of review, *i.e.* by the issues of constitutionality (in many countries also legality) of the regulatory acts to be examined by the Constitutional Court.

By far not in many countries all the noted types of legal acts are regarded as the objects of constitutional review. Those are mostly the countries of the above-noted first group. The trend of development of the constitutional review is such that the number of countries belonging to this group is continually growing. However, to be discussed here is primarily the Constitution and the laws adopted by the referendum. As already noted, there are many cases when constitutional courts reverted to this problem and even adopted decisions to clarify their position. The examples of France, the Czech Republic and a number of other countries show that those countries are inclined to beware of the constitutional review of the Constitution and of the laws adopted by the referendum. We have already noted in this regard that the system of constitutional review will never become integral and efficient if it does not embrace the interpretation of the Constitution independent of the character of constitutional review of regulatory acts of any kind.

To be identified in this regard is the second group of disputable issues. It is related to the decisions of central and regional bodies of executive power and bodies of local self-government. The experience of Armenia shows that, except the government decisions, the legal acts of this type are not objects of constitutional review. This situation is typical mainly for the countries making part of the third group. On one hand, this is explained by the fact that the Constitutional Court is not confronted with the task of resolving jurisdictional disputes, besides, the Court has no right to consider the individual complaints on constitutionality and legality of the acts on human right protection. On the other hand, within the total judicial system, an attempt is undertaken to concentrate these issues in the courts of general jurisdiction, with the focus of the constitutional courts being trained upon the objective of ensuring the constitutionality of laws and international treaties.

This type of decision will however require a distinct determination of functional relations of the Constitutional Court with the total judicial system (the best example will again be provided by Austria, Germany, Spain, Italy), lest there should emerge, on one hand, the stalemate situations, on the other hand, the issue resolution would not remain suspended, and should be transferred to the sphere of administrative red tape. This issue has unfortunately found no proper solution in Armenia, so the whole sphere is to be reviewed.

A frequently expressed opinion is that the constitutional review is done by a centralized or decentralized judicial system, while all other bodies directly associated with this issue are posing as subjects appealing to the Court (if it is provided by the Constitution or a Law). This seems a wrong approach causing confusion. The concepts of "subject of constitutional review" and "subject having the right to appeal to the Constitutional Court" are substantially different.

The study of many countries' constitutions shows, that different bodies have competence to exercise constitutional review directly, to some degree.

Naturally, the constitutional review is realized by different methods and in a manner established by law for any subject. Although different countries are characterized by different features, generally, the subjects of constitutional review are:

- the people (when adopting a Constitution by referendum or making amendments thereto);
- the President of the country (in most countries the text of the Presidential oath states the responsibility to protect the Constitution, while Art. 49, part 1 of the *Constitution of the Republic of Armenia* determines that the President of RA will watch the observance of the *Constitution*, ensure the normal activity of the legislative, executive and judicial authority. This type of competence undoubtedly requires a well-defined mechanism);
- the Parliament;
- specialized bodies of constitutional review;

- the judicial system of general jurisdiction;
- the law-protecting agencies;
- any state agency or a public organization ensuring the adoption of its decisions and the actions in accordance with the Constitution. Here in particular the governments are identified in whose regard the Constitution provides special responsibilities (*e.g.*, Art. 89 item 7 of the *Constitution of the Republic of Armenia* states that the government is under an obligation to take measures to consolidate legality, to ensure the human rights and freedoms).

In a number of countries the Constitution provides an institute of the ombudsman which is also a subject of constitutional review.

One of the types of review is that in a number of countries the Constitution provides a right to natural persons and legal entities to disobey the non-constitutional laws (Ghana, Benin, Slovakia, Germany).

As already noted, the system of constitutional review cannot be considered complete if it fails to embrace the entire field of retention and development of the system of values historically shaped as the fruit of social life of a particular nation and country. Therefore, each cell of the society is also posing as the subject of constitutional review.

One of the basic issues of constitutional review is as follows: who are the subjects appealing to the Constitutional Court, and in what way do they exercise their competence, particularly within the scope of abstract review? As a rule, their number includes the head of state, the parliament, and part of its membership, the government, courts of general jurisdiction, citizens. The scope of subjects possessing the right to appeal to the Constitutional Court, is established either by the Constitution (Germany, Armenia, Poland, Russia, etc.), or by the *Constitutional Court Act* (Moldova, Latvia, Uzbekistan, etc.), or by the *Constitutional Judicial Proceedings Act* (Estonia, Kirgizstan).

It is to be noted that in a number of countries the scope of subjects appealing to the Constitutional Court, is vast. *E.g.*, in Portugal these also include the ministers, parliamentary fractions, the prosecutor, judges, bodies of territorial self-government, citizens.

In Russia: the President, the Government, the State Duma, the Council of the Federation, 1/5 of the deputies, the Supreme Arbitration Court, the Supreme Court, any judge, legislative and executive bodies of the subject states, as well as the citizens (if their rights were trampled by the Law).

In Syria this type of subject is only the President of the country and 1/4 of the Parliament, in Sri-Lanka the President alone.

In France, prior to 1974, the right to appeal belonged to the President, the Government, and the Chairs of the parliamentary chambers (within this time, the Constitutional Council heard annually 1 case on the average on the issue of constitutionality). Starting from 1974, the appealing subjects included 60 deputies and 60 senators (heard in 1974 - 1991 were 220 cases incited by the latters' initiative).

In Germany, the scope of subjects appealing to the Constitutional Court expanded in 1969.

In some countries, the appealing subjects can be the constitutional courts themselves, *i.e.*, the Constitutional Court can examine a case by its own initiative. In certain countries the law provides for clarifying the limits of the initiative (Albania, Austria, Benin, Gabon, Uzbekistan). *E.g.*, if the Constitutional Court of Austria examines a case for the constitutionality of some provision of the

law, it can also look at other provisions of the law, independent of whether or not it is mentioned in the appeal. Generally, a case examination on the court's proper initiative, as a right afforded to the constitutional courts, is regarded as inexpedient, to us, the approach seems right that the Court is becoming exposed to the risk to be drawn into political games (like, for example, the experience of Russia, where the Court in 1991-1993 possessed this right that was nullified by the *Constitution* in 1993).

Efficiency of constitutional review is also necessarily stipulated by the right of direct appeal by the courts of general jurisdiction to the body exercising constitutional review, as well as the right of the Constitutional Court to review a court decision on the basis of an individual complaint with a claim against an unconstitutional legal regulation.

The most actual objective today in the issue of constitutionality of regulatory acts is the recognition of natural persons as subjects. This is a dual objective. Firstly, there has been a substantial expansion of the scope of subjects of constitutional review, so that the review is becoming more operational, secondly, an improvement is done to the inner-state system of human rights protection.

Independent of the character of system (European, American or another option), it is essential that the natural person had an opportunity to raise the issue of constitutionality of regulatory acts and to obtain a decision within a judicial procedure (*e.g.*, in Slovenia, about 80 percent of regulatory acts are admitted for examination on the basis of individual complaints)[201]. The pendency of this issue nurses a danger by becoming an active insinuative of political tension.

An attempt to conceive a picture of the Constitutional Court in the 21st century will make us believe its mission to be to ensure the vitality of the immune system of the social organism. The human society is a unique natural phenomenon not only ensuring the preservation of its own species and its reproduction with improved characteristics, besides, it can only exist in a community, in a system. Man, as a species, with his inherent qualities and the system of values is a reproducible species only within the system called the social environment.

It is general knowledge that our planet has existed for over 4.5 billion years, harboring the biological life for over two billion years, while intelligent Life came into existence only a few thousand years ago. Mankind has reached the current level of public consciousness having passed a long way.

Research by English anthropologists Lick et al. shows that the prehistoric man lived 11 750 000 years ago. The prehistoric human community, very much reminding of a herd of 30-40 individuals, existed 100 000 years ago. It is only since the 8th millenium B.C. the first cords of the symphony of intelligence started to be heard.

The initial sprouts of human society are related to the 5th - 4th millennia B. C. The ancient Sumerian, Egyptian and Babylonian sources show that in the 3rd millenium B. C. human society had already had certain achievements like the elements of state and institutes of religious worship.

For more than one half of this short period of intelligent existence, mankind lived in hordes and other organizational forms characteristic to the animal world. In the course of millennia the formation was going on of the emerging systems of state structures, and, as figuratively stated by Plato, the state was born out of human needs, when man needed something else that he could not do alone.

A further development of civilization resulted in the formation of organizational institutes of being with the public constitutional consensus, having a 200-year-old history only, starting its count only

since the moment when America, adopting her *Constitution*, laid down therein the principles of forming the civil society of a new type.

The 20th century withnessed, too, the continuation of the quest for perfecting the systemic form of public being, regrettably accompanied by unsuccessful experiments in this field, carrying away 130 m. human lives, without producing any acceptable result. We agree with Professor G. V. Atamanchuk that the state administration, understandably, as a system, as a public phenomenon, rather than as designs and behavior of individual persons, even the most outstanding or moral, has not fulfilled its public mission. It was unable to preserve us, and mainly, our forerunners from slaughterous and inefficient revolutions, from brutal destructive wars, from dictators and windbags, from international conflicts, from terrorism and crime, from wasteful expenditure of huge natural, material and human resources"[202].

While today the primary goal of medicine is to overcome the immunodeficiency of the human body, the normal operation of the society is becoming increasingly dependent upon overcoming the immunodeficiency of the public organism, injecting it with dynamism and harmonic development, preventing irrational reproduction in public relations.

In this regard the 20th century has simultaneously become a qualitatively new period of the methods of searching for the harmonic coexistence of the human society. In view of the lessons of history, the humanity is confronted with the following vital priorities: to counter the revolutionary, to ensure the dynamism and sustainable development, the consequential wielding of administration following the principle of separation of powers, ensuring a balanced state of the functional structure of societal administration with regard to the novel capabilities of information science, development and introduction of a valid system of deterrents and counterbalances, ensuring their reviewed application, injecting new qualities to the immune system of society, recognizing it and affecting its operation to encourage its vitality. Those objectives were in the center of public attention following W.W.I, however their resolution was destined to the 21st century. The responsibility of the scientific thought of the turn of the century is to generalize the lessons of history and to prepare the soil for the resolution of those fundamental issues of great concern for the whole of mankind.

The scientific thought in the fields of microbiology and medicine has in the last few years produced a number of serious generalizations that are also exclusively significant for the subject of our study:

1. The immune system operation is directly associated with the brain and has a hierarchical character;

2. Each body cell has certain resources of self-defense, their termination triggering the protective system of the whole body;

3. The chief mission of the immune system is to retain the natural balance and stability within the entire body, since the non-rehabilitation of disrupted balance becomes the cause of irrational reproduction;

4. The immune and nervous systems are in a state of harmony, exactly like the immune system and the physiological balance of the body;

5. The immune system, as the control system, operates in its inherent order and is relatively independent. In a disrupted harmony, activation occurs of a relevant subsystem, and of the hormones responsible for the rehabilitation of the disrupted functional balance, which hormones can be activated in different degrees depending on the type of disruption;

6. Any pathological situation activates and triggers the entire system;

7. The number of immune-hormones always existing in a certain quantity, in case of a protective reaction increases up to the number needed for the full-blown execution of the protective function. However, if the protective ability is insufficient for the rehabilitation of the functional equilibrium, the emerging pathological situation demands interference.

Evolution of biological species shows that the protective system varies at different stages of development. Starting with the vertebrates, a qualitatively new system has been formed that reached perfection with the intelligent beings (humans). Relevant to this system is distinct differentiation and rationality of protection, a precise order of purposeful pre-programmed actions for preserving the integrity and harmony of the cellular system of the body.

The structural elements of the said system are:

- uncovering the disbalance;

- determining the type of violation (what is recognized, how and with what intensity must the protection system work?);

- exclusion of a new violation after the rehabilitated balance.

All that has been said shows that a perfect dynamic and harmonic functional system has been shaped and is operational in the most perfect creation of nature, the human organism characterized by the usage of an adequate control (immune) system.

To draw analogy between the human body and society (as a social body), an involuntary question will arise: in what way can a possible social analogue of the immune system ensure the dynamism and stability of the social development?

Independent of what the response is going to be, for us it is unambiguous that the primary link of the social organism, the man, is also bound to be the primary link of the immune system of the society. Therefore, the fixation of this reality with regard to the constitutional review of the 21st century is becoming a methodological basis for determining the scope of subjects of constitutional review.

Among the subjects appealing to the Constitutional Court, the bodies of local self-government, too, will have to find their places (as in certain countries), and the church (religious organizations). To those issues there are also different approaches. That is particularly so with the religious organizations that are separated from the state, but have to be able to defend his (and his companions') constitutional rights.

It is to be added that in all, the efficient operation of the institutes of constitutional review, their targeted action is largely contingent upon the thoughtful and weighted selection of the scope of the appealing subjects. The best model is perhaps the one where all subjects of constitutional review (and supervision), as well as the citizens (with regard to protection of their constitutional rights) are the subjects appealing to the Constitutional Court.

Both with regard to the implementation of constitutional powers and when shaping the objects and subjects of constitutional review, as has been noted, certain features of constitutional review in the protection of human rights are of great importance.

Protection of human rights is one of the most important international-legal and constitutional responsibilities of the state. The objective of the state is to establish a reliable system of socio-economic, political and legal guarantees for the protection of constitutional human rights that has to integrate into a single unity the principles, laws, structure, mechanisms. Posing as the subjects of the resolution of the problem are all institutes of state authority. Particularly important is the role of the head of state, the parliament, the courts, the government. As shown by the international experience, increasingly important is becoming the role of specialized bodies of constitutional review within the cause of efficient implementation of human rights protection. The following issues are to be elucidated:

a) how much does the body of constitutional review ensure the systemic integral solution of this problem;

b) what form of constitutional review and what system of appealing subjects are selected for protecting the human rights;

c) what, in the particular case, is the correlation between the citizen, the ordinary courts, the institute of ombudsman and the Constitutional Court?

The first question is directly associated with the problem of establishing an operational and integral system of guaranteeing the constitutional human and civil rights within the state. It is primarily related to the legislative and institutional guarantees.

The issue of human rights protection is not at all limited by the constitutional registration of this right. Are the necessary legal guarantees created for that? How integral and full is the legal field, have its internal contradictions been overcome, are there sufficient guarantees for law enforcement, are created and ready the relevant governmental and non-governmental institutes to resolve those problems? The answers to those questions have to be related to the sequence of priorities of the state politics. None the less important is the problem of the form of constitutional review in human rights protection. In international experience several basic approaches can be identified. They can provisionally be classified into two groups: direct review and indirect review. A typical example of the first group is countries where citizens are regarded as subjects appealing to the Constitutional Court without any preconditions.

The other group, in turn, can be divided into two subgroups: one - where the issues of protecting human and civil constitutional rights, within the framework of specific review indirectly become the subject of examination by the Constitutional Court. Two - where this issue becomes the subject of examination by the abstract, elective review (the example can be the decisions by the Constitutional Court of the Republic of Armenia with regard to examining the international treaties with Germany, Egypt, Georgia, where individual provisions were recognized as non-conforming to the *Constitution of the Republic of Armenia* with regard to the violations of the human constitutional rights).

The best example of the first subgroup is Italy. Here a citizen has initially to submit a complaint to an ordinary court. If both parties or one of them think that the complaint concerns the constitutionality of a regulatory act, the judge, if he finds (or assumes) it to be the case, he suspends the procedure temporarily to apply to the Constitutional Court.

A system very much resembling this is operational in Spain. Meanwhile, while in Italy and Spain these functions belong to all courts, in Austria, for example, they belong to the courts of the second instance and to the Supreme entity of judicial authority. In this case we deal with a partially specific and partially abstract, or mixed system.

In fact, the constitutional review in human rights can be done either as abstract review, or in the process of examining specific cases, as well as based on individual complaints.

The experience of the last four decades shows that the constitutional review based upon individual complaints is usually introduced some time after the establishment of the Constitutional Court. *E.g.*, in Austria, the procedure of civil rights protection by the Constitutional Court based on individual complaints was introduced after 1975 only. Later it was introduced in Germany, Spain, Portugal. However, this situation cannot be regarded as absolute. The important thing is that the issue of human rights has today become one of the pivotal issues of constitutional review, and it can be successfully implemented primarily based on individual complaints. Therefore, we think that the New Independent States who created this opportunity without delay or loss of time, have acted in their own right.

The experience of the mentioned countries also shows that for an efficient implementation of this function, a distinct legislative regulation is necessary. Commonly effective is the so-called filtration mechanism ensuring, on one hand accessibility of the Constitutional Court for a person, on the other hand the appeals on the issues that really comprise the problem of the Regulatory acts and their conformity to the Constitution[203]. To be used for this purpose are: the capability of the ordinary courts (to get the right to appeal to the Constitutional Court when all other possibilities are exhausted), the procedure of paying the state duty to appeal to Court (*e.g.*, in Germany since 1985 it amounts to 1000 DM, and in case of misusing this right it is 5000 DM), determining the boundaries of regulatory acts (*e.g.* in Russia appeals can be made only on constitutionality of a law), the institute of ombudsman (when the latter becomes a subject to appeal to the Constitutional Court), etc.

Another important issue is what kind of document should the decision of the Constitutional Court be in the particular case - a document of general (of a regulatory character) or of related nature application (with regard to the parties of a specific case). In this issue we also see different approaches. While in Spain and Italy it has a relative character, in Germany it is universal, and it is required that the Court of general jurisdiction appeal to the Constitutional Court only being ensured in a non-conformity of the regulatory act to the Constitution or its individual provision.

However, this situation in the issue of constitutional review of the protection of human rights is not a deterrent, since in Germany a citizen can also appeal to the Constitutional Court directly.

Generally in this regard the entities of constitutional review can be divided into 3 groups:

1. When any person can appeal to the Constitutional Court on the issue of constitutionality of a regulatory act (*e.g.*, Austria, Germany, Russia, Hungary, Slovenia, Georgia).

2. When the appeal can be done indirectly, *i.e.* through ordinary courts and through the institute of ombudsman (Italy, Portugal and all the countries where the constitutional review is done by the courts of general jurisdiction).

3. When the citizens are deprived of the right to appeal to the Constitutional Court (France, Latvia, Romania, Armenia, Ukraine, Moldova).

In the field of human rights protection, the constitutional review has a dual function. On one hand, it is the protection of the constitutionally registered personal human and civil rights, on the other hand, it is the review over the bodies of state authority in the exercise of their duties with regard to this issue, with a manifestation of the relevant attitude.

The underestimation of this situation and lack of powers in this field on the part of the Constitutional Court unambiguously suggests an unsolvable problem, the state lacking an integral and operational system of human rights protection.

The practice of constitutional review has always advanced disputable questions: within what constitutional regulations it is preferable to effect the individual complaint, and is there a need for some mechanisms of filters or limitations? The resulting conclusion is that the most substantiated limitation is the division of constitutionally stated fundamental human and civil rights and freedoms. This type of approach enables us to make constitutional review substantial and efficient, and to inject clarity the functional relationship between the judicial bodies and other institutes of authority.

Another important question: what regulatory acts are covered by the review. Here there are substantial differences as well. For example, in Austria, Germany, Slovenia and a number of other countries there are practically no limitations, so that any regulatory act can become object of constitutional review. However, in Italy, Spain, and Russia, it extends only to the laws and regulatory acts having the force of a law. As to, *e.g.*, Austria, Croatia and a number of other countries, the review extends also to the mandates adopted by the executive authority. We think that for the countries in the transitory stage of development, when no distinct operational system of guarantees have yet been formed of the human rights protection, a legislative field has multiple inherent controversies and disagreements, therefore, it is preferable not to delimit the scope of regulatory acts subject to constitutional review.

In different countries, apart from various features of constitutional review of human rights protection, there is a truth of general recognition, i.e. the main prerequisite for preventing the trampling of human rights and freedoms, the exclusion of this potential within the legislature itself is possible through a maximum expansion of the scope of subjects entitled to appeal to the Constitutional Court on this issue.

There is also another contingency, *i.e.* the role of constitutional review in the issue of confirming the constitutional principle of human dignity. This issue is currently becoming particularly important, with international seminars held on this issue (in particular, the seminar held by the Venice Commission 2-6 July, 1998 in Montpellier). The constitutions of over 65 countries contain a distinct approach to the principle of human dignity. This is the subject of one or more Articles of the Constitution, underscoring the inviolability of dignity as the inalienable right, the responsibility of the state to respect and to protect it, as well as its associations with the specific rights and duties.

Let us cite a few examples:

The *Constitution of Germany*, Article 1: "(1) The dignity of man is inviolable. To respect and protect it is the duty of all state authority".

The *Constitution of the Russian Federation*, Article 21: "1. The dignity of the person shall be protected by the state. No circumstance may be used as a pretext for belittling it ".

The *Constitution of Portugal*, Article 1: "Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people.".

The *Constitution of Poland*, Article 30: "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities".

The *Constitution of Croatia,* Article 35: "Privacy, Dignity, Reputation, Honor. All citizens are guaranteed respect for and legal protection of personal and family life, dignity, reputation, and honor".

The *Constitution of Slovenia*, Article 34:

"The Right to Personal Dignity and Personal Safety
The dignity and security of the individual shall be guaranteed. "

The *Constitution of Azerbaijan*, Article 35: "Protection of honor and dignity. Everyone has the right to protection of honor and dignity. The personal dignity is protected by the state. No circumstance can be the basis for a humiliation of personal dignity".

The *Constitution of Georgia*, Article 17: "1. A person's conscience and dignity are inviolable".

The *Constitution of Bulgary*, Preamble and Article 4. Art. 4: "(1) The Republic of Bulgary is a law-governed state. It is governed by the Constitution and the laws of the country.

(2) The Republic of Bulgary shall guarantee the life, dignity, and rights of the individual and shall create conditions conducive to the free development of the individual and the civil society".

The *Constitution of Ukraine,* Article 3: "An individual, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value.

Human rights and freedoms and their guarantees determine the essence and the direction of the activity of the State. The State is responsible to the person for its activity. The establishment and maintaining of human rights and freedoms is the main duty of the State".

The *French Constitution* provides no clear formulation of this issue, which with regard to the principles of the European constitutionalism can be considered a substantial vacancy. This vacancy is considered as filled by the decision of the Constitutional Council.

In the New Independent States human dignity became a component of the constitutional right starting from 1990s. The Communist legal system had registered this principle in the criminal and civil law, rather than in the constitutional law. It was this inertia that had penetrated into the *Constitution of Armenia* (see Art. 19: "A human being cannot be subjected to torture, cruel of denigrating treatment or punishment".

Professor Petrukowska, Member of the Constitutional Tribunal of Poland, noted: "In the years of the real socialism the principle of human dignity had been the subject of civil law rather than constitutional law. The concept of respect for human dignity became a component of the doctrine of constitutional law after 1985. In Poland the approach was changed after the fall of Communism and the establishment of the parliamentary democracy: the issue of human rights and personal dignity became the object of constitutional law".

The sources of this constitutional principle are to be sought in the Christian outlook (*The Old Testament, The Book of Genesis, Part 1*): Man has been created in the image of God and is worthy of respect. In the introductory part of Leviticus it is said: The God of holiness, the God of love and life wants to make His people part of His holiness, so that they in turn become the carriers of life, love and holiness. It is with this purpose that He prompts and teaches the rules of the true, humane and dignified life. What are the deep generalizations within the philosophical dimension of life that

are contained in the biblical rules and testaments. The state has to exist for man, rather than man for the state.

The principle of human dignity and human rights is the circle that lends integrity to the implementation of this statement. Dignity is posing as the general basis of the rights. It is manifested through different specific rights.

Inalienability, inviolability of dignity, the responsibility of the authorities to respect and protect it are the direct objects of the constitutional review.

Can a human being voluntarily reject the implementation of this principle to the measure only, to which the society will accept this rejection?

The minimal inventory of constitutional rights (with regard to the decision of the European Virtual Constitutional Court provisionally formed by the participants of the Montpeller seminar), sufficient for the excercise of human dignity, includes:
- the right to life,
- the right to freedom, security and personal inviolability,
- the right to individual dignity,
- the right of consent to medical treatment,
- the right of free movement,
- the right to the secrecy of computer information,
- the presumption of innocence,
- the right for legal protection,
- the right for respect and protection of privacy.

The role of the constitutional review in human rights protection is ever increasing with regard to the international cooperation. The international structures are going to play a significant role in the democratization of not only the intrastate but also the interstate relations. Particularly significant is currently the role of the European Court of Human Rights. However, prior to appealing to this Court, the individual has to exhaust all the intrastate resources of the protection of his rights. Particularly important among them is the contingency of appealing to the Constitutional Court with the individual complaint. Therefore, with regard to lending more integrity and efficiency to the system of intrastate relations, it is necessary that the individual possess the right to appeal to the Constitutional Court. The country recognizing the principle of the supremacy of law, the country accepting the recognition and respect of human rights as the highest value, cannot manifest an alternative methodological approach to the issue of establishing the system for protecting those rights, which is the case in the countries where the individual is dismissed from the system of constitutional review.

Chapter VI. Features of Judicial Constitutional Process and the Types of Decisions by the Constitutional Court

The Particularities of Current Constitutional Proceedings

Dissenting/Concurring Opinion

There is an essential difference between decisions issued by constitutional courts in Europe and those of the Anglo-American type. The former are issued "impersonally" by the Court as a whole, whereas in the latter, individual judges make their personal contributions. In the first case the decision itself does not show whether it was adopted unanimously or by a majority of votes;

moreover, it is absolutely not clear in any decision the way an individual judge actually voted. In the second case, however, it is not only evident when a majority or unanimous decision was adopted and how individual judges voted, and the judges who do not agree with the majority add their interpretation of the decision in either:

- a **concurring opinion**, when a judge agrees with the ruling but differs as to its reasoning, or
- a **dissenting opinion**, when a judge objects to the ruling itself.

At first the dissenting/concurring opinion was recognised only in the USA as well as in other Common Law based or American tradition based countries of the British Commonwealth, Central and South America, Scandinavia and Japan. After many theoretical and political objections the dissenting/concurring opinion became gradually accepted in the countries with Continental (European) legal systems. Although individual European systems of constitutional/judicial review departed from the decision-making mode characteristic of the Austrian model, they remained half-way to an American type of decision that introduced the dissenting/concurring opinion into Constitutional Court decisions.

As far as publication is concerned, a distinction may be made between two types of dissenting/concurring opinions:
- open, published together with the respective decision;
- anonymous, only added in writing to the internal part of the case.

Some constitutional judicial review systems do not accept dissenting/concurring opinions but keep the voting results secret, without publishing either the voting results or the names of judges[204]. The dissenting/concurring opinion is known above all in Croatia[205], Germany[206], Greece[207], Hungary[208], Portugal[209], Slovenia[210], Chile[211] and Spain[212]. In Portugal, however, the publication of votes including names is a matter of judicial tradition because the decisions issued by the Constitutional Court strictly include names also. On the other hand, much attention was aroused by the frequent occurrence of the dissenting/concurring opinion in Spain, where this practice appeared in both forms (dissenting opinion, concurring opinion). The dissenting/concurring opinion is, however, not recognised by the Court of Justice of the European Community in Luxembourg, but was recognised by the European Commission[213] and is recognised by the European Court of Human Rights in Strasbourg[214].

Temporary Orders

Pursuant to the regulation in force, a temporary order may refer to both a general and an individual act. It could be applied in the proceedings of an abstract review, a constitutional complaint as well as impeachment. The Constitutional Court considers this type of decision-making to be its own discretionary right. The disputed provision formally still remains in force, but it is prohibited to use it. Accordingly, the temporary order (because of the temporary situation as well as due to legal security) cannot be legally implemented by itself, unless the Constitutional Court itself specifies the respective implementation mode.

The Constitutional Court can adopt a temporary order either with a special ruling (if the proceedings is initiated on the request of a privileged applicant) or with a ruling on a general subject. If the Constitutional Court adopts a special ruling on a temporary order, but the constitutional proceedings are subsequently discontinued, the Constitutional Court, by issuing a ruling that discontinues the proceedings, explicitly orders that the temporary order itself is no longer in force either. Otherwise the term of the temporary order is considered to expire according to the final Court decision.

Whether the applicant's proposal for a temporary order is accepted or refused depends on the decision of the Constitutional Court. The Court weighs whether not-easily-reparable damages are probable, which could justify the temporary order. On the other hand, it may also weigh the possible damages following the adoption of the temporary order. Accordingly, the Court decides not to adopt the temporary order if it is of the opinion that the damages resulting from the temporary order might exceed the risk of an unconstitutional interpretation of the disputed legal provision in a concrete case. The Constitutional Court may refuse the applicant's request for a temporary order with a special ruling, but may do it in a ruling on the non-acceptance of a popular complaint.

Suspending the implementation of an act can be total or only partial provided that the implementation thereof could involve not-easily-reparable consequences. If during the term of the temporary order the consequences of the respective ruling are interpreted in different ways, the Constitutional Court may, by a special decision, specify the manner its decision must be implemented.

With reference to the Slovenian system, a temporary order is not limited in time, as in the German constitutional review system (Para. 6 of Article 32 of the *Federal Constitutional Court Act/BverfGG*). The ultimate limit of its duration extends to the issuance of the relevant final Constitutional Court decision. However, the Constitutional Court is free to order the termination of its validity at any time during its term.

Concerning temporary orders in the Slovenian system, the Constitutional Court decision may be as follows:

1. The Abstract Review

- An abstract review can result in the possible stay of the implementation of a general act pending a final decision.

2. The Constitutional Complaint

- A ruling on the suspension of the implementation of an individual act which is the subject of a constitutional complaint can be issued while deciding on a constitutional complaint.

- A ruling on the possible suspension of the implementation of a general act pending a final decision can be issued while deciding on a constitutional complaint. The above mentioned possibility of a temporary order parallels the temporary order foreseen in the abstract review proceedings.

The Constitutional Court may decide on a temporary order on a general act only in a plenary session, not also in an *a camera* session.

The Constitutional Court decides on temporary orders in proceedings examining a constitutional complaint and/or may suspend the implementation of a disputed individual act only if the constitutional complaint is accepted. If procedural prerequisites are lacking and/or if the constitutional complaint is not accepted, the Constitutional Court does not decide on the applicant's request for a temporary order.

3. Other (Specific) Proceedings

- The court may issue a decision suspending the President/Prime Minister/Ministers from office - while deciding on impeachment. The Constitutional Court may decide for such a temporary

prohibition by a two-thirds majority of votes of all judges.

The Character of the Decisions of Constitutional Courts and their Publication

Contents and effects of decisions

1. Contents

1.1. Abstract Review

The following forms are possible, particularly concerning the Slovenian system of constitutional review:

- The abrogation (*ex nunc*) in whole or in part of unconstitutional statutes is effective immediately or within such a period of time, not exceeding one year, as specified by the Constitutional Court.

The regulation in force allows to the Constitutional Court to abrogate a general act with deferred effect, *i.e.* the respective decision comes into effect on the expiry of the period specified by the Constitutional Court. In this case, too, the Constitutional Court evaluates whether the specific circumstances of the respective case justify such a measure. On one hand, the reasons for an abrogation with deferred effect are opposite to the reasons for a temporary order: the absence of the direct risk that the further implementation of the general act could cause considerable or even irreparable damage. On the other hand, however, the Constitutional Court may, as a rule, impose this measure whenever it chooses to avoid a legal gap resulting from abrogation when it presumes that the legislature would be able to change the unconstitutional or unlawful provision in the respective period and to bring it into conformity with the Court's decision.

Beside deciding upon constitutional complaints regarding violations of human rights, the most important new element is that the Slovenian Constitutional Court is empowered to abrogate (*ex nunc*) a statute directly. Due to the Principle of the Unity of Powers and the Supremacy of the Parliament, the former function of the Constitutional Court focused on assessing the unconstitutionality of a statute. This changed into an active relationship not only involving the abrogation of statutes, but also offering guidance to the legislature for the creation of Law. However, the Constitutional Court agreed to allow the legislature the opportunity to review disputable regulations within a due period of time, following the guidelines of the Constitutional Court in a specific decision.

In this way the Court assumed the role of a "negative legislature". In a period of transition the legislature is not always able to follow developments nor to impose standards for all shades of the legal system and its institutions. The so-called interpretive decisions issued by the Constitutional Court and the appellate decisions include certain instructions from the Constitutional Court to the Legislature on how to settle certain questions or specific issues. However, in compliance with the Principle of Judicial Self-Restraint, a clear limit has been imposed on the Slovenian Constitutional Court by the Court itself, which indicates that the Constitutional Court has already been creating legal rule (usually reserved for the Legislature). On the other hand, there is the question whether the Constitutional Court actually creates the law, because it also involves the review of legislative activity. In any case, the Legislature cannot avoid the existence of contemporary Slovenian Constitutional Case-Law in its activity.

- The abrogation (*ab initio*/*ex tunc* or prospectively/*ex nunc*) of other unconstitutional or unlawful executive regulations and other general acts.

- The declaration of the unconstitutionality and illegality of statutes, other general acts or general acts for the exercise of public powers which were made to conform with the *Constitution* and statute or which cease to be valid if the consequences of their unconstitutionality or illegality are not eliminated.

- The declaration of the unconstitutionality or illegality of a statute, other general act or a general act for the exercise of public powers because a certain matter which it should have regulated was not regulated or is regulated in a manner which makes it impossible to be abrogated retroactively (*ex tunc*) or prospectively (*ex nunc*). The Legislature or body which issued such unconstitutional or illegal general act must abolish the ascertained unconstitutionality or illegality within the period set by the Constitutional Court. The *Constitutional Court Act* has not foreseen any "sanction" if the Legislature fails to bring the disputed provision into conformity with the *Constitution* following the Court decision. The Legislature is bound only by the general provision on legally binding decisions of the Constitutional Court. The disputed regulation remains in force, and this has been confirmed by constitutional case-law.

- Any affected person is entitled, based on a Constitutional Court decision regarding the constitutional review of general acts, to request an amendment or retroactive abrogation (*ex tunc*) of an individual act or the elimination of detrimental consequences or even claim damages within three months from the day of the publication of a Constitutional Court decision.

1.2. Constitutional Complaint

The following results are possible:

- The abrogation, retroactive (*ex tunc*) or prospective (*ex nunc*), of an individual act and return of the case to the empowered body.

- The abrogation, retroactive (*ex tunc*) or prospective (*ex nunc*), of a general act (while deciding on a constitutional complaint).

- The final decision on a contested human right or freedom based on a constitutional complaint (entailing the replacement of the disputed individual act by the Court decision), in the case of a retroactive abrogation (*ex tunc*) of an individual act, if such proceedings is necessary in order to eliminate consequences that have already occurred on the basis of the abrogated individual act, or if such is the nature of the constitutional right or freedom, and if a decision can be reached on the basis of the information in the document. At first the above power of the Constitutional Court gave rise to a discussion of whether in this case the Constitutional Court represented an instance above the ordinary courts (especially above the Supreme Court). Present constitutional case-law, however, proves that the Constitutional Court is limited to the evaluation of pure constitutional issues, *e.g*. to the strict evaluation of breaches of certain constitutional rights.

1.3. Other (Specific) Proceedings

Other proceedings, mainly adopted by systems of constitutional review, can result in the following:

- Stating the empowered body in jurisdictional disputes.
- Finding a proposal for impeachment to be unfounded.
- Deciding on the grounds for impeachment, deciding on the suspension of the President's/Prime Minister's/Minister’s office.
- The annulment of an unconstitutional political party act or activity, or an order requiring a deletion from the register of political parties.

- The annulment of a decision of the National Assembly, or a decision on a representative's election.
- An obligatory opinion on the conformity of international treaties with the Constitution.
- A declaration of the unconstitutionality of a request concerning a call for a referendum.

2. The Appointment of a Body Empowered to Implement Court Decisions

If necessary, the Court specifies which body must implement its decisions (regarding the constitutional review of general acts), and in what manner. The Constitutional Court may order the temporary suspension of the implementation of individual acts, based on a general act abrogated by the Court decision.

The replacement of a disputed individual act by a Court decision is implemented by the body empowered for the implementation of the individual act retroactively abrogated (*ex tunc*) by the Constitutional Court and replaced by the decision of the same. If there is no such empowered body according to the current regulations, the Constitutional Court appoints one.

3. Effects

Under the main accepted principle of constitutional review systems, the decisions of the Constitutional Court are binding and produce effects *erga omnes*.

Exceptions to this rule are constitutional complaints and jurisdictional disputes where decisions have effect only *inter partes*, but even here effects are felt *erga omnes*, when the Constitutional Court acts *ex officio*.

Rehearing of Proceedings Before the Constitutional Court

The decisions of the Constitutional Court are binding (*e.g.* Para. 3 of Article 1 of the *Slovenian Constitutional Court Act*, Official Gazette RS, No. 15/94) and executable (Para. 2 of Article 40 of the *Slovenian Constitutional Court Act*). The rules concerning the proceedings before the Constitutional Court do not include any exceptional legal remedy against a Constitutional Court decision, which also includes any rehearing or, in general, repetition of proceedings concerning an already adjudicated constitutional dispute.

The problem of rehearing proceedings was discussed in constitutional theory and practice in the eighties[215]. The discussions looked for inspiration in foreign systems, however not in the American system, which includes accessory constitutional review in ordinary cases with an in *inter partes* judgment effect of the judgment, but first of all in the Austrian and Italian systems[216]; even though also in these systems the rehearing of proceedings is excluded. Therefore, there were some proposals[217] concerning the subsidiary implementation of rules of other proceedings for the rehearing of proceedings before the Constitutional Court following the example of the regulation governing rehearings in administrative disputes: *i.e.* on the grounds of a worse violation occurring during the proceedings, or on the grounds of a particular criminal offence, when a party uncovers new facts or they have an opportunity to be able to submit new evidence with which a case may have been adjudicated more advantageously for the party if such facts or evidence had been submitted in the previous proceedings. First of all, a rehearing in a constitutional dispute (taking into consideration its particularities, because the object of adjudication in such a dispute is a normative act) would be reasonable if after the issuance of the Constitutional Court decision, new facts or evidence were uncovered which, if they had been known and applied previously, would have caused a different Constitutional Court decision. The rehearing of proceedings would be reasonable in all kinds of Constitutional Court decisions, except when the Constitutional Court by

its previous decision has abrogated or annulled a particular normative act[218]. If the rehearing was implementable in the case of such a normative act, and the previous Constitutional Court decision on an abrogation or annulment were abolished, the Constitutional Court would without competency, in fact, enter into the normative function of the legislature or other author of normative acts which determine the legal order in a particular field.

Concerning the conditions or reasons for rehearing, the same reasons may be applied as for the rehearing of an administrative dispute. In view of what has been explained above, in a constitutional dispute it would not be reasonable in a rehearing to abolish a previous Constitutional Court decision and to replace such a decision with a new one on the grounds that in the confrontation of a normative act with a certain constitutional or statutorial provision, such a provision had not been correctly interpreted and was mistakenly legally implemented. However, this does not mean that the Constitutional Court may not even without a formally held rehearing proceeding following a request of a party in the same case, and in a special proceeding, revise the Court's previous decision. In the constitutional case-law of the former Yugoslavia, in some cases a case before the Constitutional Court was reheard, the previous Constitutional Court decision was overturned and replaced by a new one[219]. The rehearing of a Constitutional Court case is not a rehearing in the classical judicial sense (despite the subsidiary implementation of rules concerning judicial proceedings). As a matter of fact, it is a special kind of rehearing of Constitutional Court proceedings that may result in overturning previous Constitutional Court decision and its replacement with a different decision.

Properly speaking, the Constitutional Court is internally procedurally bound by the text of its decision and/or with the "irrevocability" of the decision[220]. Such irrevocability means that the Constitutional Court may not abrogate or change a decision which has already been issued. "Any promulgated or issued decision is no longer in the disposition of the Constitutional Court"[221].

Consequently, the decisions of the Constitutional Court are indisputable for the parties. However, as an exception it is necessary to consider the *European Convention for the Protection of Human Rights and Fundamental Freedoms* of 4 November 1950, which gives individuals the right to the so-called individual complaint against a national final Constitutional Court decision[222]. Because there is no (national) legal remedy against Constitutional Court decisions, they become formally final when issued.

In a majority of Constitutional Court systems, Constitutional Court decisions are declared final, sometimes they are explicitly defined as irrevocable[223]. In this way, constitutional courts are prevented from changing their decisions after their enforcement, with the exception of corrections of obvious incorrectness[224]. So, constitutional courts are completely internally-procedurally bound by their own decisions.

However, the generally accepted principle of the irrevocability of Constitutional Court decisions may be loosened or even partially waived by particular systems. A certain "relaxation" of the above principle means that such systems authorise constitutional courts to interpret their own decisions[225]. Such systems render a relative touch to the finality of Constitutional Court decisions[226].

On the other hand, the Belorussian, Lithuanian and Ukrainian systems authorise the Constitutional Court to change its decision *ex officio* subsequently, without any external request or petition[227]. The Belorussian and Lithuanian systems require that some circumstances become known which had not been known by the Constitutional Court when issuing its decision, or that the constitutional provision which was the basis for the Constitutional Court decision was changed[228]. The Lithuanian system requires that in such cases the Constitutional Court have an appropriate new decision[229]. Under the Ukrainian system the required condition is that new circumstances are discovered

connected with the case which were not previously discussed and existed at the time the case was discussed and decided[230]. In addition, the Belorussian Constitutional Court is empowered to intervene in such cases *ex officio*[231]. The Lithuanian Constitutional Court, however, may react only on the basis of an "external" request[232]. Otherwise, the mentioned systems do not determine a legal remedy against Constitutional Court decisions. Therefore, Constitutional Court decisions are indisputable. An exception is the suspensive veto against a Constitutional Court decision which may be submitted by the President of State and the President of the Parliament, as determined by the *Constitution of Kazakhstan*[233].

THE PUBLICATION OF CONSTITUTIONAL COURT DECISIONS

1. Publication

Decisions and certain resolutions (if the Constitutional Court so chooses) are published in the Official State Gazette, local official gazettes and/or official gazettes of territorial units and in the official journal in which the respective general act had been published (in Slovenian).

2. The Effect of Publication

One day after the publication of decisions or on the expiry of the period specified by the Constitutional Court, abrogation decisions (*ex nunc*) come into effect. A general act abrogated (*ex nunc*) by the Constitutional Court does not apply to relationships that had arisen before the day such abrogation came into effect, if by that day such relationship had not been entered into.

Within three months from the day of the publication of the Constitutional Court decision, any affected person is entitled, based on a Constitutional Court decision, to request an amendment or retroactive abrogation (*ex tunc*) of an individual act or the elimination of detrimental consequences or even claim damages.

Comparative analysis shows that different countries display interesting features of constitutional judicial proceedings. *E.g.*, in Austria on October 3, 1946, the Constitutional Court approved the standing orders of its activities, which stays in effect and unmodified since.

In the Constitutional Court the parties may give up taking part in the hearing, which on no account will prevent the court from making a decision.

To effect normal judicial process and maintain the authority of the Constitutional Court, the Chair has the right to apply an administrative fine to the amount of 500-1500 shillings and (or) a detention of 3-9 days. A stricter sanction is used for using insulting words, deliberate dragging of time, giving false testimony. In the course of case examination a recusation or self-recusation of a member of the Court is not authorized by law. However, the Court at a closed hearing can make a decision to ban a participation of a Court member in a specific case if he had a direct association with the particular case. The decisions of the Constitutional Court enter into force in an established order since the day of the official publication. Meanwhile, for the inept legal acts the Court is competent to establish new terms.

It is also to be noted that the Austrian Constitutional Court compiles generalized information annually submitting it to the Federal Chancellor. It also contains findings and suggestions related to the administration of constitutional review.

In Germany the Federal Constitutional Court operates on the basis of the *Basic Law, the Federal Constitutional Court Act* adopted in 1951 (with subsequent amendments, 1969 and 1993 in particular, and its standing orders (adopted in 1986 and amended in 1989, 1995). The Court's operation is continuous. One chamber is run by the Court Chair, the other chamber by his deputy. Decisions are commonly taken by the majority vote. If the votes are tied equally (with a 4:4 correlation in chambers), the case examination is terminated.

It is important to underscore that the case examination is mainly done in a written form. The Court also has the right to hold an oral hearing, if no objections by the parties. No oral examination can be demanded if the case is based on an individual complaint. Cases of this type are examined in the written form. Incidentally, individual complaints can be submitted within 1 month after making the judicial decision or another disputed act. When appealing the law, this term extends to 1 year. As established by the Law, an individual complaint can be submitted to the Constitutional Court only if all other means of judicial decision have been exhausted. It is also required by Law that the parties be represented by counsel.

To be noted are certain features of constitutional judicial proceedings in Portugal. In particular, reporters on the case are chosen by lot and have to submit a draft decision. When making the decision, provided the votes tied, the Chair has a tie-breaking vote. Decisions on issues of abstract review are made at plenary sessions of the Court, and on issues of concrete review the case examination and decision making is done by the chambers (with 6 members each). It is also provided that the Chair can transfer an examination of some concrete case to a plenary session. The parties in the court are represented by counsel, case examination is in the written form, open hearings are not organized. Present in the Court are 2 permanent representatives of the prosecutor's office. If on concrete cases a particular legal norm is thrice recognized as unconstitutional, the prosecutor's representatives in the Court can initiate a procedure of abstract review. In this case, the Court decision has a universal character, so that the particular regulation becomes invalid. The Court in this country has the right to autonomously determine the terms of putting its decision into operation.

In many countries the law clarifies the characteristics of constitutional judicial proceedings on individual categories of cases. For example, Chapter 9 of the RA *Constitutional Court Act* is dedicated to this issue (THE CHARACTERISTICS OF A CASE UNDER REVIEW AT THE CONSTITUTIONAL COURT), moreover, Articles 55 -57 of this Act state: "Article *55: Consideration of a case on the conformity of laws, resolutions of the National Assembly, decrees and orders signed by the President of the Republic, and Government resolutions with the Constitution.*

With regard to issues determined by Point 1 of Article 100 of the *Constitution,* the following may appeal to the Court:

1) the President of the Republic;
2) at least one-third of the Members of the National Assembly.
The Constitutional Court shall determine whether the legal acts or its certain provisions referred to in the appeal filed with the Constitutional Court are in conformity with the *Constitution* or not, proceeding from the following factors:

1) the form of the legal act;
2) the time when the act was adopted, as well as whether it was signed, made public and implemented in compliance with established procedures;
3) the contents of the legal act;
4) the necessity of protection and free exercise of human rights and freedoms enshrined in the *Constitution,* the grounds and frames of their permissible restriction;

5) the principle of separation of powers as enshrined in the *Constitution;*
6) the permissible limits of powers of state bodies and public officials;
7) the necessity of ensuring direct application of the *Constitution.*

Article 56: Consideration of cases of the conformity with the *Constitution* of obligations assumed under an international agreement Before the ratification of an international agreement by the National Assembly, the President of the Republic shall appeal to the Constitutional Court with the question concerning the conformity of obligations assumed within the agreement with the *Constitution.*

The Constitutional Court may adopt one of the following decisions on the case:

1) recognize the obligations deriving from the international agreement as being in conformity with the *Constitution;*
2) recognize the obligations deriving from the international agreement in whole or in parts as not in conformity with the *Constitution.*

Article 57: Consideration of disputes relating to the results of referenda, the results of the election of a President and deputies.

With regard to issues determined by Point 3 of Article 100 of the *Constitution,* the following may appeal to the Constitutional Court:

1) the President of the Republic;
2) at least one-third of the Members of the National Assembly;
3) candidates for President of the Republic and for the National Assembly, on issues related to the results of elections.

The state body, that has summarized the results of referenda or elections, may act as a respondent. Factual circumstances relating to the case under review by the Constitutional Court may not be a subject for examination.
On issues related to the results of referenda and of elections for the President of the Republic and the National Assembly, appeals to the Constitutional Court may be made within seven days after the official announcement of the results".

To some degree, those features, in accordance with different powers of the Court, are registered in the law. Meanwhile, we maintain a viewpoint that the regulation of those features should be left to the discretion of the Court.

With regard to the dissenting opinion in constitutional proceedings and to its evaluation as a completely positive phenomenon, there is a parallel awareness that the institute of dissent conceals a potential danger, since the members of the Constitutional Court can be prone to political populism. This system is particularly dangerous when making decisions on electoral disputes as well as in minor systems in a transitional period. The latter is because on one hand, the society is overly politicized, on the other hand, nearly all active members of society in smaller countries have some knowledge of one another. Therefore, the role of collegial, non-individualized decisions and approaches is very great.

One of the substantial features of the constitutional judicial proceedings stipulated by the time factors is in limitations sanctioned in different countries, often unjustified. For example, part 1, Article 102 of the *Constitution of the Republic of Armenia* reads:

"The Constitutional Court shall render its decisions and findings not later than within thirty days after a case has been filed". However, the worldwide practice rejects such limitations giving the Court a certain freedom.

Also important is the right of the Court to determine the terms of validation for their decisions. A typical example is the Constitutional Tribunal of Poland. Article 190 of this country's *Constitution* reads: "3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.

4. A judgment of the Constitutional Tribunal on the non-conformity to the *Constitution*, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the particular proceedings".

This approach seems to be justified, causing the constitutional review to be most efficient. We consider as irrelevant to the institute of constitutional review making the decisions obliging the bodies of executive or other authorities to carry out certain actions or those containing binding mandates[234].

The type of decisions of the bodies of constitutional review mainly stipulates their role and position within the system of state authority, and the potential ensuring the supremacy of the Constitution. The legal type of the Constitutional Court decisions is very clearly defined in literature. This is a legal act recognized by the court within its competence and in the procedural order established by the law, the contents of which act is a statement of certain legal facts and presentation of state-power rulings mandatory for the parties to the constitutional legal relations[235].

Without touching upon the procedural features and types of decisions by the constitutional courts, or requirements to the particular decisions, we deem it necessary to focus upon the problem of the legal validity of the Constitutional Court decisions.

The Constitutional Court decisions are as a rule binding for implementation, final and are not subject to review. However, in some countries the Parliament can review a Constitutional Court decision adopted within the framework of the preliminary review (Namibia, Romania, Ecuador, Ethiopia). The legislator can nullify the decision of the body of constitutional review by 2/3 of the votes. A similar right of veto is enjoyed by the Parliaments of Romania, Mongolia, the President of Kazakhstan (in Mongolia, if the Great State Khural nullifies the decision, the Court will re-examine the case to carry out the final decision (Art. 66 of the *Constitution)*, white in Kazakhstan a presidential veto is overruled by 2/3 of the votes).

The mandatory decisions can in turn be of two kinds: one - having a universal (regulatory) character and mandatory for all, two - having a relative effect concerning only the subjects of law associated with a particular case.

From a scientific viewpoint the legal text focuses upon law making in the sphere of constitutional review, upon types and legal nature of the acts by the constitutional courts[236]. Special attention is devoted to the statements where the acts by Constitutional Courts have a universally mandatory

nature, become the source of law, in most cases (particularly when interpreting the constitutional provisions) have more legal force than the acts by legislative bodies.

We think that it should be particularly noted that a Constitutional Court decision is to re-establish disrupted constitutional balance rather than result in new disruptions of this balance. With regard to the importance and deficient knowledge of this aspect, it seems expedient to identify the effect of the Constitutional Court decisions. This can be elucidated by three examples. One: the formulation of Andrash Shayo, provided with regard to the decisions by the Constitutional Court of Hungary on the socio-economic rights. The formulation is as follows:

"The socio-economic rights + Constitutional Court = a relapse of the state-controlled socialism"[237]. The meaning of this question is that in the New Independent States, a new tint and a special significance are Attached to he decisions of a body which takes final decisions not subject to review. In this case, following the strict letter of the law (incidentally also the law whose provisions are already contradictory to the new philosophy and logic of reforms and remains unmodified often for technical reasons), prompted indirectly is the approach that basically contradicts the process of transformation of public relations and with the type of constitutionally registered new relations. This problem unfortunately has not been sufficiently studied or properly reflected in the new NIS laws on bodies of constitutional review. This type of situation can frequently result in extreme and misplaced decisions. E.g., a draft new Constitution of Hungary provided an outcome of this situation by abolishing the right of the citizens to directly appeal to the Constitutional Court. The Venice Committee of The Council of Europe expressed its attitude to this type of approach at the meeting of March 7, 1997: this step has been perceived as an inadmissible and serious retreat from the democratic elements of implementing constitutional review.

It would be good to show another example. It is concerned with the decision of the Constitutional Court of the Russian Federation of February 18, 1997 on the constitutionality of government decision # 197 of February 18, 1995. The matter is that the Constitutional Court, aware that the government decision contains unconstitutional regulations, was also sure that an immediate suspension of this decision (relevant to the expected changes in the revenue section of the budget) will in turn create an unconstitutional situation. The Constitutional Court can see the way out in that the government decision is recognized as invalid 6 months after the validation of the Constitutional Court decision. This type of decision can perhaps be regarded as compromising and typical for a transitional period. No doubt that the right to making this decision is authorized by the *Constitutional Court Act.* However, note here is to be taken of another thing. The Constitutional Courts have to willingly or unwillingly dedicate the necessary efforts to the possible aftermath of their decisions and their direct or indirect effect upon the social processes[238].

The third example is related to Armenia. We have already noted that the effect of Constitutional Court decisions upon the social processes are of major importance. It is very essential that the people believe in objective and unbiased judgment of the constitutional review, which can mainly be ensured through the functional efficiency and principled behavior of the Constitutional Court. However, there are many other unfortunate factors playing a certain role in forming the public opinion. Problems of this type frequently emerge when examining the disputes on electoral results. The Constitutional Court, as a rule, has not competence to examine the factual circumstances of those cases (e.g., see the *Republic of Armenia Constftutional Court Act,* Art. 57). In similar situations the Constitutional Court should proceed from the decisions of ordinary courts, to determine the effect of electoral fraud upon the general electoral results. And what if through different reasons the relevant persons have not appealed to the ordinary courts, so that the objective decisions of those courts do not exist? In that case, some part of society will certainly retain a mistrust to the overall decisions on electoral disputes.

The Constitutional Court of the Republic of Armenia found itself just in this type of situation when examining the case on disputing the results of the Republic of Armenia presidential election that had taken place on September 22, 1996.

It is to be noted that 930 communal and 11 regional electoral commissions had been organized and acting to monitor the course of preparation holding and summarizing the election on the territory of the Republic, following the *Republic of Armenia Election of the President of the Republic Act.* The entire electoral process had been organized and controlled by the Central Electoral Commission, the membership of which had been confirmed by the decision #190 of the Government of the Republic of Armenia, as established by the Law, on June 25, 1996. 100 representatives of the Council of the Inter-parliamentary Assembly of CIS with a status of observers, EU offices of democratic laws and human rights, as well as the observers representing the Parliament of Georgia took part in the process of preparation, implementation and generalization of the results of Presidential election by the invitation of the Central Electoral Commission. They were afforded the opportunity to perform the functions of foreign observers during the elections, provided by Articles 7, 26, 29, 30 of the *Republic of Armenia Election of the President of the Republic Act.*

The Central Electoral Commission, summarizing the electoral results, adopted a resolution on September 29, 1996 by the majority vote (16 v. 2) on the election of Levon Ter-Petrossian as President of the Republic. Vazgen Manukian, candidate for the Presidency of the Republic, in his appeal submitted to the Constitutional Court on October 24, 1996, qualified this resolution as unacceptable. The appealing party determined that during the preparation and implementation of election the universal, equal, direct suffrage and secret voting had been violated, which had a direct effect on the electoral results.

The appealing party explained the existence of such violations, mentioned in the documents submitted by them, on the ground of inconsistency of numerical data in protocols of electoral commissions with officially published results, on the ground of artificial increase of percentage of voters' participation in voting at individual precincts, written explanations of witnesses, as well as the facts registered by foreign observers.

Also taken as a base were arguments given in the final statement of the EC supervisory mission of October 16, 1996.

The respondent on the case, the Central Electoral Commission, objected to the appellants, stating that there was no case for nullifying the election, inasmuch as the Central Electoral Commission summarized the electoral results according to Article 31 of the *Republic of Armenia Election of the President of the Republic Act* on the basis of summary data of the regional voting results, while the appellant-stated fraud can be considered as proved only with reference to the relevant decision of a higher-ranking electoral commission or courts of general jurisdiction. However, the appellants, as a rule, have never appealed to those bodies, and this type of court decisions are non-existent.

References were obtained from the Supreme Court and the Ministry of Justice of the Republic of Armenia that the courts of general jurisdiction had received no appeals on the presidential election.

The presidential candidate submitted the documents of the following type: firstly, separate opinions of the proxies and members of commissions, protocols and other legends, secondly, references and analyses prepared on their basis by appellant's representatives, thirdly, copies of summary protocols of electoral commissions. The first group of documents reflecting the basic arguments of the appellant party on their reported wrongdoing at individual electoral districts and commissions, was signed by about three percentage of persons taking part in the preparation, carriage and monitoring of the election on behalf of the party disputing the electoral results.

Examination of those documents has shown that they largely consisted of assumptions, impressions, unverified rumors.

About 14 percent complaints cited in the mentioned documents dealt with summarizing the electoral results, with the rest reflecting the preparation and carriage of the election.

In order to verify the arguments cited by using the individual precincts as examples, and to examine the facts referred to in the statement of the EC supervisory mission, the Constitutional Court has organized a special investigation of all the documents from 162 electoral precincts. Included into those precincts were mainly the electoral precincts to be inspected as specified by the appellant party.

Those huge and strained efforts, irrelevant to some degree to the Constitutional Court and resulting in a vigorous rejection of the appellant's arguments, as a whole, failed, however, to satisfy the expectations of the public.

Moreover, comparison of summary protocols of 1035 electoral commissions acquired by the proxies of the presidential candidates and submitted to the Constitutional Court, with the official voting data at the same precincts, has shown that partial inconsistencies had taken place at 9 precincts only.

The Constitutional Court has remarked that in the course of preparation and carriage of the election as well as in summarizing the electoral results, the presidential candidates and their proxies did not make a full use of all the opportunities afforded by law to resolve the arising disputes.

Thus, the *Republic of Armenia Election of the President of the Republic Act* (Articles 9, 10, 11, 13, 18, 19, 21, 30) allows to appeal the decisions and actions of the electoral commissions, and demands the electoral commissions to review and to nullify the illegal decisions and actions of the inferior electoral commissions. Article 13 of the Act that is completely dedicated to the procedure of appealing the decisions and actions of the electoral commissions, provides that the decisions and actions of electoral commissions can be appealed to the superior electoral commissions or court, while the decisions on summarizing the electoral results and the counting of stubs can be appealed to the superior district and Central Electoral Commissions. The decisions (except the decisions on electoral results) and actions of the Central electoral commission can be appealed to the Supreme Court.

Despite the existing procedure of this type for examining the complaints, the evidence acquired during the Constitutional Court inquiry showed that the competent persons of the appellant parties have nearly failed to implement their rights provided by the law on this issue.

As also noted by the Constitutional Court, despite the evident improvement of the electoral legislation, the organization, implementation and summarizing of the electoral results have been adversely affected by the flaws and lapses in the *Election of the President of the Republic Act* and the *Elections to the Bodies of Local Self-Govemment Act.*

The Constitutional Court stated that the procedure for recruitment of the electoral commission by the principle of party representation registered in Articles 7, 8, 9 and 10 of the *Republic of Armenia Election of the Bodies of Local Self-Govemment Act* was unjustified.

The issues of organizing the voting of the military, and the verification of voting results, evaluation of the inaccuracy of voting results were resolved insufficiently or incompletely. The procedure of

summarizing the voting results and compiling the protocols needed more simplicity and verification.

The Constitutional Court has also stated that summarizing the September 22, 1996 presidential election results in the Republic of Armenia by the Central Electoral Commission had been effected pursuant to the powers established by Law.

Having examined the summary protocol of the Central Electoral Commission, the Constitutional Court found that there was full accord between the summary data of the district electoral commission and the summary protocol of the Central Electoral Commission, as well as between the different indications of the latter. This showed that in the Central Electoral Commission there had been no misrepresentation of the presidential election results, and the data of electoral commissions on electoral results had been accurately summarized.

Meanwhile, with regard to the registered extensive numerical disagreement between the number ot voters and the available stubs and ballots, particularly in Yerevan City, the Constitutional Court compared the data of summary protocol of all 303 precinct commissions and 12 communal commissions of Yerevan City. It has been found out that there had been a number of inaccuracies and inconsistencies.

To verify the valid summary of presidential election results done by the district electoral commissions, the Constitutional Court examined the data on electoral results summarised in the communities, as published by the "Hayastani Hanrapetutiun" tabloid on October 22, 1996, and examined the complete information presented by the Central Electoral Commission at the Court's demand.

In those cases, the correlation of votes cast for the presidential candidates, was also in correspondence to the summary data of the Central Electoral Commission. When evaluating the effect of the divergence in the number of ballots and stubs in the ballot boxes or the number of voters and stubs or ballots upon the votes cast for the candidates, as well as with regard to the disagreements of the protocol data, it has been found out that in this case, too, the votes cast for the candidate elected President of the Republic by the decision of the Central Electoral Commission, amounted to over one half of all the votes cast for the candidates. On this basis, the case was dismissed.

However, if from the legal viewpoint the decision by the Constitutional Court within the existing competence has passed a serious test successfully, the problem as a whole remained unresolved to some degree. The matter is that anyway, under the acting legislation, electoral system and public attitude to the judicial system of general jurisdiction, many issues remained outside the competence of the Constitutional Court.

The experience of the Constitutional Court of the Republic of Armenia shows that of great importance in organizing and carrying out the election is to provide a systemic approach in combining and implementing the competencies of all entities and institutes engaged in the electoral process. As to the body of the judicial constitutional review, it has to possess the competence or to implement a complete control over the electoral process (as implemented by the Constitutional Council of France), or else it has to restrict itself to establishing the constitutionality of the decisions by the Central Electoral Commission. This type of approach was also agreed upon by the participants of the Third Yerevan International Seminar on the subject "Constitutional Review and the Electoral Process" held in October 1998.

Currently going on in the international practice is an effort to help the constitutional courts of NIS in the process of their substantiation, to facilitate the elaboration of correct solutions to the problems of the transitional period. A huge experience has been gathered by the Venice Commission of the European Council, organizing seminars in different countries, dedicated to the basic issues of constitutional review, expert revision of laws and draft laws, problem discussions, etc. However, there was a non-standard ruling adopted by the Commission at its meeting of March 7, 1997. It was on the issue of the Constitutional Court of Croatia. The ruling basically stated that the European Council from the 3 candidates presented by the Constitutional Court of Croatia and 3 more candidates from the Venice Commission selected two persons to be appointed observers in the Constitutional Court of Croatia. The observers have the right to express their opinion prior to decision taking, and following the decision taking, to submit their separate written opinion. Without dwelling upon details, particularly on this approach being very ambiguous, it is to be noted that in emergencies, when resolving the problems of system reformation, the constitutional review is becoming more significant, its decisions become crucial, and require therefore a careful and weighted approach.

There is an often-expressed opinion that for the transitional period the constitutional regulations have to be of a temporary nature, not to restrict the implementation of active reforms, particularly in the realm of economics[239]. Naturally, situations of this type make the missions of the constitutional courts more difficult and lend the new tinges to the old-time dispute: what is to be favored: the letter or the spirit of the Constitution.

We think that the need to ensure a relatively free activity of the constitutional courts and to delegate them the competence to directly interpret the Constitution is becoming a priority. However, in the particular case it is necessary to exclude the possibility of a case inquiry by the Court on its own initiative on some issue and of taking a decision. There must be a principle of self-restriction. Otherwise, a statement of the French legal scholar Lecharier is completely justified that the Constitutional Council is the funniest page of the French constitutional law. Even the most conservative psychotics could never devise the power of veto, so as to put it at the disposal of nine gentlemen responsible to no one and appointed arbitrarily by virtue of a courteous favoritism[240]. We think that there is no need to fall into an extremity, it should not be disregarded that even in relation to law making the constitutional review can be regarded only as a means of ensuring democracy.

In the practice of constitutional review the issue of adjusting the time limits of the Court decision is of great significance. As has been noted, Part 1, Art. 102 of the *Constitution of the Republic of Armenia* contains an unambiguous provision: "The Constitutional Court shall render its decisions and findings not later than thirty days after a case has been filed". Acting within the same frame is also the Constitutional Council of France.

The reason, however that it is possible in France is that the review is mainly done in the written form, the judicial procedure is not competitive, the decision is made by hearing the case at a closed-door session. In all countries where the decision is taken with the parties engaged in an oral judicial proceedings, as a rule, rigid limitations of terms are not established. There have also been extreme cases, when, e.g., the US Supreme Court made a decision only several years after the hearings. The prevailing, and, perhaps, most acceptable is the approach when the Constitutional Court is given some autonomy in deciding upon the term of decision making. In these cases the practical average term is 5 - 6 months. That is testified by the experience of Italy, Germany, Slovakia, Slovenia, Hungary and a number of other countries.

It is also important to show a differentiated approach when exercising different types of powers. E.g., Armenia is one of the few countries where the Constitutional Court is competent to resolve disputes the results of parliamentary elections (Art. 100, item 3 of the RA *Constitution).*

Meanwhile, the Court has to pass a decision at an open-door session in full membership (with an insured quorum) within 30 days. It is theoretically not excluded that after the forthcoming parliamentary elections the Constitutional Court will simultaneously hear a large number of appeals from parliamentary candidates. A deadlock is necessarily developed, otherwise the court is bound to show a purely formal approach that would affect its image. Those are the issues awaiting further adjustments.

Particular features are characteristic of the procedure for adopting acts by specialized bodies of constitutional review, and to their legal aftermath in different countries. We shall dwell here on the distinctive and noteworthy features. Eg., in Austria the Court selects permanent speakers from among its members for 3 years, who, on errand from the Chair, prepare the cases for examination. Decisions are commonly adopted by majority vote, the chair having no tie-breaking force. It is to be noted that although the Court has a single chamber and the decisions are taken by the full membership, certain issues can be examined at sessions involving 4 judges. This approach could be fully acceptable in Armenia when resolving disputable issues concerning the parliamentary elections.

In Germany the Federal Constitutional Court is in continuous operation. The work of one chamber is guided by the Chair of the Court, the other one by the Deputy Chair. Decisions are commonly adopted by majority vote. If votes are divided equally (in relation 4:4 in the Chambers), the hearing of the case is suspended.

Also of interest is the type of decisions taken by the Federal Constitutional Court. The Constitutional Court can recognize a legal regulation as invalid, this decision having retroactive effect. Meanwhile, the Court can rule that a legal regulation does not conform to the *Basic* Law, however, in that case, too, this regulation remains in effect until it is reviewed by the legislator. Meanwhile, the Constitutional Court can establish a term of time for the review (paragraphs 31 and 79 of the *Federal Constitutional Court Act).* The Constitutional Court can also declare null and void the decision by an ordinary court and appeal the case to another court (as a rule, the Constitutional Court does not issue decisions on cases under the jurisdiction of the general courts).

Pursuant to Art. 75 of the country's *Constitution*, as well as with regard to the precedents (in particular, that is relevant to the decision #16 adopted in 1976), the Constitutional Court of Italy can resolve the issue on holding a referendum on banning certain regulations (it is to be noted that the bodies of constitutional review in some countries, like the Constitutional Council of France, consider themselves incompetent to examine issues related to holding the referenda).

In France the term of decision taking is one month (on demand by the Government it can be reduced to 8 days). The Council takes decisions at the required quorum of 7 of its members. A decision is made following the results of written examination, with the sides taking part, and with no provisions for dissenting opinion or publishing the discussion and voting results.

In the countries providing the right of a Constitutional Court member for a dissenting opinion, the dissenting opinion is published along with the decision.

In Spain, the Constitutional Court is authorized to defer issuing the decision (both at plenary sessions and at sessions of chambers), to commit the submission of additional arguments, having suspended for this period the validity of the regulation in question (up to 6 months). The decisions with regard to the constitutionality of the regulations issued on specific cases also have binding and universal character.

In Turkey, the Constitutional Court is bound to issue a decision on the case, to be published not later than 5 months following the filing. If the appeal had been received from an ordinary court, with no decision taken within that period, the court of first instance has to complete the case pursuant to the legislation. However, if the Constitutional Court has carried a final decision on the case, the court of first instance is bound to comply. A recurrent appeal with regard to the same provision of the law is unqualified until a period of 10 years has elapsed since the day of the official publication of the Constitutional Court decision on the rejection of the first appeal. Art. 153 of the country's *Constitution* determines the character of the decisions by the Constitutional Court and the procedure of their publication. There is a provision that the decisions of the Constitutional Court are final. The decisions qualifying a legal act as not valid cannot be published without supporting argumentation. When hearing the cases on nullifying the laws, decrees having the force of laws or their individual provisions, the Constitutional Court cannot assume the role of a law maker, nor can it use its decision to lend new application to the disputed act. The Law, regulatory acts having the force of law, decrees or Rules of procedure of the Grand National Assembly or their individual provisions are suspended and recognized as invalid since the date of the publication of the decision by the Constitutional Court. If needed, the Constitutional Court can also establish the term of its decision coming into effect. This term cannot exceed one year since the date of the official publication of the decision. The decisions of the Constitutional Court have to be published immediately, printed in an official newspaper, they are mandatory for the legislative, executive and judicial bodies, officials, citizens and their associations.

As a feature of the Court's activities, perhaps, it is also to be indicated that in case of an abstract review of the constitutionality of regulatory acts an appeal can be made only within 60 days after the publication of the act.

As has been noted, in contrast to many other countries, in Romania, a decision by the Constitutional Court on constitutionality of laws and parliamentary rulings is not final. It can be accepted for examination by the Parliament. In case of a confirmation of a legal act by 2/3 votes in both chambers, the Court is no more competent to re-examine the constitutionality of the given act. There is one exception: the decision by the Constitutional Court on the standing orders of the Houses is final. In this case, the Parliament has no competence to examine the Court's decision. A similar question emerged in 1994, when co-chairs of both chambers appealed to the Constitutional Court separately on the constitutionality of the Chambers' standing orders. In both cases the Court ruled that they contained unconstitutional regulations (25 of the 213 standing orders provisions of the Chamber of Deputies, and 29 of 184 standing orders provisions of the Senate), so that the Parliament had to bring the acts into conformity with the *Constitution.*

In the Russian Federation the *Constitutional Court Act* clearly defines (Art. 79), that the decisions of the Constitutional Court are validated at the moment bf their publication in the Court. As is noted, a procedure has been practically established, when the Constitutional Court of Russia often determines the procedure of implementing its decisions, or delegates to relevant bodies to implement a specific action within their competence. This mode of action is also applied with regard to the Parliament (the requirement to make the relevant amendment of the law or produce a legislative decision). This type of approach is not supported by many legal experts, since the Court is allegedly taking upon itself the legislative functions.

One of the principal conditions of the effectiveness and coherence of decisions taken by the Constitutional Court is to respect the requirements of international legal acts. A good example in this issue is the Constitutional Court of the Russian Federation, which, when developing its legal references, often leans upon the international covenants on economic, social and ethnic rights, as well as upon the *Universal Declaration of Human Rights*[241]. A similar approach is also widely practiced by the Constitutional Court of the Republic of Armenia.

Chapter VII. Basic Approaches to Perfecting the System of Constitutional Review in the Countries of Emerging Democracy

The protection of constitutionality and legality is reflected in the constitutionally assured protection of constitutionality and legality (the judicial review of constitutionality). This was introduced on the basis of the realization that also State bodies can violate the Constitution, and was more firmly established with written constitutions. The ideal ground of constitutional review involves the principle that the Constitution is the highest legal act, which in the hierarchy is above all other general legal acts (and particular statutes). Constitutional review is the highest remedy among the legal remedies for the protection of constitutionality and legality. It would be excessive to assert that it is impossible to consider as constitutional such constitutional systems which do not have an appropriate legal guarantee of constitutionality. However, it is necessary to take into consideration the fact that the protection of constitutionality by different forms of judicial review is one of the most important guarantees for the enforcement of the sociopolitical system determined by the constitution.

Constitutional justice (in particular concerning the European model of constitutional review) is a part of the political system and its basic function is to protect the socio-political relations determined by the Constitution, whose legal basis is dependent on different systems of constitutional review. For the implementation of constitutionality and legality, appropriate social and political guarantees are necessary[242]. Only once the appropriate social conditions are fulfilled, does the judicial review of constitutionality become reasonable and important, because only then can constitutionality be implemented also by legal remedies. Constitutional review is as such a legal form which attempts to assure the consideration of the Constitution by repressive remedies. In comparison with other legal remedies, constitutional review protects and implements the Constitution as the highest legal and political act. Therefore, constitutional justice is the highest protector of constitutionality. As such, it is not a part of the ordinary judiciary. It is a special institution which can not be identified with the judiciary, legislature or with some other legal activity. Constitutional justice has a special function which is of a legal and political nature. Its aim is, in case of necessity, to (indirectly) assure the basic rights and freedoms of humans and citizens by repressive remedies. Constitutional justice is a part of the political system which endeavours to protect in a legal form basic sociopolitical relations. Therefore, constitutional justice differs from the judiciary in that it has a completely different function - *i.e.* protection on the grounds, *i.e.* the Constitution, of a given social and political order. Constitutional justice and review can act only within a stable social and political system, where the social forces are ready to respect the decisions of bodies exercising the judicial review of constitutionality. Although constitutional review is fundamentally of a repressive character, it may have a preventative function within a stable political system. Simply the existence of constitutional review should influence the consideration of the Constitution.

Theory distinguishes wider and narrower senses of constitutional review. Constitutional review in a wider sense of the word means the deciding of constitutional disputes in a judicial form with the aim to protect the Constitution. In a narrower sense of the word, constitutional review is an evaluation of the conformity of statutes with the Constitution, i.e. the review of the constitutionality of statutes. Constitutional review can act only within the system of a compact (rigid) constitution. If the Constitution may be changed only by ordinary statute, ie. by ordinary legislative procedure, the judicial review of constitutionality would be without sense. The more the Constitution is compact (rigid) the more it corresponds to the judicial review of constitutionality.

It is possible to speak about "real" constitutional review when the material meaning of constitutionality is taken into consideration. Constitutional review reflects the realization that legislative bodies can also violate the basic rights of humans and citizens. Therefore, constitutional review is closely bound with the consideration of such rights.

The Constitution is a basic legal and political act. Therefore, constitutional disputes are legal concerning form, and political concerning contents. Because the Constitution is a legal and political act, it is clear that the protection and implementation of the Constitution is a basic question of every democratic political system. The basic function of constitutional justice is the protection of the Constitution. In this function constitutional justice also reviews the activities of legislative and administrative bodies. This role of constitutional justice necessarily has a political nature. The specific nature of constitutional justice is reflected in the possibility of reviewing legislative and administrative bodies.

Constitutional review may not contradict itself. Therefore, the bodies that carry out judicial review of constitutionality must consider some unwritten rules. Among others, these include that the constitutional review of the constitutionality of statutes must interpret the Constitution in accordance with valid social and political principles. In addition, the Constitutional Court must equally evaluate the unconstitutionality of statutes form the point of view of the contents as well as from the point of view of formal constitutionality. The basic principles and the basic rights are the framework which determines the competence of the legislature. Consequently, the Constitutional Court is bound by basic human rights, although it protects these rights indirectly when evaluating the conformity of a statute with the Constitution. Such conformity has to be material and formal. Constitutional review is, when necessary, the instrument of the rule of law. Furthermore, the rule of law involves the consideration of individuals as the subject of the political system, as well as constitutionality as a historically introduced political and legal category.

The basic function of the judicial protection of constitutionality is to decide if statutes and executive regulations are in conformity with the Constitution. Therefore, the interpretation of the Constitution is the basic activity of bodies exercising the judicial review of constitutionality. This interpretation entails a comparison of two regulations which are on different level of the legal hierarchy, i.e. a comparison of a lower regulation with a higher one. The basic aim of such interpretation is to give or to determine the appropriate meaning (the contents) of constitutionality as concerns a concrete case, however, having an *erga omnes* effect. This comparison involves the comparison of the contents and the form.

Constitutional review in the world has reflected and still reflects different social and political interests, depending on particular social and political relations within concrete political systems. Therefore, it is impossible to speak about a certain positive or negative function of this institution. In any case, the function of constitutional review is the protection of social and political regulation. Constitutional review is a legal remedy, by its contents and consequences it can intervene into political circumstances. It may be taken to be one of the most important guarantees for the secure stability of a particular political system, because it potentially limits the self-interest of the highest bodies of authority, in particular the legislative, executive and administrative branches.

The system of constitutional review can function efficiently and completely only if certain prerequisites are available. Some of those are:

- the functional, institutional, organizational, material and social independence of the judicial constitutional review;
- consistency in the constitutional implementation of the principle of separation of powers;

- adequacy and comparability of the basic constitutional principles with the relevant constitutional mechanisms of exercising state authority;
- the correct and substantiated option of the objects of constitutional review;
- definition of the optimum range of subjects having the right to appeal to the Constitutional Court;
- systemic approach to ensuring the functional capacity of the judicial authority;
- availability and implementation of well-defined lawmaking policy;
- the level of perception of the democratic values in the society.

Besides the noted prerequisites, of major importance is the awareness that the legal capacity of the system of constitutional review is directly contingent upon the constitutional decisions themselves. Deformation of the constitutional principles and methodological elements, internal contradictions of the Constitution, its bottlenecks and vacancies produce a relevant effect upon the functioning of constitutional review.

The guarantees of supremacy of the Constitution have to be embedded into the Constitution itself. The constitution has to take possession of a necessary and sufficient system of intra-constitutional self-preservation. In other words, any system has to be provided with an adequate immune system intended to preserve the functional integrity of this very system.

With regard to the methodological position stated, we shall try primarily to identify the logic of improvement of the Constitution itself using the example of the Republic of Armenia. We think that it is necessary to identify three basic levels:

- the methodological elements and the basic principles of constitutionality;
- consistency in implementing the principle of separation of powers;
- correlation of institutional decisions with the basic constitutional principles and the objectives of social development.

Comparative analysis of constitutional provisions and the public experience show that at all noted levels the *Constftution of Armenia* requires certain revision. That in the first place is related to clarification of the theoretical and methodological approach of the constitutional resolutions. Many constitutional provisions show (particularly, Art. 2, 4, 6, Ch. 2) confusion in the approaches to the natural and subjective law. We believe that an establishment of a democratic society is impossible by leaning upon the supremacy of the law of power. The world experience shows that this approach results in authoritarian power, fascism and dictatorships in its different forms.

Constitutional review will in turn inevitably get into controversy with social experience, if it is aimed at ensuring the supremacy of the subjective rights of authorities, rather than of the natural human rights and freedoms. In regard to this, we think that the first paragraph of Article 6 of the *Constitution* ("in the Republic of Armenia the Supremacy of statute is guaranteed") is to read as follows: "in the Republic of Armenia the Supremacy of law is guaranteed". Moreover, Art. 15 is to be amended as follows: "The natural and inalienable human dignity is the source of human and civil rights, and the people and the state in the administration of power are restricted by these rights and freedoms as by a directly acting law". This fundamental approach is to be materialized in all basic sections of the *Constitution.*

The issue of separation of powers is of fundamental importance. This issue became the subject of a special discussion at the session of the Constitutional Court of the Republic of Armenia when hearing the case "On the conformity of Article 24 of the *Telecommunication Act of the Republic of Armenia* of the *Constitution of the Republic of Armenia".*

The precedent for the case hearing was the appeal by 72 deputies of the National Assembly of the Republic of Armenia to the Constitutional Court.

The appellant party thought that Article 24 of the *Telecommunication Act of the Republic of Armenia* was not in conformity to the *Constitution of the Republic of Armenia,* in particular, to the provisions on the state-guaranteed freedom of economic activity and free economic competition registered in Article 8 of the *Constitution of the Republic of Armenia.*

The respondent party thought that the noted regulation of the Law does not contradict the *Constitution of the Republic of Armenia,* since the issue concerns a natural monopoly, and restrictions on free economic activity in telecommunications are intended to improve the communication situation on the territory of the Republic and to ensure technical advancement in this field.

The legal analysis of the provision of Article 24 of the Act shows that the legislator has established not an all-mandatory regulation adjusting the legal relations, but actually, ratifying the license terms established by the executive authority for a concrete legal entity, lent those regulations the force of Law.

Moreover, by stipulating in Article 24 of the *Telecommunication Act of the Republic of Armenia* that "The effect of rights established by the said license must be ensured by the legislation of the Republic of Armenia (including the antitrust legislation)" (this type of legislation were totally absent at the moment of adopting this Act), the legislator actually, while lending the legal regulation the features proper to a constitutional norm, had anticipated the concept of laws to be adopted for regulating this sphere.

According to Part Three, Article 62 of the *Constftution of the Republic of Armenia,* the powers of the legislative body are established by *the Constitution,* that has not lent the National Assembly of the Republic of Armenia the competence to adopt the organic (constitutional) laws containing the regulations of the constitutional type.

Moreover, according to Part Two, Article 5 of the *Constitution of the Republic of Armenia,* the state bodies and officials are competent to perform only the actions to which they are entitled by the legislature. The National Assembly of the Republic of Armenia has lent the force of Law to a document containing the regulations exceeding the competence of the Government or of the body empowered by the latter.

It was also underscored that according to Part Three, Article 8 of *the Constitution of the Republic of Armenia,* the state guarantees free development and equal legal protection to all forms of property, freedom of economic activity, free economic competition. Moreover, according to Article 4 of the *Constitution,* the state ensures the protection of human rights and freedoms on the basis of the Constitution and laws, pursuant to the principles and norms of International Law. Freedom of economic activity is not absolute freedom, it can be restricted according to the norms and principles of International Law, the type of restriction being substantiated by the legislator, with due consideration given to the fact that it is possible only for ensuring the relevant recognition and respect of rights and freedoms of other persons and for satisfying the rightful requirements of morality, public order and common welfare in a democratic society (Part Two, Article 29 of the *Universal Declaration of Human Rights,* item 3, Article 12 of *International Covenant on Civil and Political Rights).*

The principle of free economic competition, in turn proceeds from the principles of economic freedom and equality, and implies the equality of all economic entities of the market economy, ensuring by the state of equal conditions and opportunities for them.

Meanwhile, the analysis of the provisions of the *Constitution of the Republic of Armenia,* theanalysis of the constitutionality principles shows that the free economic competition does not exclude the types of activities prohibited by the state, subject to state licensing, activities that are natural or are state monopolies or are regulated by exclusive rights and intended to provide security or lawful interests of the state and society, public order, health and morality, rights and freedoms of other persons.

However, clarification of those spheres, possible restrictions of the degrees of freedom of economic activities or of free economic competition are regulated by the *Constitution* and by the laws for implementing the antitrust policies ensuring evenhanded competition as well as the economic and social advancement.

The legislative authority alone is competent to determine the limits and nature of these restrictions as regulations of all-mandatory behavior. And in case when individual legal relations are not yet regulated by Law, the Government can provide amendments not only as a subject providing the legislative initiative, but also based upon Article 78 of the *Constftution,* whereby with the purpose of legislative support of the Government activity program, the National Assembly can authorize the Government to adopt resolutions that have the effect of law that are in force within the period established by the National Assembly and cannot be contradictory to laws.

Thus, the Constitutional Court of the Republic of Armenia ruled that Article 24 of the *Telecommunication Act of the Republic of Armenia* does not conform to the requirements of Articles 5 and 8 of the *Constitution of the Republic of Armenia* inasmuch as the clarification of the types of activities subject to state licensing, being a state or natural monopoly, implementation in these spheres of antitrust policies, and with regard to security and lawful interests of the state and society, purposes of protecting the rights and freedoms of other persons, the possible limitation of the degree of freedom of economic activitiy and free economic competition as the norm of all-mandatory behavior had been previously established by the executive authority rather than by the law, while the legislator, in the form of transitional provisions lent the force of law to the stipulations targeted at a concrete legal entity, which stipulations contain language not conforming the *Constftution of the Republic of Armenia.*

Practically, the decision of the Constitutional Court, through interpreting the constitutional provisions specified the framework of the competence for the legislative and executive authorities with regard to a particular concrete law or government resolutions. At the same time, to avoid the practical disputes on constitutional competence or to minimize them, it is necessary to resolve the problem of separation of powers.

The issues of constitutionality of regulatory acts with regard to adjusting free economic activities are often dealt with in the experience of constitutional courts of the New Independent States. There is an interesting experience in today's Russia. An example would be the Constitutional Court of the Russian Federation having examined the case on reviewing the constitutionality of individual provisions of Paragraph 6 Article 6 and Paragraph 2 Part 1 of Article 7 of the *Law of the Russian Federation On Operating the Cash Machines for Monetary Exchanges wfth the Population,* stated in its decision of May 12, 1998 that according to a provision contained in the particular Law, the tax authorities are under an obligation to put fines upon the companies and upon natural persons guilty of violating this Law and this provision on using the cash machines when implementing monetary exchanges with the population as provided by the particular Law. Pursuant to paragraph two of part

one Article 7 of the Law, a company having monetary exchanges with the population without using a cash machine is to be fined 350-fold to the minimum monthly wages established by law. The appellants think that the norms disputed by them violate the principle of equality of all before the law and the court, as well as the constitutional guarantees and the property rights, the right for legal defense and the right for an unhindered usage of one's abilities and property for entrepreneurial activities or other activities not prohibited by law, and so, they contradict the *Constitution of the Russian Federation* including its Articles 19 (part 1), 34, 35, 45, 46 and 55 (parts 2 and 3). The Constitutional Court also stated that it follows from Article 118 (part 2) of *the Constitution of the Russian Federation,* stating that the judicial authority is implemented by the constitutional, civil, administrative and criminal judicial proceedings, that the judicial proceedings on cases associated with examining the actions envisaged by the challenged provisions, have to be the administrative proceedings independent of whether they are examinedby a court of general jurisdiction or by a court of arbitration. Consequently, the preliminary proceedings will be the same, i.e. administrative, as well as the proceedings in cases when the decision making actually belongs to the bodies of executive power entitled with the relevant competence. Moreover, classifying a specific violation of certain rules in the sphere of economic activity, including the sphere of trade and finances, as an unlawful action, namely as an administrative offense, and, in view of the need for applying the relevant measures of state enforcement in the form of administrative responsibility, the legislator has to observe the relevant requirements of *the Constitution of the Russian Federation.*

The Constitutional Court has underscored that according to the *Constitution of the Russian Federation,* guaranteed in the Russian Federation is the freedom of economic activity (Article 8, Part 1); everyone has the right for a free usage of one's abilities and property for entrepreneurial or other economic activity not prohibited by law (Article 34, Part 1); the right to private property is protected by law (Article 35, Part 1), and one can not be deprived of one's property other than by a court decision (Article 35, Part 3).

It was also underscored that the right to private property and freedom of entrepreneurial and other economic activities not prohibited by law can be restricted by law. However, both as the possibility of restrictions and their nature are determined by the legislator in accordance with the *Constitution of the Russian Federation,* rather than arbitrarily, Article 55 of the *Constitution* stating that human and civil rights and liberties may be restricted by the federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defense of the country and the security of the state. This constitutional provision is in correspondence with the rules of international law, providing that while exercising his rights and freedoms an individual has to be subjected only to such restrictions that have been established by law and are necessary in order to ensure the due recognition and respect of the rights and freedoms of other persons, to preserve the state (national) security, territorial integrity, public (social) order, prevention of crime, protection of health or morality of the population (good morals), to satisfy the rightful rules of moral and commonwealth in a democratic society and compatible with other rights recognized by these norms (item 2, Article 29 of the *Universal Declaration of Human Rights,* item 3 Article 12 of the *International Covenant on Civil and Political Rights,* item 2 Article 10 and item 2 Article 11 of the *European Convention on Human Rights and Fundamental Freedoms,* as well as item 3 Article 2 of the *Fourth Protocol to that Convention).* Within the meaning of Article 55 (part 3) of *the Constitution of the Russian Federation,* with regard to the general principles of law, introducing the responsibility for administrative violations (nonuse of cash machines in violation of the rules of trade and financial accountability) and establishment of specific sanction restricting the constitutional law, is to meet the standards of justice, to be commensurable with the constitutionally registered objectives and with the guarded lawful interests, as well as with the nature of the action perpetrated.

The Constitutional Court also established that the establishment of the undifferentiated amount of a fine by the legislator for the nonuse of cash registers when effecting monetary exchanges with the population, impossibility of its reduction do not enable this sanction to be applied with regard to the character of offense perpetrated, the amount of inflicted damage, the degree of guilt of the offender, his property status and other meaningful details of the act upsetting the principle of the punishment to be fair, individualized and commensurable. Under such conditions the fine of this size for this type of offense can be transformed from a measure of restraint into an instrument of suppressing the economic autonomy and initiative, excessive restriction of the freedom of entrepreneurial freedom and the right to private property.

With regard to a number of other provisions of this law, the Constitutional Court in its decision recognized the constitutionality of a provision contained in Paragraph 6, Article 6 of the *Russian Federation Law of June 18, 1993 On Using Cash Machines in Carrying out Monetary Exchanges with the Population* according to which the tax bodies have competence to impose files upon companies as well as upon natural persons guilty of violating this Law when effecting the monetary exchanges with the population.

Meanwhile, collection of fines from natural persons is done within a judicial procedure; collection of fines from legal entities cannot be done unconditionally without their consent.

At the same time, the Court recognized as not conforming to the *Constitution of the Russian Federation,* Articles 19 (Part 1), 34 (Part l), 35 (Parts 1, 2, 3), 55 (Part 3) the provision of Paragraph 2, Part 1 Article 7 of the relevant Law, according to which a company carrying monetary operations with the populations without using the cash machine are subjected to the fine to the amount of 350 minimal monthly wages established by law.

It was also established that subsequently, before the adjustment of this issue by the Federal Assembly in accordance with the *Constitution of the Russian Federation* and with regard to the decision of the Constitutional Court for committing the offence indicated in Paragraph two Part one Article 7 of the examined law, the fine is imposed to the amount stated in Article 146 of the Code *of RSFSR on Administrative Offenses, ie.* 50 to 100 minimal wages[243].

The cited example also shows that when examining the constitutionality of regulatory acts of principal importance is the issue on separation of powers and retaining the balance of competence.

It is recorded in Art. 5 of the *Constftution of Armenia* that "The State Power is exercised in accordance with the *Constitution* and the laws, on the basis of the principle of separation of the legislative, executive and judicial powers". This type of formulation is not frequently used worldwide. In most countries the focus is upon the principle itself, rather than upon its effectuation, or the provision of separation of powers. For example, Art. 10 of the *Constitution of the Russian Federation* states that "The State power in the Russian Federation is exercised on the basis of separation of the legislative, the executive and the judiciary branches. The bodies of the legislative, executive and judiciary powers are independent".

Moreover, in the constitutions of many countries the focus is also upon the interdependence (Portugal, Art. 114), interaction (Moldova, Art. 6), coordinated operation and interaction (Kirgizstan, Art. 7), balance (Poland, Art. 10), balance (Estonia, Art. 4) of powers, etc. This type of approach seems more justified providing consistency in realizing the principle of separation of powers.

To uncover the contents of this principle from the vantage point of the constitutional review, the following question has to be answered: what are the criteria of the level of realizing this principle?

(see Diagram 11). This question was in the center of a theoretical discussion at the International Seminar in YEREVAN, in October, 1998. Our position, approved by many participants of the seminar, particularly by Professors M. Lessage and D. Rousseau of France consists in providing the functional efficiency and independent realization of the separated powers, as well as the continuance and systemic balancing of the state power[244]. The problem consists in the very fact that each of the branches of authority has powers on the three levels (see Diagram 12):

- functional powers,
- competencies in the dimension of the counterbalances,
- competencies having a deterrent character.

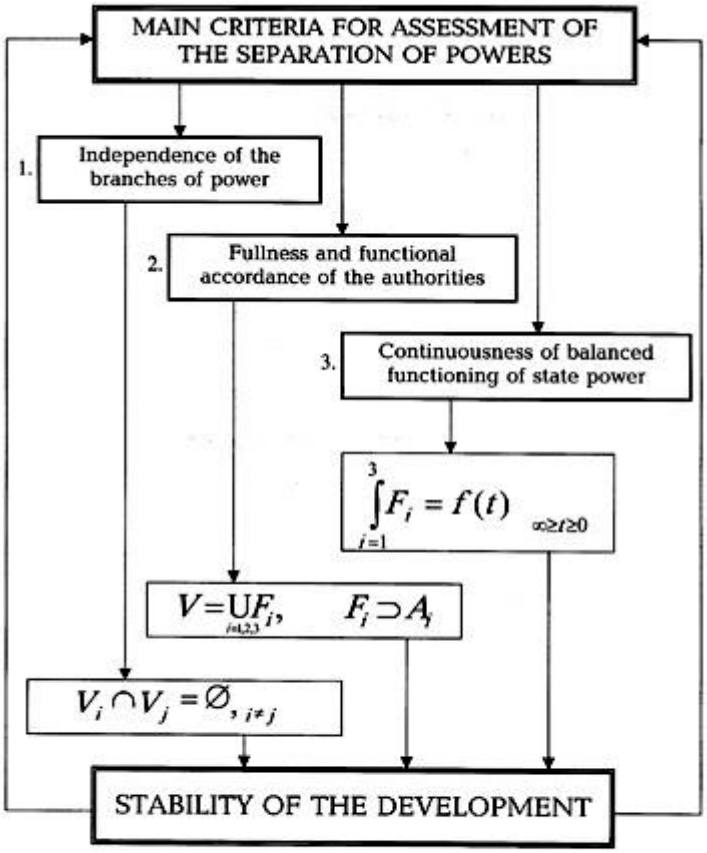
It is just the integrity and common coordination of these powers that provide on one hand, the functional efficiency, on the other hand, the independence of each link, and still on another the balancing in the development of state authority.

The Constitution of Armenia has not provided solutions to many of these issues, which are in need of further development. That is primarily the case with the following issues:

- clarification of the place of the President in the system of state authority;
- adjustment of relationships between the President and the National Assembly (particularly on item 3 Art. 55 of the *Constitution),* with the Government (on Part 1 and 2, Art. 86), with the judiciary (Art. 94, Part 1, Art. 95);
- provision of the real and constitutionally guaranteed independence and integrity of judicial authority;
- establishment of the necessary prerequisites for the deployment of a more efficient and operational system of the constitutional review;
- establishment of the real capabilities of the constitutional and legal resolution of political arguments.

It has been noted that the *Constitution of Armenia* practically lacks the institutes of interpretation and resolution of jurisdictional disputes. With regard to these institutes having a great significance within the system of intra-constitutional self-preservation, they still have to be applied in the constitutional amendments.

Diagram 11



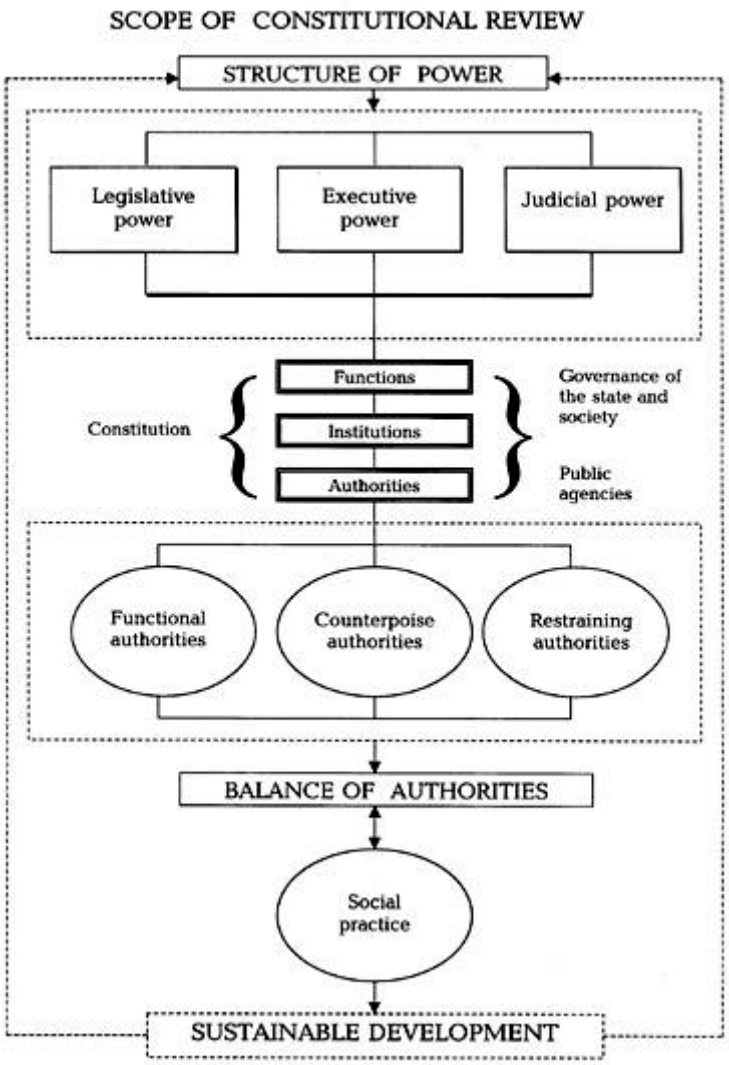
V_i - i-th branch of state power,

$f(t)$ - function of state power depending on time t,

F_i - combination of the functions of i-th branch of state power,

A_i - combination of authorities of i-th branch of state power.

Diagram 12



The problem of securing the independence of the judiciary system needs particular attention. Art. 94 of the *Constitution of the Republic of Armenia* states: "The guarantor of independence of the judicial bodies is the President of the Republic. He presides over the Judicial Council". Experience shows that this type of formulation results in a distortion of the very concept of judicial independence. We think that there is a need for a new version of part 1 of this Article, viz.: "The guarantors of independence of the judicial bodies are the Constitution and the Laws of the Republic of Armenia". We also believe the logic of providing the judicial independence does not yield the situation whereby the President presides over the Judicial Council.

Awaiting their resolution are many questions associated with the organization of elections and electoral disputes. We suggest to introduce certain amendments to Articles 51, 100, 101 and 102 of the *Constitution* in order to provide a genuine support not only to the first round of voting and disputes' resolution within this round, but also to organize and carry the second round and the new Presidential election, as well as to comprehensively materialize the problem of resolving disputes on parliamentary elections.

Moreover, it is suggested:

- to provide the adoption of the Constftutional Court Act,
- to amend item 2(1) in Article 100: ... based upon an appeal

by the President of the Republic, by the National Assembly or by the Government, (the Constitutional Court examines cases on interpreting the Constitution with regard to disputes of the bodies of state authority on constitutional competencies);

- to state item 3 of this Article in the new version: "... resolves disputes associated with the resolutions on the results of referenda, elections of the President of the Republic and of the deputies";

- to state item 6 in the following version: "... provides definitions on the constitutionality of measures stated in items 13 and 14 of Article 55 of the *Constftution";*

- to indicate in Article 101 as possible appellants to the Constitutional Court: "The President, 1/5 of the members of the Parliament, the Government, the courts of general jurisdiction, the Prosecutor General - for abstract review, the elective bodies of local self-government, church, any natural or legal entities - for concrete review, candidates for the republican presidency and for deputies - for disputes associated with resolutions on electoral results", - to review Article 102 and state it in the following formulation: "The Constitutional Court carries decisions and findings within the order and terms provided by the *Constitution* and by the *Constitutional Court Act.*

The decisions of the Constitutional Court are final, not subject to review and enter into force at the moment of publication, however, the Constitutional Court can appoint another term for the regulatory acts' invalidation. This term cannot exceed twelve months, if it is a law, and six months if it is another regulatory act. In case of taking decisions associated with financial expenditures having no provisions in the budgetary law, the Constitutional Court determines the term for the regulatory acts' invalidation following a briefing with the Government.

The issues indicated in items 1-4 of Article 100 of the *Constitution* are resolved by the Constitutional Court's majority, while those indicated in items 5-9 and 211 - at least by two thirds of the members.

The bodies of state authority have no right to adopt resolutions countering the official findings of the Constitutional Court."

There can be no doubt that the issues discussed have a direct association with establishing a functional system of constitutional. review. Their resolution will however not fully eliminate the problem. Unfortunately, there is a confusion in Armenia between the two approaches to establishing the functional and the institutional bases of the constitutional review. Those two approaches are: the judicial constitutional review and the quasi-judicial preventive review. The need is ripe to introduce clarity into this issue which will certainly result in relevant amendments in the *Republic of Armenia Constitutional Court Act.*

Our proposals are intended to not only establish a reliable system of intra-constitutional self-protection, but also to consolidate the immune system of the public organism with regard to the fact that this system will be able to provide the stability and dynamic development, to properly uncover and overcome the disturbances of the functional balance, to prevent a massive buildup of negative social energy. We deeply believe that the efficiency of constitutional review is not determined by the number of submitted appeals or examined cases. The major criterion for assessing the activities of the institutes of constitutional review is the extent of the actual effect produced by their activity

upon the social processes, upon the retention of constitutional balance of the societal equilibrium, upon sustainable development and the deepening of democratic processes in the society.

Of great interest is the problem of comparative analysis of the stability of the public organism and the mechanisms of the functioning immune systems in different countries. This problem is in need of special examination. However, our suggested methodical approaches to improving the system of constitutional review and consolidation of the immune system of the social organism can be very useful with regard to this issue. There are different approaches to the integral assessment of the stability of human development. The basic idea is that systems of indicators are developed on sustainable development[245]. The problem consists in developing an integral indicator of comparative evaluation of sustainable development with the generalization of economic, social, ecological, socio-political and other indicators.

In order to assess the sustainability of a social system, we think that a system of indicators is needed at the following levels:

- social characteristics of the society;
- indicators of democratic values in the society;
- indicators of legal protection of the Constitution, the human rights and freedoms[246].

The integral indicator can be calculated from the system of listed indicators, with regard to the correlational link between the individual indicators. We suggest the following formula:

$$U_i = \sum_{j=1}^{m} \left[\frac{(x_{ij} - x_j^{(э)})}{\sigma(x_j)} \prod_{\substack{\beta=1 \\ \beta \neq j}}^{m} (1 - \gamma_{\beta j}) \right],$$

where U_i - integral level of sustainability,
x_{ij} - characteristic pf j-th indicator of the i-the country (system),
$x_j^{(э)}$ - characteristic of reference indicator,
$\gamma_{\beta j}$ - coefficients of paired correlation.

The suggested methods will also make it possible to resolve the issue on controlling the process, determining the effect of each indicator upon the integral level of sustainability.

When determining the integral effect of certain sets of factors (social, legal, etc.) upon the development of society, this formula can be presented in the following form (see also Diagram 13):

$$U_i' = \sum_{j=1}^{m} \frac{(x_{ij}' - \bar{x}_j)}{\sigma(x_j)} (1 - R_j),$$

where x_{ij}' - level of j-th indicator of i-th country,
$\bar{x}_j$ - average level of j-th indicator in a general batch of data,
R_j - coefficient of paired correlation along j-th indicator.

This formula enables us to put forward the issue of process controllability within individual sets of factors affecting the general level of social development.

The proposed techniques of effecting the sustainability of social development also enable us to put forward a problem of optimal combination of individual groups of indicators. To be put into the basis of this approach is the requirement on a most expedient and rational usage of the capability to obtain a relatively maximal effect of ensuring the sustainable development (Diagram 14).

It is to be noted that comparative analysis assumes comparisons between the relevant characteristics of sustainability for both the countries of developed democracy and emerging democracy, then the target function of the problem can be presented in the form of reducing to minimum the difference between the integral indicators and the factor-by-factor indicators of individual countries. Naturally, we deal here with a very active consolidation of democratic processes, legal guarantees and social protection in the states of emerging democracy.

This problem can be presented in the following form:

$$\sigma(U_i) = \sqrt{\frac{1}{n-1}\sum_{i=1}^{n}(U_i - \overline{U})^2} \to \min$$

at following conditions:

$$\sum_{i=1}^{n}\sum_{j=1}^{m}(x_{ij}^{t} - x_{ij}^{t-1})\lambda_{ij} \le K^{t};$$

$$x_{ij}^{t} \ge x_{ij}^{t-1};$$

$$b_{ij} \ge x_{ij}^{\gamma} \le a_{ij}, \gamma \in T$$

where λ_{ij} - Consolidation of democratic processes, legal guarantees and social protection in countries of emerging democracy;

K^{t} - Valuative magnitude of the resource potential;

a_{ij}, b_{ij} - Determine the admissible intervals of variability for x_{ij}^{γ}.

Resource limitation can also be established in the following form:

$$\sum_{j=1}^{m}(x_{ij}^{t} - x_{ij}^{t-1})\lambda_{ij}^{lt} \le K_{i}^{lt},$$

where λ_{ij}^{lt} - Demand for resource <l> for growth of a unit of j-th indicator in country <i> per period t,

K_{i}^{lt} - Possible magnitude of resource <l> in i-th country per period <t>.

To carry out this type of calculations that can be of great interest particularly for some international organizations (TACIS, USAID, UNDP, UNIDEM, IMF, WORLD BANK et al.), quite a vast range of indicators can be isolated. We can present the minimum range of those indicators as follows (Diagram 15):

We have tested this method when evaluating the social, legal and democratic indicators of sustainable development in the countries of the former USSR. The integral indicator of sustainability is characterized as follows: Armenia - 0.44, Azerbaijan - 0.42, Belarus - 0.3, Georgia - 0.43, Kazakhstan - 0.48, Kirgizstan - 0.48, Latvia - 0.72, Lithuania - 0.69, Moldova - 0.5, the Russian Federation - 0.38, Uzbekistan - 0.37, Ukraine - 0.4, Tajikistan - 0.22, Turkmenistan - 0.33, Estonia - 0.78.

Calculations show that the highest level of sustainability is observed in the Baltic States, the sustainability indicator in Estonia being 3.5 times in excess of the one of Tajikistan, 2.6 times - Belarus, 2.1 - the Russian Federation, 1.8 - Armenia.

As to the established total picture in Armenia, it is as follows: in the integral indicator Armenia is behind six countries (Estonia, Latvia, Lithuania, Moldova, Kazakhstan, Kyrgyzstan). However, the social indicators are higher only in comparison with Tajikistan, and continue to go down. Still is not functioning a reliable system of social protection, preservation of social sustainability is provided mainly through the external factors, there is an ongoing devaluation of democratic values. The picture does not look so grim in the domain of legal indicators. Meanwhile, quite ripe is the problem of reforming the Constitution. There is a continued application of the three types of laws (laws of USSR, the pre-constitutional and those adopted after the Constitution), with the provisions often contradictory and countering the Constitution (see Diagram 16).

The results of a selective analysis have shown that of the 114 examined laws, 800 contain provisions contradicting the Constitution. Meanwhile, in the three years of its existence the Constitutional Court received only three appeals on the definition of the constitutionality of laws. That is the result, in the first place, of an unjustified contraction of the circle of persons having the right to appeal to the Constitutional Court. That is also the indicator that the immune system of the society does not efficiently react to the violations of the functional balance in the society.

Diagram 13

EVALUATION OF THE INTEGRAL LEVEL OF A SET OF FACTORS

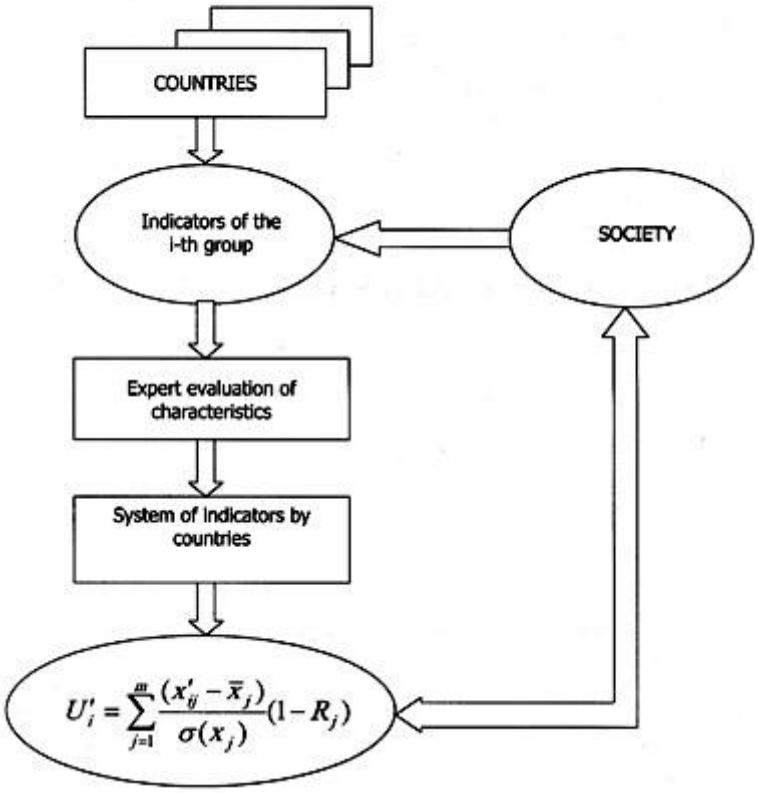


Diagram 14

OPTIMIZING THE PROCESSES OF SUSTAINABLE DEVELOPMENT

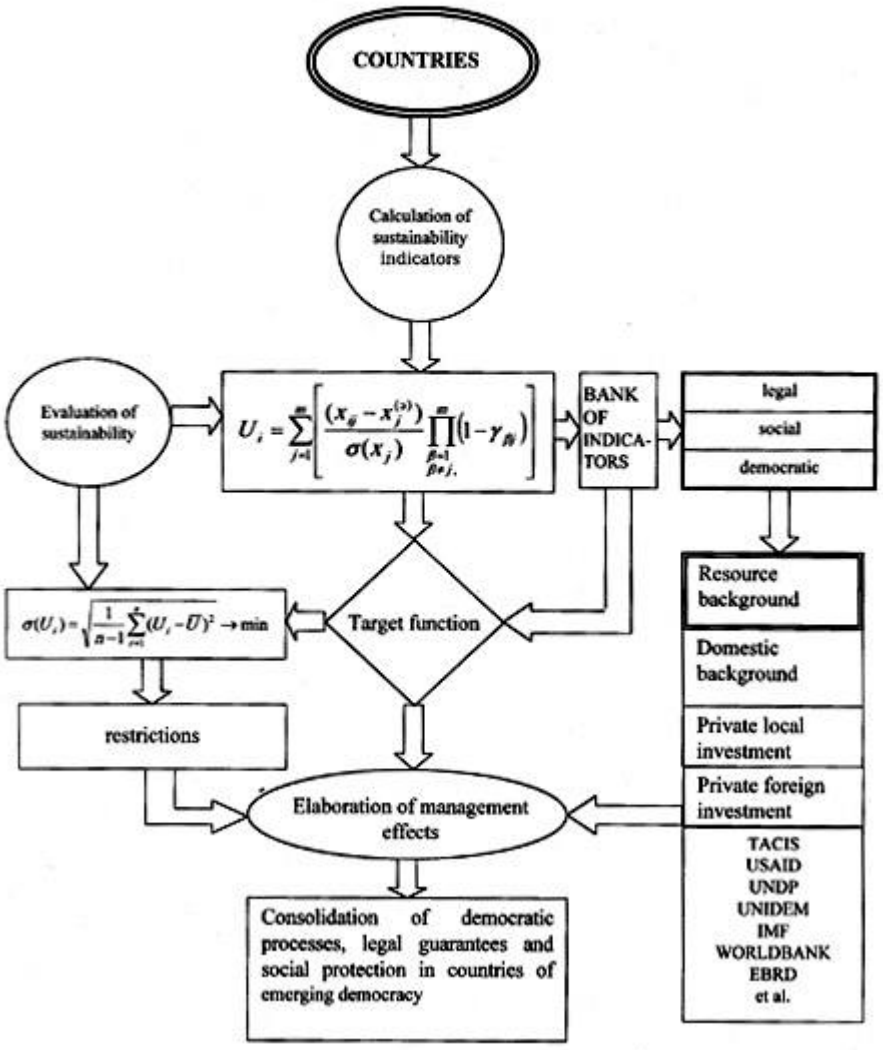


Diagram 15

THE SYSTEM OF INDICATORS

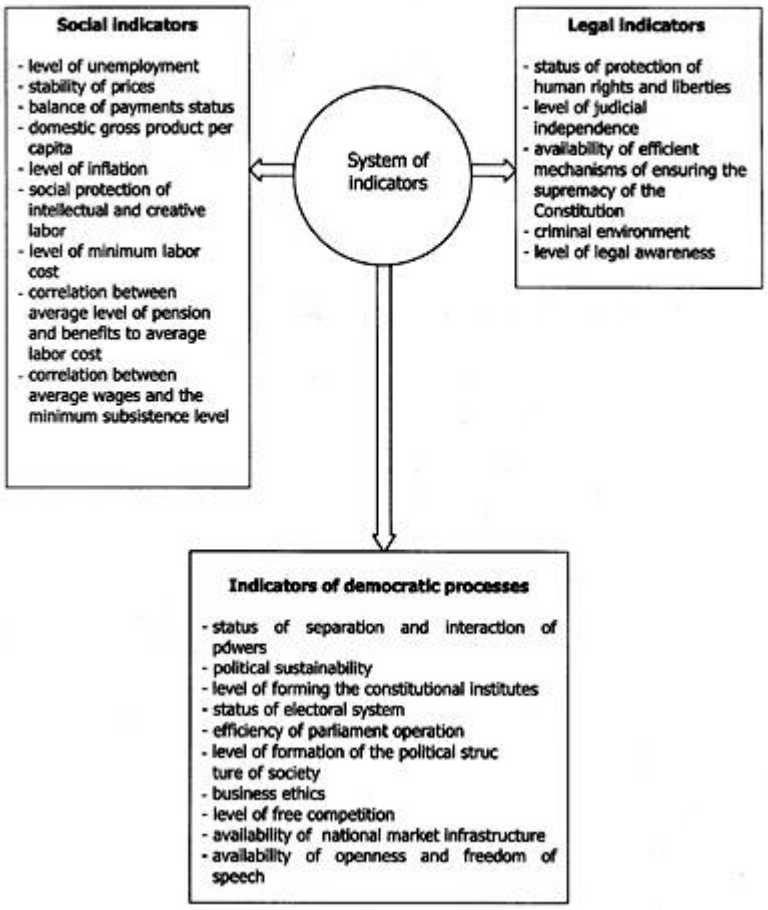
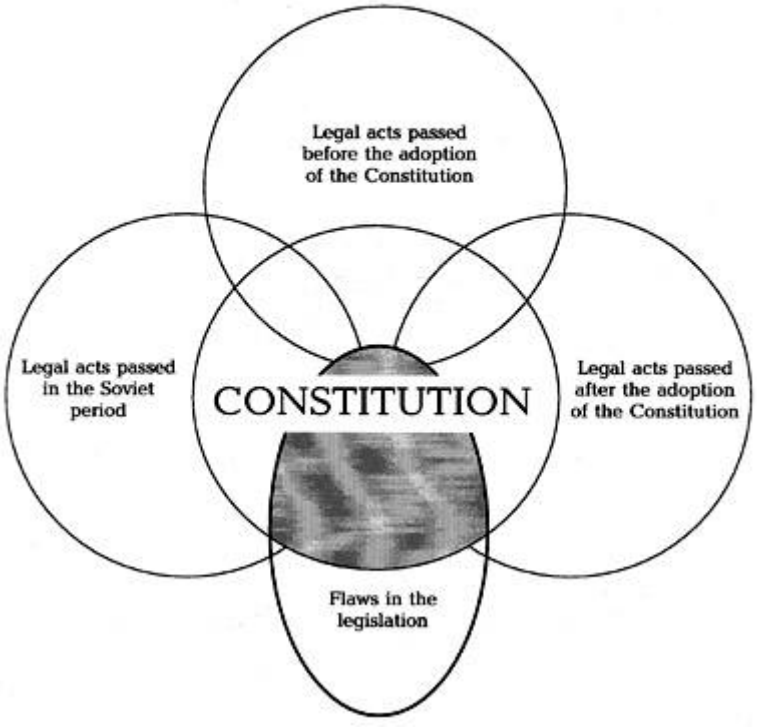


Diagram 16

THE CONSTITUTION AND THE TYPES OF LEGAL ACTS IN ARMENIA



In the Republic there is no well-defined law-making policy, which results in multiple defects in legislature which in turn promote subjective and arbitrary behavior as well as an excessive tightening of the administrative leverage. The legal awareness of the population is at a very low level. The schools have yet to introduce the legal training. The new judicial system is still in the stage of substantiation.

The acting Constitution does not provide for the functional link between the courts of general jurisdiction and the Constitutional Court while implementation of constitutional review.

All of the above demonstrate that the efficiency of constitutional review in Armenia can be substantially increased if the problems pointed out find their systemic solutions and if the mentioned necessary and sufficient preconditions are met.

Both for Armenia and other countries of emerging democracy of great importance are the improvement and expansion of the international cooperation in this field rather than only the intrastate mechanisms of providing efficient activity of constitutional courts.

Conclusions

A comparative analysis of constitutional review enables us, firstly, to uncover the common and the necessary, without which these systems cannot exist as such; secondly, to reveal the features and characteristic details of constitutional review in some countries that can be instructive and useful for others; thirdly, to be particularly noted is the emerging need for generalizing the lessons of historic development of the system of constitutional review as a guarantor of ensuring the sustainable character of societal development.

The basic conclusions and methodological approaches on improving the system of constitutional review and constitutional control, consolidating the place and role of the Constitutional Court within the system of state authority consists in the following:

1. Early in the 20th century objective prerequisites emerged for the transition to a qualitatively new system of judicial constitutional review. This was in the first place relevant to the active reformation of public relations, up to systemic transformation, as well as to the origination in a number of countries of extreme situations in the administration of society;

2. The problem of ensuring the constitutionality of regulatory acts does not any more exclusively or predominantly amount to the issue of human right protection. Coming to the foreground is ensuring the stability of society, providing its development with a sustainable dynamism, and the objective of engaging both bodies of state authority and the individual citizens in active and mutually coordinated participation in this process;

3. The problem of establishing intrastate mechanisms of human rights protection was raised to a qualitatively new level, with the specialized institutes of constitutional review attaining a special place. The assumption is that a natural and inalienable virtue is the source of human and civil rights and freedoms, while the people and the state when exercising power are restricted by these rights and freedoms as by a directly acting law.

4. In transitory and extreme situations the priority is given to the prevention of negative consequences rather than to overpowering them. In this regard the deployment of the system of preventive review is becoming tangible, which is incompatible with the American model of constitutional review;

5. The system of specialized constitutional review, particularly for countries in the transitional period, creates great potential for legal resolution of political differences. In fact, that spells a real opportunity for the constitutional and legal way out of all stalemate situations. Efficiency of constitutional review is not determined by the number of submitted appeals or cases to be considered. The main criterion for evaluating the activities of the institutes of constitutional review consists in how much their activities actually affect social processes, the retention of social balance, the sustainable development and the deepening of democratic processes in the society.

6. Examining the constitutionality of laws and providing the supremacy of the Constitution using the new systems of constitutional review has also modified the methods of approach, has moved the assignment from the law-enforcement dimension to the one of public administration;

7. The establishment of specialized institutes of constitutional review has enabled us not only to adopt a complex approach to ensuring the constitutionality of regulatory acts at the stage of their drafting, adoption and enactment, but also to establish widespread democracy by a substantial expansion of the subjects of review;

8. The specialized system of constitutional courts has substantially consolidated the effect of constitutional review upon the betterment of legislative work up to a further improvement of the constitutional decisions;

9. More possibilities emerged for retaining the balance of separation of powers, successful application of the mechanism of checks and balances. Of the circumstances facilitating the resolution of this issue, to be distinguished is the practice of preventive constitutional review with regard to the standing orders of Chambers of Parliament, as well as the right of parliamentary minorities with regard to the constitutional review, the reviewing function of constitutional courts with regard to presidential elections and the activities of political parties, as well as the capacity to resolve disputes emerging between different institutes of state authority, etc.;

10. In many countries the bodies of constitutional review started to be endowed with the powers not so characteristic for their functional role, which has a negative effect upon the efficiency of their work;

11. A fruitful and coherent work of the bodies of judicial constitutional review can be expected when a complex approach is adopted with regard to the establishment of this system, an integral system of powers is clearly defined and fixed in the Constitution, and when genuine prerequisites are formed for its implementation. In this case the approach should not be prompted by a specific up - to -the - minute political incentive, it has to be based upon the specifications of systems management techniques. Despite the varying political situations, the body of constitutional review has to enjoy ensured immunity and independent activities. That is particularly important in the transitional period, as corroborated by the incidents occurring in the Russian Federation and Belarus. This contingency also prompts the need for a substantial improvement of the international cooperation of the constitutional courts;

12. Of special significance is the recognition of the truth that in any society, including the pre-constitutional period, there were written and unwritten rules of communal life with an integral system of their observance. Their meaningful components are: faith (church), ethical norms, traditions (communal, familial), rules of behavior stipulated by the features of a major or minor system, common law, legal regulations, etc. A substantial requirement is that the judicial constitutional review should be in tune with, rather than in contrast to this system. That means that in each country all components have to be identified and reconciled on the basis of multiple features.

13. The fundamental principles that have to become the criterial basis for establishing a valid system of constitutional review are as follows: the functional full-scale efficiency of constitutional courts, a systemic character of constitutional review, rationality of the system, continuity of its action, the preventive nature of review, an organic combination of the functional, institutional, organizational and procedural elements of constitutional review, provision of the multidimensional feedback to public experience, and what is important, exclusion of a new violation of the constitutional balance when redressing the imbalance.

14. In a sustainable legal society the rights are fully materialized in the Law. In this case the concepts of the "supremacy of law" and the "supremacy of statute" can be considered identical. In a transitional society this type of identification is wrong and perilous, since constitutional review has to be based just upon the principle of ensuring the supremacy of law. In turn, the validity of the system of constitutional review is in direct dependence upon the constitutional decisions themselves. The deformations of constitutional principles and methodological bases, the internal contradictions of the Constitution, the occurrence of bottlenecks and omissions in it tell favorably upon the operation of the constitutional review. The guaranteed ensuring of the supremacy of the Constitution has to be primarily embedded in the Constitution itself. The Constitution has to possess a necessary and sufficient system of the intra-constitutional self-preservation. In other words, any system is endowed with an adequate immune system intended to preserve the functional integrity of the system itself;

15. The system of constitutional review can function efficiently and fully on condition of certain necessary and efficient prerequisites.

They are:

- the functional, institutional, organizational, material and social independence judicial constitutional review;
- consistency in the constitutional implementation of the principle of separation of powers;
- adequacy and comparability of basic constitutional principles and the relevant constitutional mechanisms for exercising the state authority;
- the rightful and substantiated selection of the subject matter for constitutional review;
- definition of the optimal range of entities having the right to appeal to the Constitutional Court;
- systemic approach in providing the functional efficiency of the judicial authority;
- current availability and implementation of well-defined lawmaking policy;
- the required level of recognizing the democratic values in the society, etc.

16. Armenia has significant resources for a substantial improvement of the system of constitutional review. This is possible to implement both on the basis of the acting Constitution, and within the framework of constitutional reforms, with regard to the guidelines suggested by the respondent.

With regard to further development of the systems of judicial constitutional review, the accents in the following trends emerge:

- preventive review, as well as jurisdictional disputes, have to remain a prerogative of specialized institutes of judicial constitutional review, while
- concrete review can be more efficient if it covers the entire judicial system (including the courts of general jurisdiction). This approach enables the decisions of the ordinary courts on the constitutionality of regulatory acts to be appealed to the Constitutional Court;
- election disputes are better suited to be examined by the ordinary courts. Meanwhile, the subject matter of constitutional review can be only the final decisions of relevant bodies on

election results;
- development of the current systems is proceeding by perfecting the mechanisms of identification, clarification and precise definitions of the competencies and principles of review, improvement of its forms and methods;
- exclusively important in the issue of constitutionality of legislative acts is the nature of decisions adopted by the bodies of constitutional review. We think, this problem should also be considered in a differentiated way, with regard to the type of regulatory act, as well as considering the consequences of enforcing the court's decisions;
- increasing importance should be attached to resolving the jurisdictional disputes between different branches of authority and on the role of preventive measures taken by the constitutional courts. It is more expedient to organically link this issue with the official interpretation of constitutional norms;
- the system of constitutional review is incomplete until review of human rights protection has become part of this system. All countries striving to provide public development with stability and a positive impulse to recognize the need for establishing the civil society, stress the problem of rational use of the creative potential of the society, in the quest for consolidating the ensuring protection of human rights and freedoms by converting the issue into the subject of constitutional review. The New Independent States have to keep in mind that the countries with established democratic traditions, specialized institutes of judicial constitutional review have emerged within the last decades and are in the process of continual improvement, it is expedient to go forward while taking into account their experience to avoid an ongoing correction of one's own mistakes.

1. Such problems were included into the agenda of the 5th International Congress on Constitutional Right (Rotterdam, July 12 - 14, 1999). Congress of the International Association of Constitutional law.

2. See: Витрук Н.В. Конституционное правосудие. М., 1998, с. 8 -9.

3. See, in particular, Алексеев С. С. Философия права. М., с. 16-20, 112-115, 219-239; Нерсесянц В. С. Философия права. М., 1997, с. 92-107; Ibid., Право и закон. М., 1983; Кудрявцев В. Н. О правопонимании и законности. Государство и право. 1994. N 3, с.7.

4. See: Овсепян Ж. И. Судебный конституционный контроль в зарубежных странах. Ростов-на-Дону, 1992, с. 42. Шульженко Ю. Л. Конституционный контроль в России. М., 1995, с. 9.

5. "Конституционный контроль и демократические преобразования в новых независимых государствах". An International Seminar, Collection of Materials. Yerevan, Oct. 16 - 18, 1996, p. 223.

6. Cf. Rousseau Dominique, La justice constitutionnelle en Europe, Montchrestien, Paris, 1996, pp. 1-10; Favoreu Luis, Los tribunales constitucionales, Editorila Ariel, S. A., Barcelona, 1994, p. 15 et al. and p. 137 et al.; Fromont Michel, La justice constitutionnelle dans le monde, Dalloz, Paris, 1996, p. 5-38.

7. Capeletti, M., The Judicial Process in Perspective, Chapt. 3, published in 58 Cal. L. Rev. 1017(1970), published also in Beatty D., Comparative Constitutional Low, Faculty of low, University of Toronto, Spring 1994, p. I-6.

8. See: Laurence H. Tride. American Constitutional Law. New York, 1988, p. 23-42; Constitutional Law, Cases - Comments - Questions. West Publishing Co., 1996, p. 1-57; Christopher Wolfe. The Rise of Modern Judicial Review, 1994.

9. John E. Novak, Ronald D. Rotunda. Constitutional Law. Fifth edition, West Publishing Co. 1995, p. 4.

10. See details: Sulvia Snowiss, Judicial Review and the Law of the Constitution. Yale University Press, 1990, p. 408-174.

11. Capeletti, M., The Judicial Process in Perspective, Chapt. 3, published in 58 Cal L. Rev. 1017(1970), published also in Beatty D., Comparative Constitutional Law, Faculty of Law, University of Toronto, Spring 1994, p. I- 711-8.

12. Where the representative body itself decides on the constitutionality of its laws.

13. Where the Constitution is the basis and the source of all state power.

14. Not by the Parliament itself but either by the regular courts or by a special body, such as the Constitutional Court or some other body.

15. Capeletti, M., The Judicial Process in Perspective, Chapt. 3, published in 58 Cal L. Rev. 1017(1970), published also in Beatty D., Comparative Constitutional Law, Faculty of Law, University of Toronto, Spring 1994, p. I-4/I-II.

16. Poland (1982), already in the former Soviet Union (1988), Romania (1991), Albania (1992), Bulgaria (1991), Lithuania (1992), Estonia (1992), Hungary (first attempt in 1984, definitely in 1989), Slovakia (1992), the Czech Republic (1992), Slovenia (newly established Constitutional Court by the 1991 Constitution), Croatia (1991), after 1991 Armenia, Azerbaijan, Belarus, Bosnia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Macedonia, Moldova, Mongolia, Montenegro, Serbia, the Serbian Republic of Bosnia, Tajikistan, Ukraine, Uzbekistan, as well as the federal entities of the Russian Federation (Adigea, Altai, Baskiria, Buryatia, Chuvashia, Dagestan, Inguchia, Irkutskaya Oblast, the Kabardino-Balkar Republic, Khakassia, the Karachaewo-Cherkez Republic, Karelia, Kalmikia, Komy, Marii-El, Northern Ossetia, Tatarstan, Tuva, Udmurtia, Yakutia).

17. Under the Charter of the Tibetans in Exile of 14 June 1991.

18. Although the powers of the House of Lords include some elements of the preventive constitutional review.

19. Concerning the system of the Netherlands, there are a few exceptions concerning the powers of the Supreme Court to decide cases connected to European Communities institutions.

20. However, certain functions of constitutional review may be exercised in Libya by the Supreme Court of Libya which is also a member of the Arab Group of the Constitutional Courts and Constitutional Councils.

21. In the following countries it is not superior in rank, but has a special character of supranational law: Denmark, Germany, Italy, Portugal.

22. In the following countries feature the recognition of the supremacy of supranational law over national law.. Belgium, France, Luxembourg, the Netherlands, Spain.

23. Poland (1982), the former Soviet Union (1988), Romania (1991), Albania (1992), Bulgary (1991), Lithuania (1992), Estonia (1992), Hungary (first attempt in 1984, definitely in 1989), Slovakia (1992), the Czech Republic (1992), Slovenia (newly established Constitutional Court by the 1991 Constitution), after 1991: Armenia, Azerbaijan, Belarus, the Federation of Bosnia and Herzegovina, The (International) Constitutional Court of Bosnia and Herzegovina, the FRY, the FYROM, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Mongolia, Montenegro/the FRY, Serbia/the FRY, the Serbian Republic of Bosnia, Tajikistan, Ukraine, Uzbekistan (with the Constitutional Committee of the Autonomous Republic of Karakalpakstan), as well as the federal entities of the Russian Federation (Adigea, Altai, Bashkiria, Buryatia, Chuvashia, Dagestan, Ingushia, Irkutskaya Oblast, the Kabardino-Balkar Republic, Khakassia, the Karachaewo-Cherkez Republic, Karelia, Khalmikia, Komy, Marii-El, Northern Ossetia, Tatarstan, Tuva, Udmurtia, Yakutia/Sakha).

24. Such as the Presidency of the Supreme Soviet of the Soviet Union and the State Council of Poland, where the right to petition was held by the general state attorney. Subsequently such constitutional review bodies were also introduced in Romania (the Constitutional Committee by the Constitution of 1965) and in Hungary (by the Constitution of 1984). The Hungarian Council for Constitutional Law was in charge of cooperation with other government bodies concerned with the protection of the constitutionality and legality of all statutes, decrees and ordinances. The 11 to 17 member council was elected by the National Assembly from among the deputies and politicians. The first Constitution of the former Democratic Republic of Germany granted constitutional review jurisdiction to the so-called Constitutional Committee. Before 1963 in Slovenia the system of the protection of constitutionality and legality included the review of rules under the principle of self-review inside the parliamentary system.

25. Based on Kelsen's Model of 1920, involving the interconnection between the principle of the supremacy of the Constitution and the principle of the supremacy of the Parliament, whereunder constitutional matters are dealt with by specialized Constitutional Courts with specially qualified judges or by regular Supreme Courts or High Courts or their special senates (a concentrated constitutional review) in special proceedings (principaliter). Usually abstract reviews are carried out, although specific reviews are also possible. In addition to the a posteriors review, a pri . art . revi . ews are also foreseen. The decisions have an erga omnes effect with reference to the absolute authority of the institution by whom they are issued.

26. Armenia, Azerbaijan, Belarus (as well as statutes and other regulations), Bulgary, Buryatia/Russia, Dagestan/Russia, Estonia (as well as statutes), Georgia, Hungary (as well as statutes), Lithuania, Karelia/Russia, Kazakhstan (as well as statutes), Moldova (as well as constitutional provisions), Romania (as well as statutes and other regulations), Russia (as well as statutes), Tajikistan, Ukraine. The Slovak system on the other hand explicitly excludes the possibility of any preventive review, while the Northern Ossietian system includes the preventative review of statutes and regulations.

27. Preventative reviews by subject and country:
1. Constitutional provisions: Moldova;
2. International agreements: Albania, Armenia, Azerbaijan, Belarus, Bulgary, Buryatia/Russia, Dagestan/Russia, Estonia, Georgia, Hungary, Karelia/Russia, Kazakhstan, Lithuania, Moldova, Poland, Russia, Slovenia, Tajikistan, Ukraine;
3. Statutes.. Belarus, Estonia, Hungary, Kazakhstan, Northern Ossetia/Russia, Poland, Romania, Russia;
4. Regulations: Belarus, Northern Ossetia/Russia;
5. Other regulations: Belarus, Romania.

28. Repressive (a posteriors) reviews by type, subject, and country:

1. Abstract reviews:
- Constitutional provisions: Dagestan/Russia, the FRY, Kyrgyzstan, Russia, Ukraine, Uzbekistan;
- International agreements: Adigea/Russia, Azerbaijan, Bashkiria/Russia, the Kabardino-Balkar Republic/Russia, Latvia, Lithuania, Moldova, Russia, Tatarstan/Russia, Tuva/Russia, Uzbekistan, Yakutia/Russia;
- Statutes: Adigea/Russia, Albania, Armenia, Azerbaijan, Bashkiria/Russia, Bosnia and Herzegovina, Bulgary, Buryatia/Russia, Croatia, the Czech Republic (as well as the subsidiary power of the Supreme Court), Dagestan/Russia, Estonia, the FRY, the FYROM, Georgia, Hungary, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Montenegro/the FRY, Northern Ossetia/Russia, Poland, Russia, Serbia/the FRY, the Serbian Republic of Bosnia and Herzegovina, Slovakia, Slovenia, Tajikistan, Tatarstan/Russia, Tuva/Russia, Ukraine, Uzbekistan, Yakutia/Russia;
- Resolutions of the Parliament: Latvia, Armenia,.
- Regulations: Adigea/Russia, Albania, Armenia, Azerbaijan, Buryatia/Russia, the Czech Republic, Dagestan/Russia, the FRY, Georgia, Hungary, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Latvia, Lithuania, Moldova, Montenegro/the FRY, Northern Ossetia/Russia, Poland, Russia, Serbia/the FRY, the Serbian Republic of Bosnia and Herzegovina, Slovakia, Slovenia, Tajikistan, Tatarstan/Russia, Ukraine, Uzbekistan, Yakutia /Russia;
- Acts of the President of the State: Adigea/Russia, Armenia, Azerbaijan, Bashkiria/Russia, Bulgary, Buryatia/Russia, Georgia, Latvia, Lithuania, Moldova, Northern Ossetia/Russia, Russia, Tajikistan, Tatarstan/Russia, Ukraine, Uzbekistan, Yakutia/Russia;
- Rules and other acts of national administrative units: Azerbaijan, Bashkiria/Russia,

Buryatia/Russia, Dagestan/Russia, the FRY, Georgia, Irkutskaya Oblast/Russia, Karelia/Russia, Komy/Russia, Latvia, Northern Ossetia/Russia, Serbia /the FRY, Slovakia, Slovenia, Russia, Tajikistan, Ukraine, Uzbekistan, Yakutia/Russia;
- Proclaimed regulatory measures of statutory authorities: Slovenia;
- Other rules: Croatia, the FYROM, Hungary, the Kabardino-Balkar Republic/Russia, Northern Ossetia/Russia, Poland, Serbia/the FRY, Slovakia, Slovenia, Tajikistan;
- The conformity of national legal norms with (usually ratified) international agreements: Albania, Bulgary, the Czech Republic, the FRY, Hungary, Latvia, Slovakia, Slovenia, Poland;
- Regional agreements/agreements of member states concluded with the Federal State: Buryatia/Russia, Dagestan/Russia, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia;

2. Concrete reviews, requested by regular courts: Adigea/Russia, Azerbaijan, Bashkiria/Russia, Bulgary, Buryatia/Russia, Croatia, the Czech Republic, Dagestan/Russia, Estonia, Georgia, Hungary, Karelia/Russia, Kazakhstan, Komy/Russia, Kyrgyzstan, Lithuania, Poland (by a request presented by a government body), Romania, Russia, Slovenia, Yakutia/Russia;

3. Interpretation of rules:
- Constitution: Albania, Adigea/Russia, Azerbaijan, Bashkiria/Russia, Bulgary, Buryatia/Russia, Dagestan/Russia, Hungary, Irkutskaya Oblast/Russia, Kazakhstan, Komy/Russia, Kyrgyzstan, Moldova, Russia, Slovakia, Uzbekistan, Yakutia/Russia;
- Statutes and other rules: Azerbaijan, Dagestan/Russia, Poland, Uzbekistan;

4. Implementation of rules: Bashkiria/Russia, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Russia, Tuva/Russia;

5. Citizens' legislative initiatives: Hungary, Romania;

6. Constitutional Court legislative initiatives: Adigea/Russia, Bashkiria/Russia, Buryatia/Russia, Dagestan/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Northern Ossetia/Russia, Tatarstan/Russia, Tuva/Russia, Yakutia/Russia.

29. The omission of (statutory) regulations: Hungary.

30. - Between top government bodies: Adigea/Russia, Albania, Azerbaijan, Baskhiria/Russia, Bulgary, Buryatia/Russia, Dagestan/Russia, the FRY, the FYROM, Georgia, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Kazakhstan, Latvia, Mongolia, Poland, Russia, the Serbian Republic of Bosnia and Herzegovina, Slovakia, Slovenia, Tajikistan, Tatarstan/Russia, Ukraine;
- Between the State and regional or local units: Adigea/Russia, Albania, Bosnia and Herzegovina, Bulgary, Buryatia/Russia, the Czech Republic (as well as subsidiary power of the Supreme Court), Dagestan/Russia, the FRY, the FYROM, Hungary, Irkutskaya Oblast/Russia, Karelia/Russia, Komy/Russia, Montenegro/the FRY, Russia, the Serbian Republic of Bosnia and Herzegovina, Slovenia, Tatarstan/Russia, Ukraine,. - Between local or regional units: Bashkiria/Russia, Bosnia and Herzegovina, Buryatia/Russia, the FRY, Irkutskaya Oblast/Russia, Karelia/Russia, Komy/Russia, Montenegro/the FRY, Russia, Slovenia, Tatarstan/Russia, Ukraine;
- Between courts and other government bodies: Montenegro/the FRY, Serbia/the FRY, Slovenia;
- Other jurisdictional disputes: Croatia, Hungary, Ukraine, Yakutia/Russia;
- Between the Constitutional Courts of the Member states: the FRY.

31. Albania, Armenia, Azerbaijan, Bashkiria/Russia, Bulgary, Croatia, the Czech Republic, the FRY, the FYROM, Georgia, Moldova, Montenegro/the FRY, Poland, Romania, Russia, Serbia/the FRY, the Serbian Republic of Bosnia and Herzegovina, Slovakia, Slovenia, Yakutia/Russia.

32. Armenia, Croatia, Georgia, Hungary, Kazakhstan, Moldova, Mongolia, Montenegro/the FRY, Romania, Slovakia, Slovenia.

33. - Elections: Albania, Armenia, Bulgary, Croatia, the Czech Republic, the FRY, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Mongolia, Montenegro/the FRY, Romania, Serbia/the FRY, Slovakia;
- Confirming the election of deputies: Bulgary, Georgia, Kazakhstan, Mongolia, Slovakia, Slovenia, Ukraine.

34. - Constitutional complaints of individuals: Adigea/Russia, Albania, Azerbaijan, Bashkiria/Russia, Buryatia/Russia, Croatia, the Czech Republic, Dagestan/Russia, the FRY, the FYROM, Georgia, Hungary, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Kyrgyzstan, Mongolia, Montenegro/the FRY, Poland, Slovakia, Slovenia, Ukraine, Uzbekistan;
- (Constitutional) complaints requested by municipalities: the Czech Republic, Hungary, Slovenia.

35. The President of the State: Adigea/Russia, Armenia, Azerbaijan, Bashkiria/Russia, Bulgary, Croatia, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Poland, Romania, Yakutia/Russia;
- Other state representatives: Bulgary, Russia, Yakutia/Russia.

36. The President of the State.. Adigea/Russia, Albania, Armenia, Azerbaijan, Bashkiria/Russia, Bulgary, Buryatia/Russia, Croatia, the Czech Republic, Dagestan/Russia, the FYROM, Georgia, Hungary, Irkutskaya Oblast/Russia, Karelia/Russia, Komy/Russia, Mongolia, Montenegro/the FRY, Russia, Slovakia, Slovenia, Tatarstan/Russia, Ukraine, Yakutia/Russia;
- Other State representatives: Bulgary, Dagestan/Russia, Georgia, Lithuania, Karelia/Russia, Komy/Russia, Mongolia, Slovenia, Ukraine.

37. Violations of international law, decisions on matters relating to the appointment of constitutional court judges and their immunities, opinions relating to declarations of martial law, the implementation of decisions issued by international Courts, proposals for the amendment of the Constitution, consultative functions, etc.: Armenia, Bulgary, the Czech Republic, Moldova, Russia, Uzbekistan.
" Azerbaijan, DagestanlRussia, Poland, Uzbekistan.

38. Tasks which the Court is charged with by the Constitution or Statute: Adigea/Russia, Azerbaijan, Bashkiria/Russia, Croatia, Dagestan/Russia, the FYROM, Georgia, Komy/Russia, Montenegro/the FRY, Slovenia, Tajikistan, Tuva/Russia, Ukraine, Uzbekistan.

39. e.g. Bulgary, Romania, Uzbekistan.

40. Albania, Hungary, Moldova, Poland, Romania, Uzbekistan, sometimes even in the form of legislative initiatives by the Constitutional Court (the Member States of the Russian Federation: Adigea, Bashkiria, Buryatia, Dagestan, the Kabardino-Balkar Republic, Karelia, Komy, Northern Ossetia, Tatarstan, Tuva, Yakutia).

41. Albania, Azerbaijan, Bulgary, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Russia, Slovakia, Uzbekistan, some Member Sates of the Russian Federation (Adigea, Bashkiria, Buryatia, Dagestan, Irkutskaya Oblast, Komy, Yakutia).

42. Azerbaijan, Dagestan/Russia, Poland, Uzbekistan.

43. Armenia, Azerbaijan, Belarus, Bulgary, Latvia, Lithuania, Romania, Tajikistan.

44. Albania, Azerbaijan, Croatia, the Czech Republic, the FR/Y, the FYROM, Georgia, Hungary, Kyrgyzstan, Mongolia, Montenegro/the FRY, Poland, Slovakia, Slovenia, Ukraine, Uzbekistan, some Member States of the Russian Federation (Adigea, Bashkiria, Buryatia, Dagestan, the Kabardino-Balkar Republic, Karelia, Komy).

45. In years: 7 (Slovakia), 8 (Croatia, Poland), 9 (Slovenia, the FYROM, Lithuania, Romania, Hungary), 10 (Ukraine), 11 (Belarus), 12 (Bulgary), 15 (Kyrgyzstan).

46. Hungary, Lithuania, Poland and Slovenia allow the re-election of (constitutional) court judges.

47. e.g. Albania, Bulgary, Poland, Romania.

48. e.g. Armenia (35), Tajikistan (30), Kyrgyzstan and Georgia (35), Slovenia, Slovakia, Ukraine (40), Hungary (45).

49. e.g. Belarus and in Tajikistan (60) as well as in Kyrgyzstan, Russia, Bosnia and Herzegovina, Tatarstan/Russia and Hungary (70).

50. In Adigea/Russia, Azerbaijan, Bashkiria/Russia, Buryatia/Russia, Croatia, Dagestan/Russia, Estonia, the FRY, Hungary, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Lithuania, Montenegro/the FRY, Northern Osselia/Russia, Poland, Serbia/the FRY, the Serbian Republic of Bosnia, Slovenia, Tatarstan/Russia, Tuva/Russia, Uzbekistan and Yakutia/Russia constitutional court judges are exclusively appointed by the legislative body.

51. In Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgary, the Czech Republic, Georgia, Kazakhstan, Romania and Slovakia.

52. e.g. the FRY, Slovenia, Tuva/Russia, Yakutia/Russia.

53. e.g. Armenia, Bashkiria/Russia, Belarus, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Montenegro/the FRY, Northern Ossetia/Russia, Poland, Serbia/the FRY, the Serbian Republic of Bosnia, Tatarstan/Russia.

54. e.g. Uzbekistan.

55. e.g. Bulgary, the Czech Republic, Sloveia.

56. e.g. Armenia, Bulgary, Croatia, Hungary, Russia, Slovakia, Ukraine.

57. e.g. the Czech Republic, Georgia, Slovenia.

58. e.g. Croatia, Hungary, Slovenia.

59. Under the Lebanese Constitution of 23 May, 1926, amended on 19 October, 1995, a Constitutional Council was established to review the constitutionality of statutes, and to decide on disputes and protests resulting from presidential and representative elections (Article 19). The right to resort to the Council, with respect to determining the constitutionality of statutes, is enjoyed by

the President of the Republic, the President of the Chamber of deputies, and the Prime Minister, or the members of the Chamber of Deputies, and heads of the legally recognized religious groups, with respect to personal affairs, freedom of belief and the exercise of religious rituals, and freedom of religious education.

60. Under the Constitution of 13 March, 1973, the Supreme Constitutional Court is composed of five members, of whom one is the President, and all of whom are appointed by the President of the State by decree (Article 139). It is not permissible to combine membership of the Court with a ministerial post or membership in the Parliament (Article 140). line term of office of Court members is 4 years subject to renewal (Article 141). Court members cannot be dismissed from the Court except in accordance with the provisions of statute (Article 142). The Court determines the validity of the special appeals regarding the election of members of parliament and submits a report on its finding (Article 144). In addition, the Court has the following powers:
- the preventative constitutional review of statutes and legislative decrees before their promulgation (Article 145);
- a consultative function at the request of the President of the Republic (Article 147).
Should the Court decide that a statute or a decree is contrary to the Constitution, whatever is contrary to the text of the Constitution is considered null and void with retroactive effect and has no consequence (Article 145). The Court has no right to look into statutes which the President of the Republic submits to public referendum and are approved by the people (Article 146).

61. The Constitution of Yemen of 28 September, 1994 extended the powers of the Supreme Court of the Republic particularly to cases of:
- charges and counter charges with respect to the unconstitutionality of statutes, regulations and resolutions;
- controversies over jurisdiction among the judicial authorities:
- the impeachment of any of members of the Parliament as may be decided or referred to the Supreme Court by the Parliament;
- the trial of the President of the Republic, the Vice-President, the Prime Minister, his deputies, ministers and their deputies in pursuance of statute (Article 151).

62. Under the Constitution of 11 November, 1962, a statute specifies the judicial body competent to decide upon disputes relating to the constitutionality of statutes and regulations and determines its jurisdiction and Proceedings (Article 173). A statute ensures the right of both the Government and the interested parties to challenge the constitutionality of statutes and regulations before the said body. If the said body decides that a statute or a regulation is unconstitutional, it is considered null and void.

63. Under the Constitution (the Basic Statute of the State) of 6 November, 1996, the statute defines the judicial body entrusted with the settlement of disputes pertaining to the extent of the conformity of statutes and regulations with the Basic Statute of the State and that the said statutes and regulations do not contradict its provisions. The statute also specifies the powers of such judicial body and the procedures which it may follow (Article 70).

64. Dahomey - now Benin, Upper Volta now Burkina Faso, Chad, Gabon, Mali, Mauritania, Niger, Sudan.

65. Dahomey - now Benin, Upper Volta now Burkina Faso, the Central African Republic, Chad, Congo, Gabon, the Ivory Coast, Madagascar, Mali, Senegal, Togo.

66. e.g.: Botswana, Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Nigeria, Uganda, the Seychelles, Sierra Leone, Swazi, Tanzania, Zambia and Zimbabwe.

67. However, the Zambian Constitution of 1991, amended in 1996 established a Special Tribunal empowered to exercise constitutional review.

68. (Article 95); similarly in Ghana and its 1960 and 1969 Constitutions (Article 42 and Article 106 respectively). In Article 2 of the 1969 Constitution it even gave standing to individuals to address the Supreme Court and request constitutional reviews, and pursuant to the modifications of the 1979 Constitution, it explicitly specified that the Supreme Court should have original and exclusive power to carry out constitutional review.

69. Article 84 of the Constitution of Kenya, Article 42 of the Constitution of Nigeria, Para. 4 of Article 30 of the Constitution of Tanzania and Article 29 of the Constitution of Zambia.

70. Republica Cape Verde (Constitution of 7 October, 1980, amended 2 February, 1981, as well as the Constitution of 25 September, 1992), Republica Guinea Bissao (Constitution of 16 May, 1984, as well as the Constitution of 11 May, 1991) and Republica Sao Tome and Principe (Constitution of 5 November, 1975, amended for the last time by Constitutional Statute No. 7190 of October 1990).

71. Articles 90 through 92 of the Constitution of Cape Verde; Article 98 of the Constitution of Guinea Bissao; Article 11 of the Constitution of Sao Tome and Principe.

72. Similar to such bodies established in Laos and in Myanmar.

73. Originally this system was adopted by Mexico (1857), Venezuela (1858), Argentina (Constitutions of 1853, 1860 and 1863), Brazil (1890) and subsequently also by the former British colonies of Central America (Barbados, Guyana, Jamaica, Trinidad and Tobago). Furthermore, it was adopted by some states with little federal experience, such as Colombia (1850), or by a few states irrespective of the form of the state system, such as the Dominican Republic (1844), where this system has been preserved to the present day.

74. e.g. Guatemala (the Constitution of 1965 and the Amparo Act of 3 May, 1966), Honduras (the Constitution of January 1982 and the Amparo Act of 14 April, 1936, amended in February 1982) and Nicaragua (the Constitution of 20 July, 1979), together with the Statute of Rights and Guarantees of 21 August, 1979 and the Amparo Act of 28 May, 1980.

75. Under the Constitution of 30 October, 1987, the Constitutional Court was introduced as a body created by statute which is entrusted with judging the constitutionality of legal rules and measures. The composition, tasks and jurisdiction of this body are regulated by statute (Article 144).

76. e.g. Colombia (the Constitution of 1961; Act No. 96 of 1936 and Decree No. 432 of 1969), Venezuela (the Constitution of 1961; the Supreme Court Act of 30 July, 1976), Panama (the Constitution of 1972, as amended in 1983; the Constitutional Complaint Act of 24 October, 1956), El Salvador (the Constitution of 8 January, 1962,. the Constitutional Proceedings Act of 14 January, 1960), as well as Brazil (the Constitution of 1967, as amended in 1969 and Act No. 4717 of 21 June, 1965); a certain form of popular complaint (actio popularis) exists also in some Argentinean Provinces (Chaco, Neuquen, Santiago del Estero) and Costa Rica (based on the Civil Proceedings Code of 25 January, 1933, as amended on 23 December, 1937).

77. Where the representative body itself decides on the constitutionality of its laws.

78. Whereunder the Constitution is the basis and the source of all state power.

79. Not by the Parliament itself but either by the regular courts or by a special body, such as the Constitutional Court or some other body.

80. See: Pestalozza, C., Verfassungsprozessrecht, Muenchen, C.H. Beck'sche Veriagsbuchhandlung, 1991, p. 372-377.

81. See: Schlaiach, K, Das Bundesverfassungsgericht, Muenchen, C.H. Beck'sche Vertagsbuchhandlung, 1994, p. 72.

82. The Constitutional Court Act (Official Gazette SRS, Nos. 39/63 and 1/64) specified the power of and the proceedings before the Constitutional Court; it determined that it should start functioning on 15 February, 1964. The Assembly of the SRS elected the first President and eight judges of the Constitutional Court on 5 June, 1963 (the resolution on their election was published in the Official Gazette SRS, No. 22/63). The President and the judges were sworn in before the President of the Assembly on 15 February, 1964. The first Rules of Procedure of the Constitutional Court were adopted on 23 February, 1965 (Official Gazette SRS, No. 11/65).

83. In practice, such relations between Constitutional Courts were not easily established, which was also due to inadequate and inaccurate distinctions between the legislative powers of the Federation and the constituent republics, and, in particular, as then believed by the Slovenian Constitutional Court, due to the not very reasonable specification of the powers of the Federal Constitutional Court. The constitutional review in both Autonomous Provinces (Vojvodina, Kosovo), introduced in 1972, existed till 1991, when the jurisdiction of the Serbian Constitutional Court was extended over the whole territory of the constituent Republic of Serbia.

84. See: Srdi Pravna zastita pred Ustavnim sudom, Beograd, Slu beni glasnik, 1993, p. 25.

85. Working Document 1 CDL - 020196 prepared by the Secretariat of the Venice Commission of the Council of Europe.

86. Full members of the Conference are: Andorra, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Cyprus, France, Germany, Hungary, Italy, Liechtenstein, Lithuania, Malta, Macedonia, Poland, Portugal, Russia, Romania, Slovakia, Slovenia, Spain, Switzerland, Turkey. The associate members are: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia, Moldava, Ukraine.

87. http://www.coe.fr

88. Members appointed by the member States of the partial agreement: Albania, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Cyprus, Denmark, Estonia, Finland, the Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine. Associate members: Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia. Observers: Argentina, Canada, Japan, Kyrgyzstan, Uruguay, the USA and the Vatican. South Africa has a special cooperative status.

89. Argentina, Canada, Japan, Morocco, Paraguay, South Africa, South Korea and the USA.

90. The Conference as a consultative body includes the following countries:Armenia, Betarus, Kazakhstan, Kyrgyzstan, Russia and Tadjikistan.

91. Tunisia, Algeria, Sudan, Palestine, Kuwait, Libanon, Libya, Egypt, Morocco, Mauritania and Yemen.

92. Albania, Algeria, Armenia, Belgium, Benin, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, the Central African Republic, Chad, Comoros, Congo, Djibuti, Egypt, Equatorial Guinea, France, the FYROM, Gabon, Guinea, Guniea Bissao, Haiti, the Ivory Coast, Laos, Lebanon, Luxembourg, Madagascar, Mali, Mauritania, Mauritius, Moldova, Monaco, Morocco, Niger, Poland, Romania, Senegal, the Seychelles, Slovenia, Switzerland, Syria, Togo, Tunisia, Vanuatu, Vietnam, Zaire.

93. See, in particular, Боботов С.В. Конституционная юстиция. М.,1994,с.55-57.

94. It is perhaps not an accident that following WW II Italy (1948) and Germany (1949) were first to approve the establishment of courts as special institutions of constitutional review, within the framework of the new Constitution.

95. See: Боботов С. А. Указ. работа, с. 62-63; Кряжков В. А., Лазарев Л. В. Конституционная юстиция в Российской Федерации. М., 1998, с. 19-20; Арутюнян Г. Г. Конституционный контроль: характер функционирования и развития системы. М., 1997, с. 39-42.

96. France, Turkey, Turkmenistan, etc.

97. Germany, Spain, Russia, Romania, Poland, Armenia etc.

98. It is quite appropriate to remind that currently in many countries having advanced democratic public relations and attained the greatest heights of civilisation, in Japan before 16 -17th centuries, in particular, the human rights were used or had a social value only for the elite. The bulk of the population did not even have the right for a name, being called and indicated by their activities or profession. Meanwhile, even Plato thought that a state had to be built so that all together should be happy, rather than only a few. (Платон. "Государство". Собр. соч., т. 3, М. 1994, с. 189). Of an exclusive significance is the fact that both Plato, and later Aristotle considered the state and society as an indivisible integrity rather than separate entities.

99. As stated by E. Kant, "Only in the society, where there is the greatest freedom, which means a permanent opposition among all its members, with the boundaries of this freedom precisely defined inasmuch as it can be combined with the freedom of others, only in that society the highest design of nature can be materialized, i.e. the development of all natural deposits enclosed in mankind". Кант И. Соч. Т. I. М., 1994, с. 95.

100. In nearly all countries that had legalized the principle of constitutional separation of powers, the Basic Law defines the legal character of the State, directly or indirectly.

101. See: Тихомиров Ю. А. Теория закона. М., 1982, с. 87-103; Тихомиров Ю. А. Публичное право. М., 1995, с. 228-229.

102. The principle of a social state is registered specifically in the Constitutions of Germany, France, Italy, Russia, Portugal, Spain, Greece, Holland, Denmark, Sweden, as well as Armenia and a number of other countries.

103. It is to be remembered that following WW II, the humanity lived through deep social changes prompted not only by the downfall of Fascism but also by the collapse of the colonial system

andformation of the new systems of value in human habitation. Under such conditions, the concept of "a social state" is to be regarded not only as an undertaking to resolve some social issues, but as a radically new quality of public relations cantered at recognising the human dignity and ensuring a new approach to it by the state.

104. Государственное право Германии. М., 1994, с. 64.

105. Мальцев Г. В. Социалистическое право и свобода личности. М., 1968, с. 134.

106. Социальное государство и защита прав человека. М. , АН РФ, 1994, с. 9.

107. As rightly noted by G. V. Maltsev, "...the system of rights and responsibilities is the core, the center of the legal sphere, holding the key to solving the fundamental legal problems ". See.: Мальцев Г. В. Права личности: юридическая норма и социальная действительность. Конституция СССР и правовое положение личности. М., 1979, с. 50.

108. Г. В. Атаманчук. Теория государственного управления. М., Юрид. лит., 1997, с. 353.

109. Хессе Конрад. Основы конституционного права ФРГ. М., 1981, с. 111-112.

110. An interesting problem setting is presented in the study: И. А.Ледях Социальное государство и права человека (из опыта западных стран), (See: Социальное государство и права человека. М., АН РФ, 1994, с. 22-33).

111. See: Тихомиров Ю. А. Курс сравнительного правоведения. М.,1996, с.35-41.

112. See: Rupnik, J., Ustavnost, demokracija in politiuni sistem, Zalohba Obzorja Maribor 1975, p. 15-150.

113. In particular, see: Конституционный контроль и демократические процессы в новых независимых странах. Ереван, 1996, с. 222-228.

114. The basic difference between the so-called intervention of the Constitutional Court into the field which belongs to the Legislature, and other forms of intervention by which the Constitutional Court would exceed its authorisation to be sometimes transformed into a **reserve Legislature**, would be intact that the Constitutional Court abrogating a statute only "takes away", but the Legislature may also amplify. On the other hand, the abrogation of statute by a Constitutional Court decision does not create law to a low degree in comparison with writing new statutorial provisions. It may depend on the context where the abrogated legal provision is situated, on the type of provision, but sometimes only on pure coincidence concerning which legislative technique was used by the Legislature, if the Constitutional Court really executes its supposed undisputable function of negative Legislature, or participates in the creation of a new provision. How much space will belong to the Legislature concerning the extraction of determined unconstitutionalities and how much space lw to be occupied by the Constitutional Court, may in cases ofthe highest degree partially depend also on the intensity of the activities of the Legislature (Testen, F, Techniques of the Decision-Making Process of the Constitutional Court in the Abstract Constitutional Review, Legal Journal (Pravna praksa), No. 1199, p. 5).

115. It is exactly by "interpretation" as a decision-making technique that the Constitutional Court can enter the space which is otherwise reserved for the Legislature. This interpretation entails a

technique which is used in Constitutional Court sentences describing the particular contents of a legal norm in an affirmative manner (Testen, F, The Techniques of Constitutional Court Decision-Making Process in the Abstract Constitutional Review, Legal Journal (Pravna praksa), No. 1199, p. 5).

116. See: Конституционное право: Восточно-европейское обозрение,1998, N 2,с.18.

117. Ditto, c. 54.

118. Adigea/Russia, Azerbaijan, Baden-Wuerttemberg/Germany, Bavaria/Germany, Bashkiria/Russia, Belgium, Berlin/Germany, Bosnia and Herzegovina, Bremen/Germany, Buryatia/Russia,Croatia, Dagestan/Russia, Estonia, FRY, Germany, Hamburg/Germany, Heessen/Germany, Hungary, Irkutskaya Oblast/Russia, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Liechtenstein, Lithuania, Montenegro/FRY, Namibia, Niedersachsen/Germany, Nordrhein- Westfalen/Germany, Northern Ossetia/Russia, Poland, Rheinland-Pfalz/Germany, Saarland/Germany, Serbia/FRY, the Serbian Republic of Bosnia, Slovenia, Switzerland, Tatarstan/Russia, Tuva/Russia, Uzbekistan and Yakutia/Russia.

119. 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 Yakutia1The Russian Federation Act of 6 February 1992.

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

121. 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 'Preventative 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 statues, 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 statutorial 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.

122. - Articles 4 and 39 of the Rules of Procedure of the Constitutional Court (Official Gazette SR, No. 10174)
- Articles 39-41 of the Regulation on Internal Of .face 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;
- the Legal Information System of the Constitutional Court introduced in 1987 the computerised database of Slovenian Constitutional Case-Law as a public database, in principle accessible to all users of legal information.

123. 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.

124. 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.

125. Шулъженко Ю. Л. Op. cit., с. 15-16. Чиркин В. Е. Контрольная власть//Гос. и право. 1993. N4, с. 11-12.

126. Штайнбергер Г. Модели конституционной юрисдикции. Издание Совета Европы, 1994, с.З.

127. Grote R. Das Rechtstaatsprinzip in der mittel- undosteuropaischen Verfassungsgerichtspraxis. /Grundfragen derVerfassungsgerichtsbarkeit in Mittel-und Osteuropa. Hrsg. vonJ. A. Frowein und T. Marauhn. Springer, 1998, S.31.

128. See: Бланкенагелъ А. Теория и практика конституционного контроля в ФРГ// Советское государство и право. 1989. N 1, с. 102.

129. Витрук Н.В. Op. cit., с. 85.

130. For more detail, see: Haberle P. Verfassungsgerichtsbarkeit zwischen Politik und Rechtsmssenschaft. Athenaum, 1980, S. 59.

131. See: Баглай М. В. Конституционное право Российской Федерации. М., 1998, с.635.

132. See: Баглай М. В., Габричидзе Б. Н. Конституционное право Российской Федерации. М., 1996, с. 414.

133. Витрук Н.В. Op. cit., с. 85.

134. See: Хабриева Т. Я. Правовая охрана Конституции. Казанский университет. 1995, с. 28-29. Федеральное конституционное право России. М., 1996, с. XI.

135. Конституционный Суд. Сборник постановлений и определений 1995-1996 гг. Кишинэу, 1997, с. 42.

136. See, in particular, Конституционное правосудие в странах СНГ и Балтии. М., 1998, с. 6; Конституции государств Европейского Союза. М., 1997; Кряжков В. А., Лазарев Л. В. Op. cit., с. 57.

137. ОвсепянЖ. И. Op. cit., с. 23.

138. To have a rigth to exercise a directing or governing influence over the legislative or executive body.

139. See: Конституции государств Европейского Союза. М., 1997, с. 670.

140. See: Конституционный Суд Российской Федерации. Зарубежная практика конституционного контроля, 1998, вып. 24, с. 7.

141. See, Конституции государств Европейского Союза. М., 1997, с. 708.

142. Ibid, с. 561.

143. See: Конституционный Суд Российской Федерации. Зарубежная практика конституционного контроля. 1998, вып. 25, с.4-7.

144. Овсепян Ж. И. Судебный конституционный контроль в зарубежных странах// Автореф. дис. докт. юрид. наук. М., 1994, с. 10.

145. See: Конституционное правосудие в субъектах Российской Федерации. Под ред. М. А. Митюкова. М., 1997, с. 5.

146. Мормакоеа Т. Г. Разграничение компетенции между Конституционным Судом и другими судами Российской Федерации. //ВКС. 1996, N6, с. 23-24.

147. See, in particular, dissenting opinions by N. V. Vitruk and G. A. Gajiev, Judges of the Constitutional Court of the Russian Federation on the case "On Interpreting some statements of Articles l25, 126 and 127 of the Constitution of the Russian Federation". « Российская газета», NI2l, от 30.06.1998 .

148. In particular, Боботов С.В. Op. cit., с.64.

149. See: Чиркни В. Е. Конституционное право зарубежных стран. М., 1997, с. 43-48; Шульженко К. Л. Институт конституционного надзора в Российской Федерации. М., 1998, с.3-7.

150. Шульженко Ю. Л. Ditto, с. 5.

151. See: Альваро Хилъ - Роблес. Парламентский контроль за администрацией /институт омбудсмена/. М., 1997.

152. Adigea/Russia, Albania, Andorra, Argentina, Austria, Azerbaidjan, Bavaria/Germany, Bashkiria/Russia, Benin, Berlin/Germany, Brazil, Bremen/Germany, Burundi, Buryatia/Russia, Cambodia, Cape Verde, the Central African Republic, Chad, Colombia, Congo, Costa Rica, Croatia, the Czech Republic, Cyprus, Dagestan/Russia, Djibouti, Ecuador, El Salvador, Equatorial Guinea, the FRY, the FYROM, Georgia, Germany, Guatemala, Hessen/Germany, Honduras, Hungary, Israel, Japan, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Komy/Russia, Kyrgyzstan, Liechtenstein, Montenegro/the FRY, Mali, Malta, Mauritius, Moldova, Mongolia, Nicaragua, Niger, Panama, Papua New Guinea, Paraguay, Peru, Poland, RheinlandPfalz/Germany, Russia, Saarland/Germany, Senegal,the Seychelles, Sierra Leone, Slovakia, Slovenia, South Africa, South Korea, Sudan, Spain, Sri Lanka, Switzerland, Syria, Taiwan, Tucuman/Argentina, Ukraine, Uganda, Uzbekistan, Venezuela.

153. Those entitled to lodge a constitutional complaint are generally individuals but in Austria, Germany, Spain, Switzerland, the FRY and Montenegro, legal entities are also explicitly entitled, while in the Croatian system legal entities are explicitly excluded as a potential appellant.

154. Adigea, Altai, Baskiria, Buryatia, Chuvashia, Dagestan, Ingushia, Irkutskaya Oblast, the Kabardino-Balkar Republic, Khakassia, the Karachaewo-Cherkez Republic, Karelia, Kalmikia, Komy, Marii-El, Northern Ossetia, Tatarstan, Tuva, Udmurtia, Yakutia/Sakha.

155. Para. 2 of Article 15 of the Croatian Constitutional Court Act or in Article 39, Article 58 and Para. 4 of Article 61 of the Slovenian Constitutional Court Act.

156. Greece, Italy, Switzerland, the USA.

157. Germany.

158. France is a specific exception among these systems, as private individuals have no access to the Constitutional Council, except with reference to elections. In France, the protection of individual rights is, however, the responsibility of the National Council acting on the basis of a complaint against administrative acts.

159. Australia, Barbados, Denmark, Finland, Great Britain, Greece, Guyana, Iceland, Ireland, Jamaica, Japan, the Netherlands, Norway, Sweden, Trinidad and Tobago, and the USA.

160. "Habeas corpus is mainly used in Argentina (as well as in the following Argentinean provinces.. Chaco, Neuquen and Formosa); Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, the USA, and in Venezuela; in Africa: Botswana, Ghana, Kenya, Lesotho, Malawi, Mauritius, Nigeria, Sierra Leone, Swazi, Tanzania, Uganda, Zambia and Zimbabwe; in Asia.. Bangladesh, Hong Kong, India, Indonesia, Malaysia, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, and Taiwan.

161. the USA; in Africa: Botswana, Ghana, Kenya, Lesotho, Malawi, Mauritius, Nigeria, Sierra Leone, Swazi, Tanzania, Uganda, Zambia, Zimbabwe; in Asia.. Bangladesh, India, Nepal, the Philippines, Sri Lanka.

162. 7he USA, and on the American model, also Taiwan.

163. Argentina, Bolivia, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

164. Colombia, Spain.

165. The exceptions are Hungary and Slovenia, where it is restricted by a demonstration of standing by the complainant.

166. Kelsen considers the popular complaint (actio popularis) as the strongest guarantee, however, he does not recommend such solution because of the possible abuse of the right to initiate a dispute as well as because of the risk of the unbearable burdening of the Constitutional Court by such complaints.

167. Bavaria - although in other German provinces and on a federal level there is no popular complaint, Croatia, partly the Czech Republic, the FRY, the FYROM, Hungary, Liechtenstein, Malta, Montenegro/the FRY, Slovenia

168. Argentina, Brazil, Colombia, Costa Rica, El Salvador, Panama, Paraguay, Peru, Venezuela.Argentina is an interesting example where there is no popular complaint (actio popularise on afederal level, but individual provinces have introduced it.. Buenos Aires, Chaco, Entre Rios, La Rioja, Nequen, Rio Negro and Santiago del Estero.

169. Burundi, the Central African Republic, Chad, Congo, Djibuti, Niger, the Seychelles, Sierra Leone - according to the 1991 Constitution, South Africa and Uganda.

170. Belarus, Belgium, Bulgary, Cambodia, Italy, Latvia.

171. Azerbaijan, Bosnia, Bulgary, Estonia, Italy, Kazahstan, Lithuania, Yakutia.

172. France.

173. Slovenia, Spain.

174. Germany.

175. Ruling No. U-I-71194 of 6 October, 1994, OdlUS III, 109

176. In the form of recurso de agravios, firme de derecho, manifestacion de personas.

177. Incorporated in the institution Reichskammergericht of 1495, envisaged in the famous constitutional text, Paulskirchenverfassung, of 1849, and in Bavaria it was pro vided for in the Constitutions of 1808, 1818, 1919 and 1946.

178. Staatliche Verfassungsbeschwerde.

179. Albania, Andorra, Austria, Croatia, the Czech Republic, Cyprus, the FRY, the FYROM, Germany, Hungary, Liechtenstein (1992), Malta, Montenegro/the FRY, Poland, Portugal, Russia, Slovakia, Slovenia, Spain, Switzerland-Supreme Court, Ukraine.

180. The federal constitutional complaint is the responsibility of the Federal Constitutional Court, the provincial constitutional complaint is the responsibility of certain Provincial Constitutional Courts: Bavaria, Berlin, Hessen and Saarland.

181. Baskiria (under the jurisdiction of the Constitutional Court), Georgia (under the jurisdiction of the Constitutional Court), Kyrghyzstan (under the jurisdiction of the Constitutional Court), Mongolia (under the jurisdiction of the Constitutional Court since the Constitution of 1992), Papua-New Guinea (under the jurisdiction of the Supreme Court), South Korea (under the jurisdiction of the Constitutional Court since the Constitution of 1987), Taiwan (under the jurisdiction of the Supreme Court), Syria (under the jurisdiction of the Constitutional Court), Uzbekistan (under the jurisdiction of the Constitutional Court); the Constitutional Courts of Member States of the Russian Federation (Adigea, Buryatia, Dagestan, the Kabardino-Balkar Republic, Karelia, Komy).

182. Benin (Constitutional Court), Cape Verde (the Supreme Court of Justice), Mauritius (the Supreme Court), Senegal (the Constitutional Council) and Sudan (the Supreme Court).

183. Bavaria, Brazil, Colombia, Croatia, partially the Czech Republic, the FRY, the FYROM, Hungary, Liechtenstein, Malta, Montenegro/the FRY, Slovenia.

184. Except for the possibility of indirectly impugning a statute in the FRY, Montenegro/the FRY, Slovenia and Spain, and the direct impugning of a statute in Germany.

185. the FYROM, Slovenia.

186. e.g. the German Federal Constitutional Court and the Spanish Constitutional Court.

187. e.g. in the Czech Republic, Georgia and Slovenia.

188. See also Klucka J., Suitable Rights for Constitutional Complaints, Report on the Workshop on the "Functioning of the Constitutional Court of the Republic of Latvia", Riga, Latvia, 3-4 July, 1997, Offprint.

189. In Germany, Hungary, Slovenia and in the Czech Republic municipalities are entitled, in order to protect self-government, to file a "communal" constitutional complaint (Germany recognises the "communal" constitutional complaint on a federal level and on a provincial level in the provinces of Wuerttemberg and North Westphalia). The German system also recognises a special constitutional complaint by an individual in relation to constitutional conditions for the nationalisation of land (Sozialisierung) in the province of Rheinland-Pfalz. A special form of constitutional complaint exists in Spain: there, the institute of the citizens' legislative initiative is also protected by constitutional complaint.

190. In Switzerland and Austria a constitutional complaint can impugn only an administrative act, while in Germany, it can impugn acts of all levels (including a statute) in Spain, Slovenia, the FRY and Montenegro a statute may also be an indirect subject of a constitutional complaint; legislative negligence may be directly impugned by a constitutional complaint in Brazil, and also in the practice of the German Federal Constitutional Court and the Bavarian Constitutional Court.

191. e.g. Article 2 of the Facultative Protocol of the General Assembly of the UN to the International Pact on Citizenship and Political Rights of 19 December, 1966 (Resolution No. 2000 A (XXI)) since the Council for human rights must accept and debate reports from individual persons who claim that they are the victims of the violation of any right defined in this Pact. The right to file an individual complaint is contained in the following: Article 23 of the Declaration on Fundamental Rights and Freedoms of the European Parliament of 12 April, 1989; section 18(2) of the Document of the Moscow Meeting of CSCE of 3 October, 1991; Article 25 of the American Convention on Human Rights of 22 November, 1969. Article 28 of the Contract on the European Community of 1 February, 1992; Charter of 1979 of the Comision y la Corte Interamericana de los Derechos Humanos; Statute of 1980 of the Inter-American Court on Human Rights; the

192. Article 25 of the Convention.

193. The European Convention for the Protection of Human Rights and Fundamental Freedoms..
- has constitutional status in Austria;
- is the basis for filing an internal national constitutional complaint in Switzerland, where it has a status comparable to the constitutional level,.

In both cases it is permissible to base a national constitutional complaint on the provisions in the Convention.
- it is sometimes higher than ordinary law (Belgium, Cyprus, France, Luxembourg, Malta, the Netherlands, Portugal, Spain);

- it is sometimes ranked as Common Law.. Denmark, which introduced the national use of the Convention by special Statute on I July, 1992, Germany, Finland, Italy, Liechtenstein, San Marino, Turkey;
- it sometimes does not have a direct internal state effect: e.g. Great Britain, Iceland, Ireland, Norway, and Sweden. Some countries of Anglophone Africa are an exception regarding the latter group of systems (e.g. Kenya, Nigeria, Tanzania, and Uganda), as they expressly adopted the system for the protection of rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms (e.g. Nigeria in the Constitution of 1960), influenced by the extension clause to the European Convention in terms of Article 63, which Great Britain signed on 23 October, 1953, whereby only the Convention itself and Protocol I apply in these regions.

194. The status of the Constitutional Court is thus defined in e.g. Para. I of Article I of the Constitutional Court Act of 1994.

195. Ruling issued by the Slovenian Constitutional Court No. U-1-71194 of 6 October, 1994.

196. In Particular, see: Защита основных прав Конституционным Судом. Европейская комиссия "За демократию через право". Издание Совета Европы, 1995, с. 52-54.

197. See, Юридический вестник, 1997, No1,с. 4.

198. See: Конституционный Суд Российской Федерации. Зарубежная практика конституционного контроля, 1998, вып. 15, с.4-6.

199. See: Бланкенагель А. Детство, отрочество, юность Российского Конституционного Суда. М., 1996, с. 26-28.

200. Article 67. The demands placed upon findings and conclusions.
With regard to issues determined by Points 1 and 2 of Article 100 of the Constitution, a decision shall be adopted based both on the literal meaning of the Act and existing juridical practice.
The Constitutional Court shall adopt findings and conclusions only as to the issues raised in the appeal.
While adopting findings and conclusions, the Constitutional Court shall not be restricted by the reasons and arguments raised in the appeal.
The findings and conclusions of the Constitutional Court shall be made public during the Session and shall be attached to the case file.

201. There is an interesting example of Spain with 29814 cases registered at the Constitutional Court July 15, 1980 – December 31, 1994, of which 28106, or 94.3 percent were by individual complaints (Защита основных прав Конституционным судом. Европейская комиссия "За демократию через право").

202. Г. В. Атаманчук. Теория государственного управления. М., 1997, ст. 369-370.

203. E. g., in Germany, of 5000 complaints annually registered in the Federal Constitutional Court, 98 percent are abrogated, with only 2 percent containing serious issues of constitutionality (See: Общая теория прав человека. М., Норма, 1996, с. 339).

204. e.g. Austria, Armenia, Belgium, France, Ireland, Italy.

205. Para. 4 of Article 19 of the Constitutional Court Act.

206. Para. 2 of Article 30 of the Federal Constitutional Court Act. In addition, some Provincial Constitutional Courts adopted the dissenting opinion, e.g. Bavaria (Para. 5 of Article 25 of the Constitutional Court Act; Article 4 of the Rules of Procedure of the Constitutional Court), Berlin (Para. 2 of Article 29 of the Constitutional Court Act), Bremen (Para. 3 of Article 13 of the Rules of Procedure of the Constitutional Court), Hamburg (Para. 4 and 5 of Article 22 of the Constitutional Court Act; Articles 27 and 28 of the Rules of Procedure of the Constitutional Court), Niedersachsen (Para. 2 of Article 11 of the Rules of Procedure of the Constitutional Court).

207. Para. 3 of Article 93 of the Constitution; Articles 35 to 38 of Act No. 184/1975.

208. Article 22 of the Constitutional Court Act.

209. Para. 4 of Article 42 of the Constitutional Court Act No. 28/1982.

210. Para 3. of Article 40 of the Constitutional Court Act; Articles 48 to 50 of the Rules of Procedure of the Constitutional Court.

211. Para. 2 of Article 31 of the Constitutional Court Act.

212. Para. 2 of Article 90 of the Constitutional Court Act No. 2/1979.

213. Para. 1 of Article 31 of the European Convention on Human Rights and Basic Freedoms.

214. Para. 2 of Article 51 of the European Convention on Human Rights and Basic Freedoms.

215. Globevnik, Problem obnove v ustavnem sporu, Pravnik, No.. 4-6/82,p. 82.

216. Globevnik, Problem obnove, p. 82.

217. Globevnik, Problem obnove, p. 83.

218. Globevnik, Problem obnove, p. 84.

219. Globevnik, Problem obnove, p. 85.

220. Unwiderruflichkeit, Jochen Abr. Frowein - Thilo Marauhn, Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und OstEuropa, Cremer, Die Wirkungen verfassungsgerichtlicher Entscheidungen, Springer, Band 130, 1998, p. 249.

221. Jochen Abr. Frowein, Thilo Marauhn, Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und Osteuropa, Springer, Band 130, 1998, p. 249.

222. The individual complaint under Article 25 of the Convention is an extraordinary legal remedy similar to the constitutional complaint (Stackelberg, 87). The Court deals with the case only if all national legal remedies have already been exhausted in accordance with generally accepted principles of international law. **Furthermore, the constitutional complaint before the Constitutional Court (if it is introduced in a particular national legal system), which is the sole subsidiary legal remedy, follows the exhaustion of legal remedies; this is confirmed also by permanent European constitutional case-law)** (Stackelberg, 93; Matscher, Der Rechtsmittelbegriff, 266; Nedjati, 16 in 18, Klecatsky, 544; Schmalz, 132). The individual has to

exhaust, in a particular case, all legal remedies allowed by the national legal order, including the constitutional complaint (Bleckmann, 45).
Sources:
1. dr. Bleckmann Albert, Staatsrecht II - Die Grundrechte, 3. Auflage, Koeln, 1989, p. 29-46
2. Klecatsky-Oehlinger, Gerichtsbarkeit des oeffentlichen Rechts, Manz Verlag, Wien, 1984, p. 517, 540.
3.Matscher dr. Franz, Der Rechtsmittelbegriff der EMRK, Festschrift fuer Winifried Kralik, Wien, 1968, p. 257
4 Nedjati Zaim M., Human Rights under the European Convention, North-Hollang Publishing Company, Amsterdam-New York-Oxford, 1978, p. 13-20
5.Schmalz Dieter, Grundrechte, 2. Auflage 1991, Nomos Verlagsgesellschaft, Baden Baden, p. 25-26, 131-133
6.Von Stackelberg Curt Freiherr sen.& jun., Das Verfahren der deutschen Verfassungsbeschwerde und der europaeischen Menschenrechtsbeschwerde, Koeln, 1988, p. 85.

223. e.g. Para. 3 of Article 26 of the Albanian Constitution (No. 7561); Para. 4 of Article VI of the Constitution of the Federation of Bosnia and Herzegovina; Para. 5 of Article 14 of the Bulgarian Constitutional Court Act; Para. 2 of Article 107 of the Lithuanian Constitution and Article 59 of the Lithuanian Constitutional Court Act; Para. 3 of Article 112 of the Macedonian Constitution; Para. 2 of Article 140 of the Moldavian Constitution; Para. 1 and 4 of Article 82 of the Constitution of Kyrgyzstan; Para. 2 of Article 102 of the Constitution of the Republic of Armenia and Para. 2 of Article 64 of the Armenian Constitutional Court Act.

224. e.g. Article 58 of the Lithuanian Constitutional Court Act.

225. Para. 5 of Article 26 of the Albanian Constitution, No. 7561; Article 61 of the Lithuanian Constitutional Court Act; Article 83 of the Russian Constitutional Court Act and Article 41 of the Belorussian Constitutional Court Act.

226. In addition, it is interesting to note that by the provision of Para 3 of Article 61 of the Lithuanian Constitutional Court Act, the Constitutional Court has to interpret its own decisions in such way that the contents do not change. The request for such an interpretation is not permissible if the request does not concern the same disputed object, but may lead to the issuing of a new decision (Decision of the Lithuanian Constitutional Court of 21 September 1994, published in the Official Digest, No. 3/1995, 111).

227. Article 42 of the Belorussian Constitutional Court Act; Article 62 of the Lithuanian Constitutional Court Act; Article 68 of the Constitutional Court Act.

228. Article 42 of the Belorussian Constitutional Court Act; Para, 1 of Article 62 of the Lithuanian Constitutional Court Act.

229. Para 2 and 3 of Article 62 of the Lithuanian Constitutional Court Act.

230. Article 68 of the Ukrainian Constitutional Court Act.

231. Para. 2 of Article 127 of the Belorussian Constitution.

232. Articles 105 and 106 of the Lithuanian Constitution and Articles 64 and 74 of the Lithuanian Constitutional Court Act.

233. Para. 3 to 5 of Article 131 of the Constitution of Kazakhstan. In a certain "milder" form a similar "intervention" in a Constitutional Court decision was determined by the former Polish system; similar forms exist in Latvia and Romania, but they are limited to the abstract control of norms.

234. See, в частности, Сборник решений Конституционного Суда Киргизской Республики. Бишкек, 1998, с., 77, 81, 85.

235. See: Федеральный конституционный закон "О Конституционном Суде Российской Федерации". Комментарий. М., 1996, с. 221.

236. See: Овсепян Ж. И. Указ. работа, с. 26-31, 282-306. Шульженко Ю. Л. Конституционный контроль в России. М., 1995, с. 10-11. Боботов С. В. Указ. работа, с. 11-16. Сравнительное конституционное право. М., 1996, с. 231-236. Эбзеев Б. С. Конституция. Правовое государство. Конституционный Суд. М., 1997, с. 162-168 и т. д.

237. See: Конституционное право: Восточно-европейское обозрение, 1996, № 2, с. 2.

238. With this regard, the decisions of the Constitutional Court of the Russian Federation often contains guidelines to the lawmaker on adopting or amending a specific law, or a statement concerning the right of a state institute having applied the given act, to adjust the relevant issue See.. ВКС. 1995, N2-3, с. 49,56,70; N5, с. 18; N6, с. 9, 13, 35-46. 1996, N2, с. 11, 19, 31, 40; N4, с. 9, etc.).

239. Fully dedicated to this issue is the article by Joel Halman "The Constitutions and the Economic Reform in the Transition Period", which invites a very close scrutiny. Êîíñòèòóöèîííîå ïðàâî. Âîñòîê-íî-åâðîïåéñêîå îáîçðåíèå, 1996, N^{0}2.

240. See: "Конституционный контроль и демократические процессы в новых независимых странах". Сборник материалов Международного семинара. Ереван, 16-18 октября 1996. с. 213.

241. See.: ВКС1993, NI, с. 31-32.1995, N2-3, с. 48,59; N4, с. 5-6,- N6, с. 50.1996, N2, С. 47-49; N3, с. 32-33,35; N5, с. 17-18. 1997, N 1, с. 27, 42. 1998, NI, с. 31, 49; N3, с. 38, 74 etc.

242. See: Rupnik, J., Ustavnost, demokracija in politiuni sistem, Zalohba Obzorja Maribor 1975, p. 15-150.

243. "Российская газета" N 96 от 21.05.98 г

244. The lessons of the 1993 conflict in Russia also teach that for the countries of the postcommunist space, the consistent resolutions of these issues are of crucial importance.

245. See: Indicators of Sustainable Development. The Wuppertal Workshop, 15-17 Nov. 1996.

246. The Concept of transition of the Russian Federation to a sustainable development, approved by the ruling of the President of the Russian Federation of April 1, 1996, #440, reads: "One of the basic conditions of the transition to a sustainable development is the insurance of the human and social rights and freedoms. Moving to this objective assumes an establishment of an open society comprising as system elements the legal state, the market economy and the welfare society ". This

document gives a practical enumeration of multiple indicators of sustainable development.

APPENDIX

SELECTION OF KEY CONCEPTS FOR COMPARATIVE CONSTITUTIONAL ANALYSIS (PROPOSED BY THE AUTHORS WHEN DEVELOPING THE "VORONUM" SYSTEM)

A			
ABSOLUTE RIGHTS	АБСОЛЮТНЫЕ ПРАВА	ԲԱՑԱՐՁԱԿ ԻՐԱՎՈՒՆՔՆԵՐ	ABSOLUTNE PRAVICE
ABUSE OF POWER	ЗЛОУПОТРЕБЛЕНИЕ ВЛАСТЬЮ	ԻՇԽԱՆՈՒԹՅԱՆ ՉԱՐԱՇԱՀՈՒՄ	ZLORABA OBLASTI
ACT (WRIT) OF HABEAS CORPUS	ХАБЕАС КОРПУС АКТ	ՀԵԲԻՍ ԿՈՐՊՈՒՍԻ ԱԿՏ, ԿԱԼԱՆԱՎՈՐԻՆ ԴԱՏԱԿԱՆ ՆԻՍՏԻՆ ՆԵՐԿԱՅԱՑՆԵԼՈՒ ՄԱՍԻՆ ԴԱՏԱԿԱՆ ՀՐԱՄԱՆ	HABEAS CORPUS AKT
ACTION OF LAW	ДЕЙСТВИЕ ЗАКОНА	ՕՐԵՆՔԻ ԳՈՐԾՈՂՈՒԹՅՈՒՆ	UČINEK ZAKONA
ACTIVE ELECTORAL RIGHTS	АКТИВНОЕ ИЗБИРАТЕЛЬНОЕ ПРАВО	ԱԿՏԻՎ ԸՆՏՐԱԿԱՆ ԻՐԱՎՈՒՆՔ	AKTIVNA VOLILNA PRAVICA
ACTS OF BODIES OF STATE AUTHORITIES	АКТЫ ОРГАНОВ ГОСУДАРСТВЕННОЙ ВЛАСТИ	ՊԵՏԱԿԱՆ ԻՇԽԱՆՈՒԹՅԱՆ ՄԱՐՄԻՆՆԵՐԻ ԱԿՏԵՐ	AKTI ORGANOV DRŽAVNE OBLASTI
ADDRESS BY THE PRESIDENT (PRESIDENTIAL ADDRESS)	ПОСЛАНИЕ ПРЕЗИДЕНТА	ՆԱԽԱԳԱՀԻ ՈՒՂԵՐՁ	NAGOVOR PREDSEDNIKA
ADMINISTRATION	АДМИНИСТРАЦИЯ	ՎԱՐՉԱԿԱԶՄ	UPRAVA
ADMINISTRATIVE COURT	АДМИНИСТРАТИВНЫЙ СУД	ՎԱՐՉԱԿԱՆ ԴԱՏԱՐԱՆ	UPRAVNO SODIŠČE
ADMINISTRATIVE RESPONSIBLITY	АДМИНИСТРАТИВНАЯ ОТВЕТСТВЕННОСТЬ	ՎԱՐՉԱԿԱՆ ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅՈՒՆ	UPRAVNA ODGOVORNOST
ADMINISTRATIVE-TERRITORIAL DEVISION	АДМИНИСТРАТИВНО-ТЕРРИТОРИАЛЬНОЕ УСТРОЙСТВО	ՎԱՐՉԱՏԱՐԱԾՔԱՅԻՆ ԲԱԺԱՆՈՒՄ	UPRAVNO TERITORIALNA RAZDELITEV
PREFERENCES	ЛЬГОТЫ	ԱՐՏՈՆՈՒԹՅՈՒՆՆԵՐ	PROGRAM ZA ZAGOTAVLJANJE ENAKOPRAVNOSTI PRI ZAPOSLOVANJU
AGE QUALIFICATION	ВОЗРАСТНОЙ ЦЕНЗ	ՏԱՐԻՔԱՅԻՆ ՑԵՆԶ	ZAHTEVANA STAROSTNA MEJA
AGGRESSION	АГРЕССИЯ	ՆԱԽԱՀԱՐՁԱԿՈՒՄ	AGRESIJA

AMBASSADOR	ПОСОЛ	ԴԵՍՊԱՆ	VELEPOSLANIK
AMNESTY	АМНИСТИЯ	ՀԱՄԱՆԵՐՈՒՄ	AMNESTIJA
AMPARO	АМПАРО	ԱՄՊԱՐՈ	AMPARO
APARTHEID	АПАРТЕИД	ԱՊԱՐՏԵԻԴ	APARTHAJD
APPEAL	АПЕЛЛЯЦИЯ	ՎՃՌԱԲԵԿՈՒԹՅՈՒՆ	PRITOŽBA
APPEAL OF CITIZENS (CITIZENS' INITIATIVE)	ОБРАЩЕНИЕ ГРАЖДАН	ՔԱՂԱՔԱՑԻՆԵՐԻ ՈՒՂԵՐՁ (ԴԻՄՈՒՄ)	DRŽAVLJANSKA INICIATIVA
APPELLATE COURT	АПЕЛЛЯЦИОННЫЙ СУД	ՎՃՌԱԲԵԿ ԴԱՏԱՐԱՆ	PRITOŽBENO SODIŠČE
APPOINTMENT OF ELECTIONS	НАЗНАЧЕНИЕ ВЫБОРОВ	ԸՆՏՐՈՒԹՅՈՒՆՆԵՐԻ ՆՇԱՆԱԿՈՒՄ	DOLOČITEV VOLITEV
ARBITRATION	АРБИТРАЖ	ԻՐԱՎԱՐԱՐՈՒԹՅՈՒՆ (ԱՐԲԻՏՐԱԺ)	ARBITRAŽA
ARBITER	АРБИТР	ԻՐԱՎԱՐԱՐ	ARBITER (RAZSODNIK)
ARREST	АРЕСТ	ՁԵՐԲԱԿԱԼՈՒՄ	PRIPOR
ASSOCIATED STATE	АССОЦИИРОВАННОЕ ГОСУДАРСТВО	ՄԻԱԽՈՒՄԲ (ԱՍՈՑԻԱՑՎԱԾ) ՊԵՏՈՒԹՅՈՒՆ	PRIDRUŽENA Č LANICA
ASSOCIATION	АССОЦИАЦИЯ	ԸՆԿԵՐԱԿՑՈՒԹՅՈՒՆ	ZVEZA
ASSOCIATION	ОБЪЕДИНЕНИЕ	ՄԻԱՎՈՐՈՒՄ	ZVEZA
ASSUMING OFFICE	ВСТУПЛЕНИЕ В ДОЛЖНОСТЬ	ՊԱՇՏՈՆԻ ՍՏԱՆՁՆՈՒՄ	NASTOP FUNKCIJE
AUTHORITY (ENTITY)	ЛИЦО	ԱՆՁ	OSEBA
AUTONOMOUS TERRITORY	АВТОНОМНАЯ ТЕРРИТОРИЯ	ԻՆՔՆԱՎԱՐ ՏԱՐԱԾՔ	AVTONOMNO OBMOČJE
AUTONOMOUS COUNTY	АВТОНОМНЫЙ ОКРУГ	ԻՆՔՆԱՎԱՐ ՏԱՐԱԾՔ	AVTONOMNO OKROŽJE
AUTONOMY	АВТОНОМИЯ	ԻՆՔՆԱՎԱՐՈՒԹՅՈՒՆ	AVTONOMIJA
AWARDS AND HONORARY TITLE	НАГРАДЫ И ПОЧЕТНЫЕ ЗВАНИЯ	ՊԱՐԳԵՎՆԵՐ ԵՎ ՊԱՏՎԱՎՈՐ ԿՈՉՈՒՄՆԵՐ	PRIZNANJA IN Č ASTNI NASLOVI
B			
BASIC LAW	ОСНОВНОЙ ЗАКОН	ՀԻՄՆԱԿԱՆ ՕՐԵՆՔ	USTAVA
BILL OF RIGHTS	БИЛЛЬ О ПРАВАХ	ԲԻԼԼ ԻՐԱՎՈՒՆՔՆԵՐԻ ՄԱՍԻՆ	LISTINA PRAVIC

BLOCS OF DEPUTIES (DEPUTY BLOCS)	ДЕПУТАТСКИЕ ОБЪЕДИНЕНИЯ	ՊԱՏԳԱՄԱՎՈՐԱԿԱՆ ԽՄԲԱԿՑՈՒԹՅՈՒՆՆԵՐ	POSLANSKE SKUPINE
BRANCHES OF POWER	ВЕТВИ ВЛАСТИ	ԻՇԽԱՆՈՒԹՅԱՆ ՃՅՈՒՂԵՐ	VEJE OBLASTI
BYLAWS	УСТАВ	ԿԱՆՈՆԱԴՐՈՒԹՅՈՒՆ	USTAVA
C			
CABINET OF MINISTERS	КАБИНЕТ МИНИСТРОВ	ՆԱԽԱՐԱՐՆԵՐԻ ԿԱԲԻՆԵՏ	KABINET MINISTROV
CAPACITY	ДЕЕСПОСОБНОСТЬ	ԳՈՐԾՈՒՆԱԿՈՒԹՅՈՒՆ	SPOSOBNOST, ZMOŽNOST
CAPITAL	СТОЛИЦА	ՄԱՅՐԱՔԱՂԱՔ	KAPITAL
CAPITAL PUNISHMENT	СМЕРТНАЯ КАЗНЬ	ՄԱՀԱՊԱՏԻԺ	SMRTNA KAZEN
CASSATION INSTANCE	КАССАЦИОННАЯ ИНСТАНЦИЯ	ՎՃՌԱԲԵԿ ԱՏՅԱՆ	KASACIJSKA INSTANCA (STOPNJA)
CENSORSHIP	ЦЕНЗУРА	ԳՐԱՔՆՆՈՒԹՅՈՒՆ	CENZURA
CENTRAL BANK	ЦЕНТРАЛЬНЫЙ БАНК	ԿԵՆՏՐՈՆԱԿԱՆ ԲԱՆԿ	OSREDNJA BANKA
CENTRAL ELECTORAL COMMISSION	ЦЕНТРАЛЬНАЯ ИЗБИРАТЕЛЬНАЯ КОМИССИЯ	ԿԵՆՏՐՈՆԱԿԱՆ ԸՆՏՐԱԿԱՆ ՀԱՆՁՆԱԺՈՂՈՎ	OSREDNJA VOLILNA KOMISIJA
CHAMBER OF PARLIAMENT	ПАЛАТА ПАРЛАМЕНТА	ԽՈՐՀՐԴԱՐԱՆԻ ՊԱԼԱՏ	
CHARTER	ХАРТИЯ	ՀՐՈՎԱՐՏԱԿ	LISTINA
CHIEF EXECUTIVE	ГЛАВА АДМИНИСТРАЦИИ	ՎԱՐՉԱԿԱԶՄԻ ԳԼՈՒԽ	PREDSTOJNIK UPRAVE
CITIZEN	ГРАЖДАНИН	ՔԱՂԱՔԱՑԻ	DRŽAVLJAN
CITIZENS' PARTICIPATION IN ADMINISTRATIO N OF JUSTICE	УЧАСТИЕ ГРАЖДАН В ОТПРАВЛЕНИИ ПРАВОСУДИЯ	ՔԱՂԱՔԱՑԻՆԵՐԻ ՄԱՍՆԱԿՑՈՒԹՅՈՒՆԸ ԱՐԴԱՐԱԴԱՏՈՒԹՅԱՆ ԻՐԱԿԱՆԱՑՄԱՆԸ	SODNIKI POROTNIKI
CITIZENSHIP	ГРАЖДАНСТВО	ՔԱՂԱՔԱՑԻՈՒԹՅՈՒՆ	DRŽAVLJANSTVO
CITIZENSHIP	ПОДДАНСТВО	ՀՊԱՏԱԿՈՒԹՅՈՒՆ	DRŽAVLJANSTVO
CIVIL SERVANT	ГОСУДАРСТВЕННЫЙ СЛУЖАЩИЙ	ՊԵՏԱԿԱՆ ԾԱՌԱՅՈՂ	DRŽAVNI URADNIK
CIVIL SERVANT	ДОЛЖНОСТНОЕ ЛИЦО	ՊԱՇՏՈՆԱՏԱՐ ԱՆՁ	IZVRŠILNA

			OBLAST
CIVIL SOCIETY	ГРАЖДАНСКОЕ ОБЩЕСТВО	ՔԱՂԱՔԱՑԻԱԿԱՆ ՀԱՍԱՐԱԿՈՒԹՅՈՒՆ	CIVILNA DRUŽBA
COALITION GOVERNMENT	КОАЛИЦИОННОЕ ПРАВИТЕЛЬСТВО	ՀԱՄԱՁԱՅՆՈՒԹՅԱՆ ԿԱՌԱՎԱՐՈՒԹՅՈՒՆ	KOALICIJSKA VLADA
COLLEGIATE NATURE OF THE COURT	КОЛЛЕГИАЛЬНОСТЬ СУДА	ԴԱՏԱՐԱՆԻ ԿՈԼԵԳԻԱԼՈՒԹՅՈՒՆ	KOLEGIJSKI ZNAČ AJ SODIŠČA
COMMANDER-IN-CHIEF	ВЕРХОВНЫЙ ГЛАВНОКОМАНДУЮЩИЙ	ԳԼԽԱՎՈՐ ՀՐԱՄԱՆԱՏԱՐ	VRHOVNI KOMANDANT
COMMISSION OF PARLIAMENT	КОМИССИЯ ПАРЛАМЕНТА	ԽՈՐՀՐԴԱՐԱՆԻ ՀԱՆՁՆԱԺՈՂՈՎ	PARLAMENTARNA KOMISIJA
COMMISSION ON HUMAN RIGHTS	КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА	ՄԱՐԴՈՒ ԻՐԱՎՈՒՆՔՆԵՐԻ ՀԱՐՑԵՐՈՎ ՀԱՆՁՆԱԺՈՂՈՎ	KOMISIJA ZA Č LOVEKOVE PRAVICE
COMMUNITY	ОБЩИНА	ՀԱՄԱՅՆՔ	OBČINA
COMPENSATION	КОМПЕНСАЦИЯ	ՓՈԽՀԱՏՈՒՑՈՒՄ	KOMPENZACIJA
COMPETENCE	КОМПЕТЕНЦИЯ	ԻՐԱՎԱՍՈՒԹՅՈՒՆ	PRISTOJNOST
COMPOSITION OF THE COURT	СОСТАВ СУДА	ԴԱՏԱՐԱՆԻ ԿԱԶՄ	SESTAVA SODIŠČ A
CONFEDERATION	КОНФЕДЕРАЦИЯ	ՀԱՄԱԴԱՇՆՈՒԹՅՈՒՆ	KONFEDERACIJA
CONCILIATORY COMMISSION	СОГЛАСИТЕЛЬНАЯ КОМИССИЯ	ՀԱՄԱՁԱՅՆԵՑՈՒՑԻՉ ՀԱՆՁՆԱԺՈՂՈՎ	PORAVNALNA KOMISIJA
STANDING COMMISSIONS OF PARLIAMENT	ПОСТОЯННЫЕ КОМИССИИ ПАРЛАМЕНТА	ԽՈՐՀՐԴԱՐԱՆԻ ՄՇՏԱԿԱՆ ՀԱՆՁՆԱԺՈՂՈՎՆԵՐ	STALNE PARAMENTARNE KOMISIJE
CONSCRIPTION DUTY	ВОИНСКАЯ ОБЯЗАННОСТЬ	ԶԻՆԱՊԱՐՏՈՒԹՅՈՒՆ	VOJAŠKA DELEGACIJA
CONSTANT REPRESENTATIO N	ПОСТОЯННОЕ ПРЕДСТАВИТЕЛЬСТВО	ՄՇՏԱԿԱՆ ՆԵՐԿԱՅԱՑՉՈՒԹՅՈՒՆ	STALNO PREDSTAVNIŠTV O
CONSTITUENT ASSEMBLY	УЧРЕДИТЕЛЬНОЕ СОБРАНИЕ	ՀԻՄՆԱԴԻՐ ԺՈՂՈՎ	USTAVODAJNA SKUPŠČINA
CONSTITUTION. CONSTITUTIONA L LAW	КОНСТИТУЦИЯ. КОНСТИТУЦИОННЫЙ ЗАКОН	ՍԱՀՄԱՆԱԴՐՈՒԹՅՈՒՆ. ՍԱՀՄԱՆԱԴՐԱԿԱՆ ՕՐԵՆՔ	USTAVA USTAVNO PRAVO
CONSTITUTIONA L AMENDMENTS	КОНСТИТУЦИОННЫЕ ПОПРАВКИ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ՓՈՓՈԽՈՒԹՅՈՒՆՆԵՐ	USTAVNI AMANDMA
CONSTITUTIONA	ПОПРАВКА	ՍԱՀՄԱՆԱԴՐԱԿԱՆ	DOPOLNITEV

L AMENDMENT	КОНСТИТУЦИОННАЯ	ՓՈՓՈԽՈՒԹՅՈՒՆ	USTAVE
CONSTITUTIONAL AMENDMENTS	КОНСТИТУЦИОННЫЕ ИЗМЕНЕНИЯ И ДОПОЛНЕНИЯ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ՓՈՓՈԽՈՒԹՅՈՒՆՆԵՐ ԵՎ ԼՐԱՑՈՒՄՆԵՐ	USTAVNE DOPOLNITVE IN SPREMEMBE
CONSTITUTIONAL ASSEMBLY	КОНСТИТУЦИОННОЕ СОБРАНИЕ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԺՈՂՈՎ	USTAVODAJNA SKUPŠČINA
CONSTITUTIONAL COMPLAINT	КОНСТИТУЦИОННАЯ ЖАЛОБА	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԲՈՂՈՔ	USTAVNA PRITOŽBA
CONSTITUTIONAL COUNCIL	КОНСТИТУЦИОННЫЙ СОВЕТ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԽՈՐՀՈՒՐԴ	USTAVNI SVET
CONSTITUTIONAL COURT	КОНСТИТУЦИОННЫЙ СУД	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԴԱՏԱՐԱՆ	USTAVNO SODIŠČE
CONSTITUTIONAL GUARANTEES OF JUSTICE	КОНСТИТУЦИОННЫЕ ГАРАНТИИ ПРАВОСУДИЯ	ԱՐԴԱՐԱԴԱՏՈՒԹՅԱՆ ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԵՐԱՇԽԻՔՆԵՐ	USTAVNA JAMSTVA PRAVOSODJA
CONSTITUTIONAL GUARANTEES OF RIGHTS AND FREEDOMS	КОНСТИТУЦИОННЫЕ ГАРАНТИИ ПРАВ И СВОБОД	ԻՐԱՎՈՒՆՔՆԵՐԻ ԵՎ ԱԶԱՏՈՒԹՅՈՒՆՆԵՐԻ ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԵՐԱՇԽԻՔՆԵՐ	USTAVNA JAMSTVA PRAVIC IN SVOBOŠČIN
CONSTITUTIONAL OBLIGATIONS	КОНСТИТУЦИОННЫЕ ОБЯЗАННОСТИ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ՊԱՐՏԱԿԱՆՈՒԹՅՈՒՆՆԵՐ	USTAVNE OBVEZNOSTI
CONSTITUTIONAL JUSTICE	КОНСТИТУЦИОННОЕ ПРАВОСУДИЕ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԱՐԴԱՐԱԴԱՏՈՒԹՅՈՒՆ	USTAVNA PRESOJA
CONSTITUTIONAL REVIEW (CONTROL, OVERSIGHT)	КОНСТИТУЦИОННЫЙ КОНТРОЛЬ (НАДЗОР)	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ՎԵՐԱՀՍԿՈՂՈՒԹՅՈՒՆ (ՀՍԿՈՂՈՒԹՅՈՒՆ)	USTAVNA PRESOJA (KONTROLA, OCENA)
CONSTITUTIONAL TRIBUNAL	КОНСТИТУЦИОННЫЙ ТРИБУНАЛ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԴԱՏԱԿԱԶՄ (ԴԱՏԱՐԱՆ)	USTAVNO SODIŠČE (TRIBUNAL)
CONSTITUTIONALITY	КОНСТИТУЦИОННОСТЬ	ՍԱՀՄԱՆԱԴՐԱԿԱՆՈՒԹՅՈՒՆ	USTAVNOST
CONSULTATIVE VOTE	СОВЕЩАТЕЛЬНЫЙ ГОЛОС	ԽՈՀՐԴԱՏՎԱԿԱՆ ՁԱՅՆ	POSVETOVALNI GLAS
CONTRASIGNATURE	КОНТРАССИГНАТУРА	ԿՈՆՏՐԱՍԻԳՆԱՏՈՒՐԱ	SOPODPIS
CONVENTION	КОНВЕНЦИЯ	ՀԱՄԱՁԱՅՆԱԳԻՐ	KONVENCIJA
COUNCIL OF MINISTERS	СОВЕТ МИНИСТРОВ	ՆԱԽԱՐԱՐՆԵՐԻ ԽՈՐՀՈՒՐԴ	SVET MINISTROV
COURT	СУД	ԴԱՏԱՐԱՆ	SODIŠČE
COURT OF	СЧЕТНАЯ ПАЛАТА	ՀԱՇՎԻՉ ՊԱԼԱՏ	RAČUNSKO

AUDITORS			SODIŠČE
COURT DECISION	СУДЕБНОЕ РЕШЕНИЕ	ԴԱՏԱԿԱՆ ՈՐՈՇՈՒՄ	SODNA ODLOČBA
COVENANT	ПАКТ	ՊԱԿՏ (ՊԱՐՏԱՎՈՐԱԳԻՐ)	PAKT
CREDENTIALS	ВЕРИТЕЛЬНАЯ ГРАМОТА	ՀԱՎԱՏԱՐՄԱԳԻՐ	MANDAT
CUSTOM	ОБЫЧАЙ	ՍՈՎՈՐՈՒՅԹ	OBIČAJ
D			
DECISION	РЕШЕНИЕ	ՈՐՈՇՈՒՄ	ODLOČBA
DECISION (RESOLUTION)	ПОСТАНОВЛЕНИЕ	ՈՐՈՇՈՒՄ	ODLOČBA(SKLEP)
DECLARATION	ДЕКЛАРАЦИЯ	ՀՌՉԱԿԱԳԻՐ	DEKLARACIJA
DECREE	РАСПОРЯЖЕНИЕ	ԿԱՐԳԱԴՐՈՒԹՅՈՒՆ	UREDBA
DECREE (EDICT)	УКАЗ	ՀՐԱՄԱՆԱԳԻՐ	UKAZ
DECREE HAVING A FORCE OF LAW	ДЕКРЕТ	ՀՐԱՄԱՆԱԳԻՐ	UREDBA Z ZAKONSKO MOČJO
DEFENSE	ОБОРОНА	ՊԱՇՏՊԱՆՈՒԹՅՈՒՆ	OBRAMBA
DEFENSE AND SECURITY	ОБОРОНА И БЕЗОПАСНОСТЬ	ՊԱՇՏՊԱՆՈՒԹՅՈՒՆ ԵՎ ԱՆՎՏԱՆԳՈՒԹՅՈՒՆ	OBRAMBA IN VARNOST
DEFENCE COUNSEL	ЗАЩИТНИК	ՊԱՇՏՊԱՆ	VARUH
DEFENSE OF THE MOTHERLAND	ЗАЩИТА ОТЕЧЕСТВА	ՀԱՅՐԵՆԻՔԻ ՊԱՇՏՊԱՆՈՒԹՅՈՒՆ	OBRAMBA DOMOVINE
DEMOCRACY	ДЕМОКРАТИЯ	ԺՈՂՈՎՐԴԱՎԱՐՈՒԹՅՈՒՆ	DEMOKRACIJA
DEMOCRACY	НАРОДОВЛАСТИЕ	ԺՈՂՈՎՐԴԱԻՇԽԱՆՈՒ-ԹՅՈՒՆ	DEMOKRACIJA
DEMOCRATIC STATE	ДЕМОКРАТИЧЕСКОЕ ГОСУДАРСТВО	ԺՈՂՈՎՐԴԱՎԱՐԱԿԱՆ ՊԵՏՈՒԹՅՈՒՆ	DEMOKRATIČNA DRŽAVA
DEMONSTRATION	ДЕМОНСТРАЦИЯ	ՑՈՒՅՑ	DEMONSTRACIJA
DENUNCIATION	ДЕНОНСАЦИЯ	ՉԵՂԱՐԿՈՒՄ (ԼՈՒՇԱՐՈՒՄ)	OVADBA
DEPORTATION	ВЫСЫЛКА ИЗ СТРАНЫ	ԵՐԿՐԻՑ ԱՐՏԱՔՍՈՒՄ	IZGON
DEPRIVATION OF CITIZENSHIP	ЛИШЕНИЕ ГРАЖДАНСТВА	ՔԱՂԱՔԱՑԻՈՒԹՅԱՆ ՋՐԿՈՒՄ	ODVZEM DRŽAVLJANSTVA
DEPUTY (REPRESENTATIVE)	ДЕПУТАТ	ՊԱՏԳԱՄԱՎՈՐ	POSLANEC

DEPUTY (REPRESENTATIVE) INVIOLABILITY (IMMUNITY)	ДЕПУТАТСКАЯ НЕПРИКОСНОВЕН-НОСТЬ	ՊԱՏԳԱՄԱՎՈՐԻ ԱՆՁԵՌՆՄԽԵԼԻՈՒԹՅՈՒՆ	POSLANSKA NEDOTAKLJIVOST
DEPUTY QUESTIONING	ЗАПРОС ДЕПУТАТСКИЙ	ՊԱՏԳԱՄԱՎՈՐԱԿԱՆ ՀԱՐՑՈՒՄ	POSLANSKA VPRAŠANJA
DIGNITY OF A PERSON	ДОСТОИНСТВО ЛИЧНОСТИ	ԱՆՁԻ ԱՐԺԱՆԱՊԱՏՎՈՒԹՅՈՒՆ	ČLOVEKOVO DOSTOJANSTVO
DIPLOMATIC REPRESENTATIVE	ДИПЛОМАТИЧЕСКИЙ ПРЕДСТАВИТЕЛЬ	ԴԻՎԱՆԱԳԻՏԱԿԱՆ ՆԵՐԿԱՅԱՑՈՒՑԻՉ	DIPLOMATSKI PREDSTAVNIK
DIRECT EFFECT OF CONSTITUTIONAL NORMS	ПРЯМОЕ ДЕЙСТВИЕ КОНСТИТУЦИОННЫХ НОРМ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ՆՈՐՄԵՐԻ ԱՆՄԻՋԱԿԱՆ ԳՈՐԾՈՂՈՒԹՅՈՒՆ	NEPOSREDNI UČINEK USTAVNIH DOLOČB
DIRECT EFFECT OF THE CONSTITUTION	ПРЯМОЕ ДЕЙСТВИЕ КОНСТИТУЦИИ	ՍԱՀՄԱՆԱԴՐՈՒԹՅԱՆ ՈՒՂՂԱԿԻ ԳՈՐԾՈՂՈՒԹՅՈՒՆ	NEPOSRENI UČINEK USTAVE
DIRECT ELECTION	ПРЯМЫЕ ВЫБОРЫ	ՈՒՂՂԱԿԻ ԸՆՏՐՈՒԹՅՈՒՆՆԵՐ	NEPOSREDNE VOLITVE
DISCRIMINATION	ДИСКРИМИНАЦИЯ	ԽՏՐԱԿԱՆՈՒԹՅՈՒՆ	DISKRIMINACIJA
DISMISSAL FROM POSITION	ОТРЕШЕНИЕ ОТ ДОЛЖНОСТИ	ՊԱՇՏՈՆԱԶՆԿՈՒԹՅՈՒՆ	RAZREŠITEV S FUNKCIJE
DISMISSAL OF PRESIDENT FROM OFFICE	ОТРЕШЕНИЕ ПРЕЗИДЕНТА ОТ ДОЛЖНОСТИ	ՆԱԽԱԳԱՀԻ ՊԱՇՏՈՆԱԶՆԿՈՒԹՅՈՒՆ	RAZREŠITEV PREDSEDNIŠKE FUNKCIJE
DISSOLUTION OF THE PARLIAMENT	РОСПУСК ПАРЛАМЕНТА	ՊԱՌԼԱՄԵՆՏԻ ԱՐՁԱԿՈՒՄ	RAZPUSTITEV PARLAMENTA
DUAL CITIZENSHIP	ДВОЙНОЕ ГРАЖДАНСТВО	ԵՐԿՔԱՂԱՔԱՑԻՈՒԹՅՈՒՆ	DVOJNO DRŽAVLJANSTVO
DRAFT LAW (BILL, LEGISLATION)	ЗАКОНОПРОЕКТ	ՕՐԻՆԱԳԻԾ	ZAKONSKI OSNUTEK

E			
ECONOMIC COURT	ХОЗЯЙСТВЕННЫЙ СУД	ՏՆՏԵՍԱԿԱՆ ԴԱՏԱՐԱՆ	GODPODARSKO SODIŠČE
ECONOMIC DISPUTE	ХОЗЯЙСТВЕННЫЙ СПОР	ՏՆՏԵՍԱԿԱՆ ՎԵՃ	GOSPODARSKI SPOR
ELECTED REPRESENTATIVE	ЗАСЕДАТЕЛИ НАРОДНЫЕ	ԺՈՂՈՎՐԴԱԿԱՆ ԱՏԵՆԱԿԱԼՆԵՐ	POSLANEC
ELECTION BLOC	ИЗБИРАТЕЛЬНОЕ ОБЪЕДИНЕНИЕ	ԸՆՏՐԱԿԱՆ ՄԻԱՎՈՐՈՒՄ	SKUPINA VOLIVCEV (ELEKTORJI)
ELECTION CAMPAIGN	ИЗБИРАТЕЛЬНАЯ КАМПАНИЯ	ԸՆՏՐԱՐՇԱՎ	VOLILNA KAMPANJA

ELECTION ROUND	ТУР ГОЛОСОВАНИЯ	ՔՎԵԱՐԿՈՒԹՅԱՆ ՓՈՒԼ	FAZE VOLITEV
ELECTIONS	ВЫБОРЫ	ԸՆՏՐՈՒԹՅՈՒՆՆԵՐ	VOLITVE
ELECTORAL BLOC	БЛОК ИЗБИРАТЕЛЬНЫЙ	ԸՆՏՐԱԿԱՆ ԲԼՈԿ	ELEKTORJI (SKUPINA VOLIVCEV)
ELECTORAL COMMISSIONS	ИЗБИРАТЕЛЬНЫЕ КОМИССИИ	ԸՆՏՐԱԿԱՆ ՀԱՆՁՆԱԺՈՂՈՎՆԵՐ	VOLILNE KOMISIJE
ELECTORAL LAW	ИЗБИРАТЕЛЬНОЕ ПРАВО	ԸՆՏՐԱԿԱՆ ԻՐԱՎՈՒՆՔ	VOLILNO PRAVO
ELECTORAL PLEDGE	ЗАЛОГ ИЗБИРАТЕЛЬНЫЙ	ԸՆՏՐԱԿԱՆ ԳՐԱՎ	VOLILNE OBLJUBE
ELECTORAL PRECINCT	ИЗБИРАТЕЛЬНЫЕ УЧАСТКИ	ԸՆՏՐԱԿԱՆ ՏԵՂԱՄԱՍԵՐ	VOLIŠČA
ELECTORAL SYSTEM	ИЗБИРАТЕЛЬНАЯ СИСТЕМА	ԸՆՏՐԱԿԱՆ ՀԱՄԱԿԱՐԳ	VOLILNI SISTEM
ELECTORATE	ЭЛЕКТОРАТ	ԸՆՏՐԱԶԱՆԳՎԱԾ	VOLILNO TELO, VOLILVCI
ENACTMENTS	НОРМАТИВНО-ПРАВОВОЙ АКТ	ՆՈՐՄԱՏԻՎ-ԻՐԱՎԱԿԱՆ ԱԿՏ	NORMATIVNI AKTI
ENTERING INTO FORCE OF A LAW	ВСТУПЛЕНИЕ ЗАКОНА В СИЛУ	ՕՐԵՆՔԻ ՈՒԺԻ ՄԵՋ ՄՏՆԵԼԸ	ZAČETEK VELJAVNOSTI ZAKONA
ENTITLEMENT TO LAW	СУБЪЕКТ ПРАВА	ԻՐԱՎՈՒՆՔԻ ՍՈՒԲՅԵԿՏ	UPRAVIČENJE DO PRAVIC
EQUAL ELECTORAL LAW	РАВНОЕ ИЗБИРАТЕЛЬНОЕ ПРАВО	ՀԱՎԱՍԱՐ ԸՆՏՐԱԿԱՆ ԻՐԱՎՈՒՆՔ	ENAKA VOLILNA PRAVICA
EQUAL RIGHTS OF CITIZENS	РАВНОПРАВИЕ ГРАЖДАН	ՔԱՂԱՔԱՑԻՆԵՐԻ ԻՐԱՎԱՀԱՎԱՍԱՐՈՒԹՅՈՒՆ	ENAKE PRAVICE DRŽAVLJANOV
ESTABLISHMENT (INSTITUTION)	УЧРЕЖДЕНИЕ	ՀԻՄՆԱԴՐՈՒՄ	USTANOVA
EXECUTIVE POWER	ИСПОЛНИТЕЛЬНАЯ ВЛАСТЬ	ԳՈՐԾԱԴԻՐ ԻՇԽԱՆՈՒԹՅՈՒՆ	IZVRŠILNA VEJA OBLASTI
EXPATRIATION	ЭКСПАТРИАЦИЯ	ՀԱՅՐԵՆԻՔԻՑ ԱՐՏԱՔՍՈՒՄ	IZGON IZ DOMOVINE
EXTRADITION	ЭКСТРАДИЦИЯ	ՀԱՆՁՆՈՒՄ	IZROČITEV
EXTRAORDINARY COURTS	ЧРЕЗВЫЧАЙНЫЕ СУДЫ	ԱՐՏԱԿԱՐԳ ԴԱՏԱՐԱՆՆԵՐ	IZREDNA SODIŠČA
EXTRAORDINARY ELECTIONS	ВНЕОЧЕРЕДНЫЕ ВЫБОРЫ	ԱՐՏԱՀԵՐԹ ԸՆՏՐՈՒԹՅՈՒՆՆԵՐ	IZREDNE VOLITVE
EXTRAORDINARY SESSION OF	ВНЕОЧЕРЕДНОЕ ЗАСЕДАНИЕ	ԽՈՐՀՐԴԱՐԱՆԻ ԱՐՏԱՀԵՐԹ ՆԻՍՏ	IZREDNA SEJA PARLAMENTA

PARLIAMENT	ПАРЛАМЕНТА		
EXTRAORDINARY SESSION	ВНЕОЧЕРЕДНАЯ СЕССИЯ	ԱՐՏԱՀԵՐԹ ՆՍՏԱՇՐՋԱՆ	IZREDNA SEJA
		F	
FATHERLAND	ОТЕЧЕСТВО	ՀԱՅՐԵՆԻՔ	DOMOVINA
FEDERAL ASSEMBLY	ФЕДЕРАЛЬНОЕ СОБРАНИЕ	ԴԱՇՆԱՅԻՆ ԺՈՂՈՎ	ZVEZNI ZBOR
FEDERAL COUNCIL	СОВЕТ ФЕДЕРАЦИИ	ԴԱՇՆՈՒԹՅԱՆ ԽՈՐՀՈՒՐԴ	SVET FEDERACIJE
FEDERAL LAW	ФЕДЕРАЛЬНЫЙ ЗАКОН	ԴԱՇՆԱՅԻՆ ՕՐԵՆՔ	ZVEZNO PRAVO (ZAKONODAJA)
FEDERAL STATE	ФЕДЕРАТИВНОЕ ГОСУДАРСТВО	ԴԱՇՆԱՅԻՆ ՊԵՏՈՒԹՅՈՒՆ	ZVEZNA DRŽAVA
FEDERAL TREATY	ФЕДЕРАТИВНЫЙ ДОГОВОР	ԴԱՇՆԱՅԻՆ ՊԱՅՄԱՆԱԳԻՐ	ZVEZNA POGODBA
FEDERATION	ФЕДЕРАЦИЯ	ԴԱՇՆՈՒԹՅՈՒՆ	ZVEZA, FEDERACIJA
FELONIES	ТЯЖКИЕ ПРЕСТУПЛЕНИЯ	ԾԱՆՐ ՀԱՆՑԱԳՈՐԾՈՒԹՅՈՒՆՆԵՐ	ZLOČINI
FIRST SESSION OF PARLIAMENT	ПЕРВАЯ СЕССИЯ ПАРЛАМЕНТА	ԽՈՐՀՐԴԱՐԱՆԻ ԱՌԱՋԻՆ ՆՍՏԱՇՐՋԱՆ	PRAVA SEJA PARLAMENTA
FOREIGN CITIZENS	ИНОСТРАННЫЕ ГРАЖДАНЕ	ՕՏԱՐԵՐԿՐՅԱ ՔԱՂԱՔԱՑԻՆԵՐ	TUJCI
FORM OF RULE	ФОРМА ПРАВЛЕНИЯ	ԿԱՌԱՎԱՐՄԱՆ ՁԵՎ	OBLIKA PREDPISOV
FOUNDATIONS OF CONSTITUTIONAL LAW	ОСНОВЫ КОНСТИТУЦИОННОГО ПРАВА	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԻՐԱՎՈՒՆՔԻ ՀԻՄՈՒՆՔՆԵՐ	BASIS OF CONSTITUTIONAL LAW
FOUNDATIONS OF CONSTITUTIONAL ORDER	ОСНОВЫ КОНСТИТУЦИОННОГО СТРОЯ	ՍԱՀՄԱՆԱԴՐԱԿԱՆ ԿԱՐԳԻ ՀԻՄՈՒՆՔՆԵՐ	TEMELJI USTAVNE UREDITVE
FREE MANDATE	СВОБОДНЫЙ МАНДАТ	ԱԶԱՏ ՄԱՆԴԱՏ	SVOBODNI MANDAT
FREEDOM OF BUSINESS	СВОБОДА ПРЕДПРИНИМАТЕЛЬСТВА	ՁԵՌՆԱՐԿԱՏԻՐՈՒԹՅԱՆ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA PODJETNIŠTVA
FREEDOM OF CREATION (CREATIVE WORK)	СВОБОДА ТВОРЧЕСТВА	ՍՏԵՂԾԱԳՈՐԾԱԿԱՆ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA USTVARJANJA
FREEDOM OF CONSCIENCE	СВОБОДА ВЕРОИСПОВЕДАНИЯ	ԴԱՎԱՆՈՒԹՅԱՆ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA VEROIZPOVEDI

FREEDOM OF EMPLOYMENT (LABOR)	СВОБОДА ТРУДА	ԱՇԽԱՏԱՆՔԻ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA ZAPOSLITVE (DELA)
FREEDOM OF ASSRMBLY	СВОБОДА СОБРАНИЙ	ԺՈՂՈՎՆԵՐԻ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA ZBIRANJA
FREEDOM OF INFORMATION	СВОБОДА ИНФОРМАЦИЙ	ՏԵՂԵԿԱՏՎՈՒԹՅԱՆ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA INFORMACIJ
FREEDOM OF ASSEMBLY	СВОБОДА МАНИФЕСТАЦИЙ	ՑՈՒՅՑԵՐԻ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA ZBOROVANJA
FREEDOM OF MOVEMENT AND RESIDENCE	СВОБОДА ПЕРЕДВИЖЕНИЯ И ПОСЕЛЕНИЯ	ՏԵՂԱՇԱՐԺՄԱՆ ԵՎ ԲՆԱԿՈՒԹՅԱՆ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA GIBANJA IN PREBIVALIŠČA
FREEDOM OF PETITION	СВОБОДА ПЕТИЦИЙ	ՀԱՆՐԱԳՐԵՐԻ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA PETICIJE
FREEDOM OF SPEECH	СВОБОДА СЛОВА	ԽՈՍՔԻ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA GOVORA
FREEDOM OF THOUGHT AND CONSCIENCE	СВОБОДА МЫСЛИ И СОВЕСТИ	ԽՂՃԻ ԵՎ ՄՏՔԻ ԱԶԱՏՈՒԹՅՈՒՆ	SVOBODA MISLI IN VESTI
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GENERAL JURISDICTION COURTS	СУДЫ ОБЩЕЙ ЮРИСДИКЦИИ	ԸՆԴՀԱՆՈՒՐ ԻՐԱՎԱՍՈՒԹՅԱՆ ԴԱՏԱՐԱՆՆԵՐ	REDNA SODIŠČA
GOVERNMENT	ПРАВИТЕЛЬСТВО	ԿԱՌԱՎԱՐՈՒԹՅՈՒՆ	VLADA
GOVERNMENT MEMBER	ЧЛЕН ПРАВИТЕЛЬСТВА	ԿԱՌԱՎԱՐՈՒԹՅԱՆ ԱՆԴԱՄ	ČLAN VLADE
GOVERNMENT REPORT	ОТЧЕТ ПРАВИТЕЛЬСТВА	ԿԱՌԱՎԱՐՈՒԹՅԱՆ ՀԱՇՎԵՏՎՈՒԹՅՈՒՆ	GOVERNMENT REPORT
GOVERNMENT SERVICE	ГОСУДАРСТВЕННАЯ СЛУЖБА	ՊԵՏԱԿԱՆ ԾԱՌԱՅՈՒԹՅՈՒՆ	JAVNA SLUŽBA
GOVERNOR	ГУБЕРНАТОР	ՆԱՀԱՆԳԱՊԵՏ	GOVERNOR
		H	
HEAD OF GOVERNMENT	ГЛАВА ПРАВИТЕЛЬСТВА	ԿԱՌԱՎԱՐՈՒԹՅԱՆ ԳԼՈՒԽ	PREDSEDNIK VLADE
HEAD OF THE GOVERNMENT	ПРЕДСЕДАТЕЛЬ ПРАВИТЕЛЬСТВА	ԿԱՌԱՎԱՐՈՒԹՅԱՆ ՆԱԽԱԳԱՀ	PREDSEDNIK VLADE
HEAD OF STATE	ГЛАВА ГОСУДАРСТВА	ՊԵՏՈՒԹՅԱՆ ԳԼՈՒԽ	PREDSEDNIK DRŽAVE
HIGH CHAMBER	ВЕРХНЯЯ ПАЛАТА	ՎԵՐԻՆ ՊԱԼԱՏ	ZGORNJI DOM
HIGH COURT OF	ВЫСШИЙ	ԲԱՐՁՐԱԳՈՒՅՆ	VISOKO

ARBITRATION	АРБИТРАЖНЫЙ СУД	ԻՐԱՎԱՐԱՐԱԿԱՆ ԴԱՏԱՐԱՆ	ARBITRAŽNO SODIŠČE
HIGH COUNCIL OF JUSTICE	СОВЕТ ПРАВОСУДИЯ	ԱՐԴԱՐԱԴԱՏՈՒԹՅԱՆ ԲԱՐՁՐ ՊԱԼԱՏ	VRHOVNO SODIŠČE
HOLDINGS (OWNERSHIP)	ВЛАДЕНИЯ	ՈՒՆԵՑՎԱԾՔ (ՍԵՓԱԿԱՆԱՏԻՐՈՒԹՅՈՒՆ)	LASTNINA
HOME RULE	САМОУПРАВЛЕНИЕ	ԻՆՔՆԱԿԱՌԱՎԱՐՈՒՄ	DOMAČI PREDPIS
HONOUR	ЧЕСТЬ	ՊԱՏԻՎ	ČAST
HONOUR AND DIGNITY	ЧЕСТЬ И ДОСТОИНСТВО	ՊԱՏԻՎ ԵՎ ԱՐԺԱՆԱՊԱՏՎՈՒԹՅՈՒՆ	ČAST IN VREDNOTA
HUMAN AND CIVIL RIGHTS AND FREEDOMS	ПРАВА И СВОБОДЫ ЧЕЛОВЕКА И ГРАЖДАНИНА	ՄԱՐԴՈՒ ԵՎ ՔԱՂԱՔԱՑՈՒ ԻՐԱՎՈՒՆՔՆԵՐ ԵՎ ԱԶԱՏՈՒԹՅՈՒՆՆԵՐ	ČLOVEKOVE IN CIVILNE PRAVICE IN SVOBOŠČINE
		I	
IMMUNITY	ИММУНИТЕТ	ԱՆՁԵՌՆՄԽԵԼԻՈՒԹՅՈՒՆ (ԻՄՈՒՆԻՏԵՏ)	IMUNITETA
IMPEACHMENT	ИМПИЧМЕНТ	ԻՄՊԻՉՄԵՆՏ	OBTOŽBA DRŽ AVNEGA FUNKCIONARJA
IMPEACHMENT (ABDICATION FROM THE POST)	ОТРЕШЕНИЕ ОТ ДОЛЖНОСТИ (ИМПИЧМЕНТ)	ՊԱՇՏՈՆԱԶԿՈՒԹՅՈՒՆ /ԻՄՊԻՉՄԵՆՏ/	OBTOŽBA DRŽ AVNEGA FUNKCIONARJA (ODSTOP S FUNKCIJE)
IMPERATIVE MANDATE	ИМПЕРАТИВНЫЙ МАНДАТ	ՀՐԱՄԱՅԱԿԱՆ ՄԱՆԴԱՏ	IMPERATIVNI MANDAT
IMPLEMENTATION	ИМПЛЕМЕНТАЦИЯ	ԻՄՊԼԵՄԵՆՏԱՑԻԱ	IZVAJANJE
IMPOSSIBILITY OF EXCERCISE OF POWERS	НЕВОЗМОЖНОСТЬ ВЫПОЛНЕНИЯ ПОЛНОМОЧИЙ	ԼԻԱԶՈՐՈՒԹՅՈՒՆՆԵՐԻ ԿԱՏԱՐՄԱՆ ԱՆՀՆԱՐԻՆՈՒԹՅՈՒՆ	NESPOSOBNOST ZA OPRAVLJANJE DOLŽNOSTI
INALIENABLE RIGHTS	НЕОТЧУЖДАЕМЫЕ ПРАВА	ԱՆՕՏԱՐԵԼԻ ԻՐԱՎՈՒՆՔՆԵՐ	NEODTUJLJIVE PRAVICE
INAUGURATION	ИНАУГУРАЦИЯ	ԵՐԴՄԱՆ ԱՐԱՐՈՂՈՒԹՅՈՒՆ	SLOVESNO USTOLIČENJE
INCOMPATIBILITY	НЕСОВМЕСТИМОСТЬ	ԱՆՀԱՄԱՏԵՂԵԼԻՈՒ-ԹՅՈՒՆ	NESKLADNOST
INDEPENDENCE	НЕЗАВИСИМОСТЬ	ԱՆԿԱԽՈՒԹՅՈՒՆ	NEODVISNOST
INDEPENDENCE OF JUDGES	НЕЗАВИСИМОСТЬ СУДЕЙ	ԴԱՏԱՎՈՐՆԵՐԻ ԱՆԿԱԽՈՒԹՅՈՒՆ	NEODVISNOST SODNIKOV
INSURMOUNTABLE OBSTACLES	НЕПРЕОДОЛИМЫЕ ПРЕПЯТСТВИЯ	ԱՆՀԱՂԹԱՀԱՐԵԼԻ ԽՈՉԸՆԴՈՏՆԵՐ	NEPREMOSTLJIVE OVIRE

INTELLECTUAL PROPERTY	ИНТЕЛЛЕКТУАЛЬНАЯ СОБСТВЕННОСТЬ	ՄՏԱՎՈՐ ՍԵՓԱԿԱՆՈՒԹՅՈՒՆ	INTELEKTUALNA LASTNINA
INTERNATIONAL ORGANIZATIONS	МЕЖДУНАРОДНЫЕ ОРГАНИЗАЦИИ	ՄԻՋԱԶԳԱՅԻՆ ԿԱԶՄԱԿԵՐՊՈՒԹՅՈՒՆՆԵՐ	MEDNARODNE ORGANIZACIJE
INTERNATIONAL SAFETY	МЕЖДУНАРОДНАЯ БЕЗОПАСНОСТЬ	ՄԻՋԱԶԳԱՅԻՆ ԱՆՎՏԱՆԳՈՒԹՅՈՒՆ	MEDNARODNA VARNOST
INTERNATIONAL TREATIES	ДОГОВОРЫ МЕЖДУНАРОДНЫЕ	ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳՐԵՐ	MEDNARODNE POGODBE
INTERNATIONAL TREATY	МЕЖДУНАРОДНЫЙ ДОГОВОР	ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳԻՐ	MEDNARODNA POGODBA
INTERPELLATION	ИНТЕРПЕЛЛЯЦИЯ	ՀԱՐՑԱՊՆԴՈՒՄ	INTERPELACIJA
INTERPRETATION OF CONSTITUTION	ТОЛКОВАНИЕ КОНСТИТУЦИИ	ՍԱՀՄԱՆԱԴՐՈՒԹՅԱՆ ՄԵԿՆԱԲԱՆՈՒՄ	RAZLAGA (KOMENTAR)
INTERPRETATION OF LAW	ТОЛКОВАНИЕ ЗАКОНА	ՕՐԵՆՔԻ ՄԵԿՆԱԲԱՆՈՒԹՅՈՒՆ	RAZLAGA ZAKONA
INVIOLABILITY (IMMUNITY)	НЕПРИКОСНОВЕННОСТЬ	ԱՆՁԵՌՆՄԽԵԼԻՈՒԹՅՈՒՆ	NEDOTAKLJIVOST (IMUNITETA)
INVIOLABILITY OF A DEPUTY	НЕПРИКОСНОВЕННОСТЬ ДЕПУТАТА	ՊԱՏԳԱՄԱՎՈՐԻ ԱՆՁԵՌՆՄԽԵԼԻՈՒԹՅՈՒՆ	NEDOTAKLJIVOST POSLANCA
INVIOLABILITY OF PERSONALITY	НЕПРИКОСНОВЕННОСТЬ ЛИЧНОСТИ	ԱՆՁԻ ԱՆՁԵՌՆՄԽԵԼԻՈՒԹՅՈՒՆ	NEDOTAKLJIVOST OSEBNOSTI
ISSUE (DELIVERY)	ВЫДАЧА (ЭКСТРАДИЦИЯ)	ՀԱՆՁՆՈՒՄ	IZDAJA
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JOINT CONDUCT	СОВМЕСТНОЕ ВЕДЕНИЕ	ՀԱՄԱՏԵՂ ՎԱՐՈՒՄ	SKUPNO UPRAVLJANJE
JUDGE	СУДЬЯ	ԴԱՏԱՎՈՐ	SONIK
JUDICIAL BOARD	СУДЕБНАЯ КОЛЛЕГИЯ	ԴԱՏԱԿԱՆ ԿՈԼԵԳԻԱ	SODNI SVET
JUDICIAL INSTANCE	ИНСТАНЦИЯ СУДЕБНАЯ	ԴԱՏԱԿԱՆ ԱՏՅԱՆ	SODNA INSTANCA
JUDICIAL POWER	СУДЕБНАЯ ВЛАСТЬ	ԴԱՏԱԿԱՆ ԻՇԽԱՆՈՒԹՅՈՒՆ	SODNA VEJA OBLASTI
JUDICIAL PROTECTION	СУДЕБНАЯ ЗАЩИТА	ԴԱՏԱԿԱՆ ՊԱՇՏՊԱՆՈՒԹՅՈՒՆ	SODNO VARSTVO
JUDICIAL SYSTEM	СУДЕБНАЯ СИСТЕМА	ԴԱՏԱԿԱՆ ՀԱՄԱԿԱՐԳ	SODNI SISTEM
JUDICIARY	СУДОУСТРОЙСТВО	ԴԱՏԱՐԱՆԱԿԱԶՄՈՒԹՅՈՒՆ	SODSTVO
JURISDICTION	ПОДСУДНОСТЬ	ԸՆԴԴԱՏՈՒԹՅՈՒՆ	PRISTOJNOST

JURY (JURORS)	ПРИСЯЖНЫЕ ЗАСЕДАТЕЛИ	ԵՐԴՎՅԱԼ ԱՏԵՆԱԿԱԼՆԵՐ	POROTA (POROTNIKI)
JUSTICE	ПРАВОСУДИЕ	ԱՐԴԱՐԱԴԱՏՈՒԹՅՈՒՆ	PRAVICA
JUSTICE	ЮСТИЦИЯ	ԱՐԴԱՐԱԴԱՏՈՒԹՅՈՒՆ	PRAVICA
JUS COGENT	ОБЩЕПРИЗНАННЫЕ ПРИНЦИПЫ МЕЖДУНАРОДНОГО ПРАВА	ՄԻՋԱԶԳԱՅԻՆ ԻՐԱՎՈՒՆՔԻ ՀԱՆՐՆՃԱՆԱՉ ՍԿԶԲՈՒՆՔՆԵՐ	NAČELA MEDNARODNEGA PRAVA
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LABOR DISPUTES	ТРУДОВЫЕ СПОРЫ	ԱՇԽԱՏԱՆՔԱՅԻՆ ՎԵՃԵՐ	DELOVNI SPORI
LAND	ЗЕМЛЯ	ՀՈՂ	ZEMLJA
LAW	ЗАКОН	ՕՐԵՆՔ	ZAKON
LAW AND ORDER	ПРАВОПОРЯДОК	ԻՐԱՎԱԿԱՐԳ	PRAVO IN RED
LAWFULNESS (LEGALITY)	ЗАКОННОСТЬ	ՕՐԻՆԱԿԱՆՈՒԹՅՈՒՆ	ZAKONITOST
LEGAL ACTS	ПРАВОВОЙ АКТ	ԻՐԱՎԱԿԱՆ ԱԿՏ	PRAVNI AKTI
LEGAL PERSON	ЛИЦО ЮРИДИЧЕСКОЕ	ԻՐԱՎԱԲԱՆԱԿԱՆ ԱՆՁ	PRAVNA OSEBA
LEGISLATION	ЗАКОНОДАТЕЛЬСТВО	ՕՐԵՆՍԴՐՈՒԹՅՈՒՆ	ZAKONODAJA
LEGISLATIVE INITIATIVE	ЗАКОНОДАТЕЛЬНАЯ ИНИЦИАТИВА	ՕՐԵՆՍԴՐԱԿԱՆ ՆԱԽԱՁԵՌՆՈՒԹՅՈՒՆ	ZAKONODAJNA POBUDA
LEGISLATIVE POWER	ЗАКОНОДАТЕЛЬНАЯ ВЛАСТЬ	ՕՐԵՆՍԴԻՐ ԻՇԽԱՆՈՒԹՅՈՒՆ	ZAKONODAJNA VEJA OBLASTI
LEGISLATURE	ЛЕГИСЛАТУРА	ԼԵԳԻՍԼԱՏՈՒՐԱ	ZAKONODAJALEC
LEGITIMACY	ЛЕГИТИМНОСТЬ	ՕՐԻՆԱԿԱՆՈՒԹՅՈՒՆ	UPRAVIČENJE
LIFE TERM OF JUDGES	НЕСМЕНЯЕМОСТЬ СУДЕЙ	ԴԱՏԱՎՈՐՆԵՐԻ ԱՆՓՈՓԽԵԼԻՈՒԹՅՈՒՆ	IMENOVANJE V TRAJNI SODNIŠKI MANDAT
LIST OF VOTERS	СПИСОК ИЗБИРАТЕЛЕЙ	ԸՆՏՐՈՂՆԵՐԻ ՑՈՒՑԱԿ	GLASOVALNA LISTA
LOCAL ADMINISTRATION	МЕСТНОЕ УПРАВЛЕНИЕ	ՏԵՂԱԿԱՆ ԿԱՌԱՎԱՐՈՒՄ	LOKALNA UPRAVA
LUSTRATION	ЛЮСТРАЦИЯ	ԵԿԱՄՈՒՏՆԵՐԻ ՊԱՐԲԵՐԱԿԱՆ ՀԱՇՎԱՌՄԱՆ ՀԱՄԱՐ ՊԵՏԱԿԱՆ ԳՈՒՅՔԱԳՐՈՒՄ	LUSTRACIJA
		M	
MAJORITY	БОЛЬШИНСТВО ГОЛОСОВ	ՁԱՅՆԵՐԻ ՄԵԾԱՄԱՍՆՈՒԹՅՈՒՆ	VEČINA

MAJORITARIAN ELECTORAL SYSTEM	МАЖОРИТАРНАЯ ИЗБИРАТЕЛЬНАЯ СИСТЕМА	ՄԵԾԱՄԱՍՆԱԿԱՆ ԸՆՏՐԱԿԱՆ ՀԱՄԱԿԱՐԳ	VEČINSKI VOLILNI SISTEM
MANDATE	МАНДАТ	ՄԱՆԴԱՏ	MANDAT
MARTIAL LAW	ВОЕННОЕ ПОЛОЖЕНИЕ	ՌԱԶՄԱԿԱՆ ԴՐՈՒԹՅՈՒՆ	VOJNO PRAVO
MAYOR	МЭР	ՔԱՂԱՔԱՊԵՏ	ŽUPAN
MEDICAL CONSULTING COMMISSION	ВРАЧЕБНО-КОНСУЛЬТАТИВНАЯ КОМИССИЯ	ԲԺՇԿԱԿԱՆ-ԽՈՐՀՐԴԱՏՎԱԿԱՆ ՀԱՆՁՆԱԺՈՂՈՎ	KOMISIJA ZA ZDRAVSTVENO SVETOVANJE
MILITARY COURTS	ВОЕННЫЕ СУДЫ	ՋԻՆՎՈՐԱԿԱՆ ԴԱՏԱՐԱՆՆԵՐ	VOJAŠKA SODIŠČA
MILITARY PROSECUTOR	ВОЕННАЯ ПРОКУРАТУРА	ՋԻՆՎՈՐԱԿԱՆ ԴԱՏԱԽԱԶՈՒԹՅՈՒՆ	VOJAŠKI TOŽILEC
MILITARY SERVICE	ВОЕННАЯ СЛУЖБА	ՋԻՆՎՈՐԱԿԱՆ ԾԱՌԱՅՈՒԹՅՈՒՆ	VOJAŠKA SLUŽBA
MILITARY TRIBUNAL	ВОЕННЫЙ ТРИБУНАЛ	ՋԻՆՎՈՐԱԿԱՆ ԴԱՏԱՐԱՆ (ՏՐԻԲՈՒՆԱԼ)	VOJAŠKO SODIŠČE (TRIBUNAL)
MINISTER	МИНИСТР	ՆԱԽԱՐԱՐ	MINISTER
MINISTRY	МИНИСТЕРСТВО	ՆԱԽԱՐԱՐՈՒԹՅՈՒՆ	MINISTRSTVO
MIXED ELECTORAL SYSTEM	СМЕШАННАЯ ИЗБИРАТЕЛЬНАЯ СИСТЕМА	ԽԱՌՆ ԸՆՏՐԱԿԱՆ ՀԱՄԱԿԱՐԳ	MEŠANI VOLILNI SISTEM
MONARCHY	МОНАРХИЯ	ՄԻԱՊԵՏՈՒԹՅՈՒՆ	MONARHIJA
MULTIPARTY	МНОГОПАРТИЙНОСТЬ	ԲԱԶՄԱԿՈՒՍԱԿՑԱԿԱՆՈՒԹՅՈՒՆ	VEČ STRANKARSTVO

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NATION	НАЦИЯ	ԱԶԳ	NAROD
NATIONAL TREATMENT	НАЦИОНАЛЬНЫЙ РЕЖИМ	ԱԶԳԱՅԻՆ ՌԵԺԻՄ	NACIONALNI SISTEM
NATIONAL-CULTURAL AUTONOMY	НАЦИОНАЛЬНО-КУЛЬТУРНАЯ АВТОНОМИЯ	ԱԶԳԱՅԻՆ ՄՇԱԿՈՒԹԱՅԻՆ ԻՆՔՆԱՎԱՐՈՒԹՅՈՒՆ	NACIONALNA-KULTURNA AVTONOMIJA
NATIONAL VOTE	ВСЕНАРОДНОЕ ГОЛОСОВАНИЕ	ՀԱՄԱԺՈՂՈՎՐԴԱԿԱՆ ՔՎԵԱՐԿՈՒԹՅՈՒՆ	JAVNO GLASOVANJE
NATIONALITY	НАЦИОНАЛЬНОСТЬ	ԱԶԳՈՒԹՅՈՒՆ	NARODNOST
NATURAL LAW	ЕСТЕСТВЕННОЕ ПРАВО	ԲՆԱԿԱՆ ԻՐԱՎՈՒՆՔ	NARAVNI ZAKON
NATURAL PERSON	ЛИЦО ФИЗИЧЕСКОЕ	ՖԻԶԻԿԱԿԱՆ ԱՆՁ	FIZIČNA OSEBA

NATURALIZATION	НАТУРАЛИЗАЦИЯ	ՆԱՏՈՒՐԱԼԻԶԱՑԻԱ	NATURALIZACIJA
NEW ELECTIONS	НОВЫЕ ВЫБОРЫ	ՆՈՐ ԸՆՏՐՈՒԹՅՈՒՆՆԵՐ	NOVE VOLITVE
NGOs	ОБЩЕСТВЕННЫЕ ОРГАНИЗАЦИИ	ՀԱՍԱՐԱԿԱԿԱՆ ԿԱԶՄԱԿԵՐՊՈՒԹՅՈՒՆ-ՆԵՐ	(DRŽAVNI) ORGANI
NOMINATION OF CANDIDATES	ВЫДВИЖЕНИЕ КАНДИДАТОВ	ԹԵԿՆԱԾՈՒՆԵՐԻ ԱՌԱՋԱԴՐՈՒՄ	IMENOVANJE
NON-CONFORMITY WITH CONSTITUTION	НЕСООТВЕТСТВИЕ КОНСТИТУЦИИ	ՍԱՀՄԱՆԱԴՐՈՒԹՅԱՆԸ ԱՆՀԱՄԱՊԱՏԱՍԽԱՆՈՒԹՅՈՒՆ	ODSTOPANJE OD USTAV
O			
OATH	ПРИСЯГА	ԵՐԴՈՒՄ	PRISEGA
OBLIGATION	ОБЯЗАННОСТЬ	ՊԱՐՏԱԿԱՆՈՒԹՅՈՒՆ	OBVEZNOST
OFFICIAL LANGUAGE	ОФИЦИАЛЬНЫЙ ЯЗЫК	ՊԱՇՏՈՆԱԿԱՆ ԼԵԶՈՒ	URADNI JEZIK
OFFICIAL RELIGION	ОФИЦИАЛЬНАЯ РЕЛИГИЯ	ՊԱՇՏՈՆԱԿԱՆ ԿՐՈՆ	URADNA VERA
OMBUDSMAN	ОБЩЕСТВЕННЫЙ ЗАЩИТНИК	ՀԱՍԱՐԱԿԱԿԱՆ ՊԱՇՏՊԱՆ	JAVNI VARUH
OMBUDSMAN	ОМБУДСМЕН	ՄԱՐԴՈՒ ԻՐԱՎՈՒՆՔՆԵՐԻ ՊԱՇՏՊԱՆ	VARUH Č LOVEKOVIH PRAVIC
OMBUDSMAN	УПОЛНОМОЧЕННЫЙ ПО ПРАВАМ ЧЕЛОВЕКА	ՄԱՐԴՈՒ ԻՐԱՎՈՒՆՔՆԵՐԻ ՀԱՐՑԵՐՈՎ ԼԻԱԶՈՐ	POOBLAŠČENEC ZA ČLOVEKOVE PRAVICE
OPPOSITION	ОППОЗИЦИЯ	ԸՆԴԴԻՄՈՒԹՅՈՒՆ	OPOZICIJA
ORGANIC LAW	ОРГАНИЧЕСКИЙ ЗАКОН	ՕՐԳԱՆԱԿԱՆ ՕՐԵՆՔ	SISTEMSKI ZAKON
P			
PARDON	ПОМИЛОВАНИЕ	ՆԵՐՈՒՄ	POMILOSTITEV
PARLIAMENT	ПАРЛАМЕНТ	ԽՈՐՀՐԴԱՐԱՆ, ՊԱՌԼԱՄԵՆՏ	PARLAMENT
PARLIAMENTARY COMMITTEES	ПАРЛАМЕНТСКИЕ КОМИТЕТЫ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ՀԱՆՁՆԱԺՈՂՈՎՆԵՐ (ԿՈՄԻՏԵՆԵՐ)	PARLAMENTARNI ODBORI
PARLIAMENTARY DEBATES	ПРЕНИЯ ПАРЛАМЕНТСКИЕ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ԲԱՆԱՎԵՃԵՐ	PARLAMENTARNE RAZPRAVE
PARLIAMENTARY ELECTIONS	ПАРЛАМЕНТСКИЕ ВЫБОРЫ	ԽՈՐՀՐԴԱՐԱՆԱՅԻՆ ԸՆՏՐՈՒԹՅՈՒՆՆԵՐ	PARLAMENTARNE VOLITVE

PARLIAMENTARY FACTION	ФРАКЦИЯ ПАРЛАМЕНТСКАЯ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ԽՄԲԱԿՑՈՒԹՅՈՒՆ	PARLAMENTARNA FRAKCIJA
PARLIAMENTARY GROUP	ГРУППА ПАРЛАМЕНТСКАЯ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ԽՈՒՄԲ	PARLAMENTARNA SKUPINA
PARLIAMENTARY HEARINGS	ПАРЛАМЕНТСКИЕ СЛУШАНИЯ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ԼՍՈՒՄՆԵՐ	PARLAMENTARNO ZASLIŠANJE
PARLIAMENTARY INVESTIGATION	ПАРЛАМЕНТСКОЕ РАССЛЕДОВАНИЕ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ՔՆՆՈՒԹՅՈՒՆ	PARLAMENTARNA PREISKAVA
PARLIAMENTARY REPUBLIC	ПАРЛАМЕНТСКАЯ РЕСПУБЛИКА	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ՀԱՆՐԱՊԵՏՈՒԹՅՈՒՆ	PARLAMENTARNA REPUBLIKA
PARLIAMENTARY REVIEW	ПАРЛАМЕНТСКИЙ КОНТРОЛЬ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ՎԵՐԱՀՍԿՈՂՈՒԹՅՈՒՆ	PARLAMENTARNI NADZOR
PARLIAMENTARY SESSION	СЕССИЯ ПАРЛАМЕНТСКАЯ	ՊԱՌԼԱՄԵՆՏԱԿԱՆ ՆՍՏԱՇՐՋԱՆ	PARLAMENTARNA SEJA
PARTY BLOC	БЛОК ПАРТИЙНЫЙ	ԿՈՒՍԱԿՑԱԿԱՆ ԲԼՈԿ	STRANKARSKA SKUPINA
PARTY SYSTEM	ПАРТИЙНАЯ СИСТЕМА	ԿՈՒՍԱԿՑԱԿԱՆ ՀԱՄԱԿԱՐԳ	PARTIJSKI SISTEM
PASSIVE ELECTORAL RIGHT	ПАССИВНОЕ ИЗБИРАТЕЛЬНОЕ ПРАВО	ՊԱՍԻՎ ԸՆՏՐԱԿԱՆ ԻՐԱՎՈՒՆՔ	PASIVNA VOLILNA PRAVICA
PEOPLE	НАРОД	ԺՈՂՈՎՈՒՐԴ	LJUDSTVO
PEOPLES' INITIATIVE	НАРОДНАЯ ИНИЦИАТИВА	ԺՈՂՈՎՐԴԱԿԱՆ ՆԱԽԱՁԵՌՆՈՒԹՅՈՒՆ	LJUDSKA INICIATIVA
PETITION	ПЕТИЦИЯ	ՀԱՆՐԱԳԻՐ	PETICIJA
PLEBISCITE	ПЛЕБИСЦИТ	ՀԱՆՐԱՔՎԵ	PLEBISCIT
PLENARY HEARING OF COURT	ПЛЕНУМ СУДА	ԴԱՏԱՐԱՆԻ ՆԻՍՏ, ՊԼԵՆՈՒՄ	SODIŠČE V PLENARNI SESTAVI
POLITICAL ASYLUM	ПОЛИТИЧЕСКОЕ УБЕЖИЩЕ	ՔԱՂԱՔԱԿԱՆ ԱՊԱՍՏԱՆ	POLITIČNI AZIL
POLITICAL PARTY	ПАРТИЯ ПОЛИТИЧЕСКАЯ	ՔԱՂԱՔԱԿԱՆ ԿՈՒՍԱԿՑՈՒԹՅՈՒՆ	POLITIČNA STRANKA
POLITICAL PLURALISM	ПОЛИТИЧЕСКИЙ ПЛЮРАЛИЗМ	ՔԱՂԱՔԱԿԱՆ ԲԱԶՄԱԿԱՐԾՈՒԹՅՈՒՆ	POLITIČNI PLURALIZEM
POLITICAL RIGHTS	ПОЛИТИЧЕСКИЕ ПРАВА	ՔԱՂԱՔԱԿԱՆ ԻՐԱՎՈՒՆՔՆԵՐ	POLITIČNE PRAVICE
POLITICAL SYSTEM	ПОЛИТИЧЕСКАЯ СИСТЕМА	ՔԱՂԱՔԱԿԱՆ ՀԱՄԱԿԱՐԳ	POLITIČNI SISTEM
POLITICAL-	ПОЛИТИЧЕСКИЙ	ՔԱՂԱՔԱԿԱՆ	POLITIČNO

CONSULTATIVE COUNCIL	КОНСУЛЬТАТИВНЫЙ СОВЕТ	ԽՈՀՐԴԱԿՑԱԿԱՆ ԽՈՐՀՈՒՐԴ	SVETOVALNI SVET
POST	ДОЛЖНОСТЬ	ՊԱՇՏՈՆ	DOLŽNOST
POWER	ВЛАСТЬ	ԻՇԽԱՆՈՒԹՅՈՒՆ	OBLAST
POWER(S)	ПОЛНОМОЧИЕ	ԼԻԱԶՈՐՈՒԹՅՈՒՆ	POOBLASTILO
POWER OF PEOPLE	НАРОДОВЛАСТИЕ	ԺՈՂՈՎՐԴԱԻՇԽԱՆՈՒԹՅՈՒՆ	OBLAST LJUDSTVA
PREAMBLE OF THE CONSTITUTION	ПРЕАМБУЛА КОНСТИТУЦИИ	ՍԱՀՄԱՆԱԴՐՈՒԹՅԱՆ ՆԱԽԱԲԱՆ	PREAMBULA K USTAVI
PRECEDENT	ПРЕЦЕДЕНТ	ՆԱԽԱԴԵՊ	PRECENDENČNI PRIMER
PREROGATIVE	ПРЕРОГАТИВА	ԱՌԱՆՁՆԱՇՆՈՐՀ	PREDNOST
PRESIDENT	ПРЕЗИДЕНТ	ՆԱԽԱԳԱՀ	PREDSEDNIK
PRESIDENTIAL ELECTIONS	ПРЕЗИДЕНТСКИЕ ВЫБОРЫ	ՆԱԽԱԳԱՀԱԿԱՆ ԸՆՏՐՈՒԹՅՈՒՆՆԵՐ	PREDSEDNIŠKE VOLITVE
PRESIDENTIAL REPUBLIC	ПРЕЗИДЕНТСКАЯ РЕСПУБЛИКА	ՆԱԽԱՀԱԳԱՀԱԿԱՆ ՀԱՆՐԱՊԵՏՈՒԹՅՈՒՆ	PREDSEDNIŠKA REPUBLIKA
PRESIDENTIAL RULE	ПРЕЗИДЕНТСКОЕ ПРАВЛЕНИЕ	ՆԱԽԱԳԱՀԱԿԱՆ ԿԱՌԱՎԱՐՈՒՄ	PREDSEDNIŠKA VLADAVINA
PRESUMPTION OF INNOCENCE	ПРЕЗУМПЦИЯ НЕВИНОВНОСТИ	ԱՆՄԵՂՈՒԹՅԱՆ ԿԱՆԽԱՎԱՐԿԱԾ	DOMNEVA NEDOLŽNOSTI
PRIME- MINISTER	ПРЕМЬЕР-МИНИСТР	ՎԱՐՉԱՊԵՏ	PREDSEDNIK VLADE
PROCEDURE	СУДОПРОИЗВОДСТВО	ԴԱՏԱՎԱՐՈՒԹՅՈՒՆ	POSTOPEK
PROGRAM OF GOVERNMENT	ПРОГРАММА ПРАВИТЕЛЬСТВА	ԿԱՌԱՎԱՐՈՒԹՅԱՆ ԾՐԱԳԻՐ	VLADNI PROGRAM
PROLONGATION	ПРОЛОНГАЦИЯ	ԵՐԿԱՐԱՁԳՈՒՄ	PODALJŠANJE
PROMULGATION	ПРОМУЛЬГАЦИЯ	ՊՐՈՄՈՒԼԳԱՑԻԱ	RAZGLASITEV (ZAKONA)
PROPERTY	СОБСТВЕННОСТЬ	ՍԵՓԱԿԱՆՈՒԹՅՈՒՆ	LASTNINA
PROPERTY RIGHTS	ИМУЩЕСТВЕННОЕ ПРАВО	ԳՈՒՅՔԱՅԻՆ ԻՐԱՎՈՒՆՔ	LASTNINSKA PRAVICA
PROPORTIONAL ELECTORAL SYSTEM	ПРОПОРЦИОНАЛЬНАЯ ИЗБИРАТЕЛЬНАЯ СИСТЕМА	ՀԱՄԱՄԱՍՆԱԿԱՆ ԸՆՏՐԱԿԱՆ ՀԱՄԱԿԱՐԳ	PROPORCIONALNI VOLILNI SISTEM
PROPORTIONALITY	ПРОПОРЦИОНАЛЬНОСТЬ	ՊԱՏԺԻ ՀԱՄԱՄԱՍՆՈՒԹՅՈՒՆ	SORAZMERNOST

OF PUNISHMENT	НАКАЗАНИЯ		KAZNOVANJA
PROSECUTION	ПРОКУРАТУРА	ԴԱՏԱԽԱԶՈՒԹՅՈՒՆ	PREGON
PROSECUTOR	ПРОКУРОР	ԴԱՏԱԽԱԶ	JAVNI TOŽILEC
PROSECUTOR GENERAL	ГЕНЕРАЛЬНЫЙ ПРОКУРОР	ԳԼԽԱՎՈՐ ԴԱՏԱԽԱԶ	GENERALNI (DRŽAVNI) TOŽILEC
PUBLIC HEARING	ВСЕНАРОДНОЕ ОБСУЖДЕНИЕ	ՀԱՍԱԺՈՂՈՎՐԴԱԿԱՆ ՔՆՆԱՐԿՈՒՄ	JAVNA RAZPRAVA
PUBLIC AGENCY	ОРГАН ГОСУДАРСТВА	ՊԵՏՈՒԹՅԱՆ ՄԱՐՄԻՆ	DRŽAVNI ORGAN (JAVNO PRAVO)
PUBLIC FORMATION	ОБЩЕСТВЕННЫЙ СТРОЙ	ՀԱՍԱՐԱԿԱԿԱՆ ԿԱՐԳ	JAVNI RED
PUBLIC LAW	ПУБЛИЧНОЕ ПРАВО	ՀԱՆՐԱՅԻՆ ԻՐԱՎՈՒՆՔ	JAVNO PRAVO
PUBLIC PROSECUTOR	ОБЩЕСТВЕННЫЙ ОБВИНИТЕЛЬ	ՀԱՍԱՐԱԿԱԿԱՆ ՄԵՂԱԴՐՈՂ	JAVNI TOŽILEC
PUBLIC SAFETY	ОБЩЕСТВЕННАЯ БЕЗОПАСНОСТЬ	ՀԱՍԱՐԱԿԱԿԱՆ ԱՆՎՏԱՆԳՈՒԹՅՈՒՆ	JAVNA VARNOST
PUBLICATION	ОПУБЛИКОВАНИЕ	ՀՐԱՊԱՐԱԿՈՒՄ	OBJAVA
PUBLICATION OF LAW	ОПУБЛИКОВАНИЕ ЗАКОНА	ՕՐԵՆՔԻ ՀՐԱՊԱՐԱԿՈՒՄ	OBJAVA ZAKONA
Q			
QUALIFIED MAJORITY	КВАЛИФИЦИРОВАННОЕ БОЛЬШИНСТВО	ՈՐԱԿՅԱԼ ՄԵԾԱՄԱՍՆՈՒԹՅՈՒՆ	KVALIFICIRANA VEČINA
QUALIFICATION RANK	КВАЛИФИКАЦИОННЫЙ РАНГ	ՈՐԱԿԱՎՈՐՄԱՆ ԿԱՐԳ, ԱՍՏԻՃԱՆ	KVALIFIKACIJSKI RAZRED
QUORUM	КВОРУМ	ՔՎՈՐՈՒՄ	KVORUM
R			
RALLY	МИТИНГ	ՄԻՏԻՆԳ	SREČANJE
RULE (PROVISION)OF LAW	НОРМА ПРАВА	ԻՐԱՎՈՒՆՔԻ ՆՈՐՄ	KATEGORIJA PRAVICE
RATIFICATION	РАТИФИКАЦИЯ	ՎԱՎԵՐԱՑՈՒՄ	RATIFIKACIJA
READING OF BILL	Чтение ЗАКОНОПРОЕКТА	ՕՐԻՆԱԳԾԻ ԸՆԹԵՐՑՈՒՄ	BRANJE ZAKONSKEGA OSNUTKA
REFERENDUM	РЕФЕРЕНДУМ	ՀԱՆՐԱՔՎԵ	REFERENDUM
REFUGEES AND DEPORTED	БЕЖЕНЦЫ И ВЫНУЖДЕННЫЕ	ՓԱԽՍՏԱԿԱՆՆԵՐ ԵՎ ԲՌՆԱԳԱՂԹԱԾՆԵՐ	BEGUNCI IN IZGNANCI

PERSONS	ПЕРЕСЕЛЕНЦЫ		
REGION	ОБЛАСТЬ	ՄԱՐԶ	OBMOČJE

REGULATION	РЕГЛАМЕНТ	ԿԱՆՈՆԱԿԱՐԳ	UREDITEV
REGULATION ACT (NORMATIVE ACT)	ПОДЗАКОННЫЙ АКТ	ԵՆԹԱՕՐԵՆՍԴՐԱԿԱՆ ԱԿՏ	NORMATIVNI AKT
RELIGION	РЕЛИГИЯ	ԿՐՈՆ	VERA
RELIGIOUS ASSOCIATIONS	РЕЛИГИОЗНЫЕ ОБЪЕДИНЕНИЯ	ԿՐՈՆԱԿԱՆ ՄԻԱՎՈՐՈՒՄՆԵՐ	VERSKE ORGANIZACIJE
REPEAT ELECTIONS	ПОВТОРНЫЕ ВЫБОРЫ	ԿՐԿՆԱԿԱՆ ԸՆՏՐՈՒԹՅՈՒՆՆԵՐ	PONOVNE VOLITVE
REPORT	ОТЧЕТ	ՀԱՇՎԵՏՎՈՒԹՅՈՒՆ	POROČILO
REPRESENTATIVE	ПРЕДСТАВИТЕЛЬ	ՆԵՐԿԱՅԱՑՈՒՑԻՉ	PREDSTAVLJNJE
REPUBLIC	РЕСПУБЛИКА	ՀԱՆՐԱՊԵՏՈՒԹՅՈՒՆ	REPUBLIKA
RESIGNATION	ОТСТАВКА	ՊԱՇՏՈՆԱԹՈՂՈՒԹՅՈՒՆ (ՀՐԱԺԱՐԱԿԱՆ)	ODPUST (RAZREŠITEV)
RESIGNATION OF GOVERNMENT	ОТСТАВКА ПРАВИТЕЛЬСТВА	ԿԱՌԱՎԱՐՈՒԹՅԱՆ ՀՐԱԺԱՐԱԿԱՆ	ODSTOP VLADE
RESIGNATION OF PRESIDENT	ОТСТАВКА ПРЕЗИДЕНТА	ՆԱԽԱԳԱՀԻ ՀՐԱԺԱՐԱԿԱՆ	ODSTOP PREDSEDNIKA
RESOLUTION	РЕЗОЛЮЦИЯ	ԲԱՆԱՁԵՎ	RESOLUCIJA
RESPONSIBILITY	ОТВЕТСТВЕННОСТЬ	ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅՈՒՆ	ODGOVORNOST
RETROACTIVE EFFECT OF LAW	ОБРАТНАЯ СИЛА ЗАКОНА	ՕՐԵՆՔԻ ՀԵՏԱԴԱՐՁ ՈՒԺ	POVRATNI UČINEK ZAKONA
REVIEW	КОНТРОЛЬ	ՎԵՐԱՀՍԿՈՂՈՒԹՅՈՒՆ	PRESOJA
REVISION OF CONSTITUTION	ПЕРЕСМОТР КОНСТИТУЦИИ	ՍԱՀՄԱՆԱԴՐՈՒԹՅԱՆ ՎԵՐԱՆԱՅՈՒՄ	USTAVNE SPREMEMBE
REVOCATION OF DEPUTY	ОТЗЫВ ДЕПУТАТА	ՊԱՏԳԱՄԱՎՈՐԻ ՀԵՏ ԿԱՆՉՈՒՄ	ODPOKLIC POSLANCA
RIGHT OF ASYLUM	ПРАВО УБЕЖИЩА	ԱՊԱՍՏԱՆԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO AZILA
RIGHT TO EDUCATION	ПРАВО НА ОБРАЗОВАНИЕ	ԿՐԹՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO IZOBRAŽEVANJA
RIGHT TO EMPLOYMENT (LABOR)	ПРАВО НА ТРУД	ԱՇԽԱՏԱՆՔԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO ZAPOSLITVE (DELA)
RIGHT TO ADEQUATE ENVIRONMENT	ПРАВО НА БЛАГОПРИЯТНУЮ ОКРУЖАЮЩУЮ	ԲԱՐԵՆՊԱՍՏ ՇՐՋԱԿԱ ՄԻՋԱՎԱՅՐԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO ZDRAVEGA OKOLJA

	СРЕДУ		
RIGHT OF ASSOCIATION	ПРАВО НА ОБЪЕДИНЕНИЕ	ՄԻԱՎՈՐՎԵԼՈՒ ԻՐԱՎՈՒՆՔ	PRAVICA DO ZDRUŽEVANJA
RIGHT TO INFORMATION	ПРАВО НА ИНФОРМАЦИЮ	ՏԵՂԵԿԱՏՎՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO INFORMACIJE
RIGHT TO PRIVACY	ПРАВО НА НЕПРИКОС-НОВЕННОСТЬ ЧАСТНОЙ ЖИЗНИ	ՄԱՍՆԱՎՈՐ ԿՅԱՆՔԻ ԱՆՁԵՌՆՄԽԵԼԻՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO NEDOTAKLJIVOSTI ZASEBNEGA Ž IVLJENJA
RIGHT TO FAIR TRIAL	ПРАВО НА ПРАВОСУДИЕ	ԴԱՏԱԿԱՆ ՊԱՇՏՊԱՆՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO SOJENJA
RIGHT TO LANGUAGE	ПРАВО НА ЯЗЫК	ԼԵԶՎԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO JEZIKA
RIGHT OF LEGAL AID	ПРАВО НА ЮРИДИЧЕСКУЮ ПОМОЩЬ	ԻՐԱՎԱԲԱՆԱԿԱՆ ՕԳՆՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO PRAVNE POMOČI
RIGHT OF LIFE	ПРАВО НА ЖИЗНЬ	ԿՅԱՆՔԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO Ž IVLJENJA
RIGHT TO OPPOSE THE OPPRESSION	ПРАВО НА СОПРОТИВЛЕНИЕ УГНЕТЕНИЮ	ՃՆՇՈՒՄՆԵՐԻՆ ԴԻՄԱԴՐԵԼՈՒ ԻՐԱՎՈՒՆՔ	PRAVICA DO NASPROTOVANJA ZATIRANJU
RIGHT OF PARDON	ПРАВО ПОМИЛОВАНИЯ	ՆԵՐՄԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO POMILOSTITVE
RIGHT TO PARTICIPATE IN STATE-GOVERNING	ПРАВО НА УЧАСТИЕ В УПРАВЛЕНИИ ДЕЛАМИ ГОСУДАРСТВА	ՊԵՏՈՒԹՅԱՆ ԿԱՌԱՎԱՐՄԱՆԸ ՄԱՍՆԱԿՑԵԼՈՒ ԻՐԱՎՈՒՆՔ	PRAVICA DO SODELOVANJA PRI UPRAVLJANJU JAVNIH ZADEV
RIGHT TO PETITION	ПРАВО ПЕТИЦИЙ	ՀԱՆՐԱԳՐԵՐԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO PETICIJE
RIGHT TO RESIDENCE	ПРАВО НА ЖИЛИЩЕ	ԲՆԱԿԱՐԱՆԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO PREBIVALIŠČA
RIGHT TO REST	ПРАВО НА ОТДЫХ	ՀԱՆԳՍՏԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO POČ ITKA
RIGHT TO SECURE HEALTH	ПРАВО НА ОХРАНУ ЗДОРОВЬЯ	ԱՌՈՂՋՈՒԹՅԱՆ ՊԱՀՊԱՆՄԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO ZDRAVSTVENEGA VARSTVA
RIGHT OF SELF-DETERMINATION OF NATIONS	ПРАВО НА САМООПРЕДЕЛЕНИЕ НАРОДОВ	ԱԶԳԵՐԻ ԻՆՔՆՈՐՈՇՄԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA NARODOV DO SAMOODLOČBE
RIGHT TO SOCIAL SECURITY	ПРАВО НА СОЦИАЛЬНОЕ ОБЕСПЕЧЕНИЕ	ՍՈՑԻԱԼԱԿԱՆ ԱՊԱՀՈՎՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔ	PRAVICA DO SOCIALNE VARNOSTI

RIGHT TO STRIKE	ПРАВО НА ЗАБАСТОВКУ	ԳՈՐԾԱԴՈՒԼԻ ԻՐԱՎՈՒՆՔ	PRAVICA DO STAVKE
RULE OF LAW (SUPREMACY OF LAW)	ВЕРХОВЕНСТВО ПРАВА	ՕՐԵՆՔԻ ԳԵՐԱԿԱՅՈՒԹՅՈՒՆ	PRAVNA DRŽAVA
S			
SALARY (WAGES)	ЗАРАБОТНАЯ ПЛАТА	ԱՇԽԱՏԱՎԱՐՁ	PLAČE
SECESSION	СЕЦЕССИЯ	ՊԵՏՈՒԹՅԱՆ ԿԱԶՄԻՑ ՆՐԱ ՄԻ ՄԱՍԻ ԴՈՒՐՍ ԳԱԼԸ, ՓԼՈՒՋՈՒՄ	ODCEPITEV
SECRET	ТАЙНА	ԳԱՂՏՆԻՔ	TAJNOST
SECRET OF CORRESPONDENCE	ТАЙНА ПЕРЕПИСКИ	ՆԱՄԱԿԱԳՐՈՒԹՅԱՆ ԳԱՂՏՆԻՈՒԹՅՈՒՆ	TAJNOST PISEM
STATE SECRET	ТАЙНА ГОСУДАРСТВЕННАЯ	ՊԵՏԱԿԱՆ ԳԱՂՏՆԻՔ	TAJNA DRŽAVA
SECRET BALLOT	ТАЙНОЕ ГОЛОСОВАНИЕ	ԳԱՂՏՆԻ ՔՎԵԱՐԿՈՒԹՅՈՒՆ	TAJNE VOLITVE
SECULAR STATE	СВЕТСКОЕ ГОСУДАРСТВО	ԱՇԽԱՐՀԻԿ ՊԵՏՈՒԹՅՈՒՆ	POSVETNA DRŽAVA
SECURITY COUNCIL	СОВЕТ БЕЗОПАСНОСТИ	ԱՆՎՏԱՆԳՈՒԹՅԱՆ ԽՈՐՀՈՒՐԴ	VARNOSTNI SVET
LOCAL SELF-GOVERNING	МЕСТНОЕ САМОУПРАВЛЕНИЕ	ՏԵՂԱԿԱՆ ԻՆՔՆԱԿԱՌԱՎԱՐՈՒՄ	SAMOUPRAVLJANJE
SELF-DETERMINATION	САМООПРЕДЕЛЕНИЕ	ԻՆՔՆՈՐՈՇՈՒՄ	SAMOODLOČBA
SELF-DISMISSAL (DISSOLUTION)	САМОРОСПУСК	ԻՆՔՆԱՐՁԱԿՈՒՄ	SAMO-RAZPUSTITEV
SEMI-PRESIDENTIAL REPUBLIC	ПОЛУПРЕЗИДЕНТСКАЯ РЕСПУБЛИКА	ԿԻՍԱՆԱԽԱԳԱՀԱԿԱՆ ՀԱՆՐԱՊԵՏՈՒԹՅՈՒՆ	POL-PREDSEDNIŠKA REPUBLIKA
SENATE	СЕНАТ	ՍԵՆԱՏ	SENAT
SEPARATION OF POWERS	РАЗДЕЛЕНИЕ ВЛАСТЕЙ	ԻՇԽԱՆՈՒԹՅՈՒՆՆԵՐԻ ՏԱՐԱՆՋԱՏՈՒՄ	DELITEV OBLASTI
SEPARATION OF THE CHURCH FROM STATE	ОТДЕЛЕНИЕ ЦЕРКВИ ОТ ГОСУДАРСТВА	ԵԿԵՂԵՑՈՒ ԱՆՋԱՏՈՒՄԸ ՊԵՏՈՒԹՅՈՒՆԻՑ	LOČITEV CERKVE OD DRŽAVE
SOURCE OF LAW	ИСТОЧНИК ПРАВА	ԻՐԱՎՈՒՆՔԻ ԱՂԲՅՈՒՐ	VIR PRAVICE
SOVEREIGNTY	СУВЕРЕНИТЕТ	ԻՆՔՆԻՇԽԱՆՈՒԹՅՈՒՆ	SUVERENOST
SPEAKER	СПИКЕР	ԽՈՍՆԱԿ	PREDSEDNIK

			PARLAMENTA
SPECIAL SESSION OF THE PARLIAMENT	СПЕЦИАЛЬНОЕ ЗАСЕДАНИЕ ПАРЛАМЕНТА	ԽՈՐՀՐԴԱՐԱՆԻ ՀԱՏՈՒԿ ՆԻՍՏ	POSEBNA SEJA PARLAMENTA
STATE	ГОСУДАРСТВО	ՊԵՏՈՒԹՅՈՒՆ	DRŽAVA
STATE (NATIONAL) ANTHEM	ГИМН ГОСУДАРСТВЕННЫЙ	ՊԵՏԱԿԱՆ ՕՐՀՆԵՐԳ	DRŽAVNA HIMNA
STATE ACCUSER	ГОСУДАРСТВЕННЫЙ ОБВИНИТЕЛЬ	ՊԵՏԱԿԱՆ ՄԵՂԱԴՐՈՂ	DRŽAVNI TOŽILEC
STATE ADMINISTRATION	ГОСУДАРСТВЕННОЕ УПРАВЛЕНИЕ	ՊԵՏԱԿԱՆ ԿԱՌԱՎԱՐՈՒՄ	DRŽAVNA UPRAVA
STATE ADMINISTRATION EXECUTIVE	УПРАВЛЕНИЕ ГОСУДАРСТВОМ	ՊԵՏՈՒԹՅԱՆ ԿԱՌԱՎԱՐՈՒՄ	UPRAVLJANJE DRŽAVE
STATE AUTHORITIES	ГОСУДАРСТВЕННЫЙ АППАРАТ	ՊԵՏԱԿԱՆ ԱՊԱՐԱՏ	DRŽAVNI ORGANI
STATE AUTHORITY	ГОСУДАРСТВЕННАЯ ВЛАСТЬ	ՊԵՏԱԿԱՆ ԻՇԽԱՆՈՒԹՅՈՒՆ	DRŽAVNA MEJA
STATE BUDGET	БЮДЖЕТ ГОСУДАРСТВЕННЫЙ	ՊԵՏԱԿԱՆ ԲՅՈՒՋԵ	DRŽAVNI PRORAČUN
STATE COAT OF ARMS	ГЕРБ ГОСУДАРСТВЕННЫЙ	ՊԵՏԱԿԱՆ ԶԻՆԱՆՇԱՆ	DRŽAVNI GRB
STATE COMMITTEES	ГОСУДАРСТВЕННЫЕ КОМИТЕТЫ	ՊԵՏԱԿԱՆ ՀԱՆՁՆԱԺՈՂՈՎՆԵՐ	DRŽAVNI ODBORI
STATE COUNCIL	ГОСУДАРСТВЕННЫЙ СОВЕТ	ՊԵՏԱԿԱՆ ԽՈՐՀՈՒՐԴ	DRŽAVNI SVET
STATE FLAG	ФЛАГ ГОСУДАРСТВЕННЫЙ	ՊԵՏԱԿԱՆ ԴՐՈՇ	DRŽAVNA ZASTAVA
STATE FORMATION	ГОСУДАРСТВЕННЫЙ СТРОЙ	ՊԵՏԱԿԱՆ ԿԱՐԳ	OBLIKA DRŽAVE
STATE GOVERNED BY THE RULE OF LAW (RULE OF LAW STATE)	ПРАВОВОЕ ГОСУДАРСТВО	ԻՐԱՎԱԿԱՆ ՊԵՏՈՒԹՅՈՒՆ	PRAVNA DRŽAVA
STATE LANGUAGE	ГОСУДАРСТВЕННЫЙ ЯЗЫК	ՊԵՏԱԿԱՆ ԼԵԶՈՒ	DRŽAVNI JEZIK
STATE MINISTER	ГОСУДАРСТВЕННЫЙ МИНИСТР	ՊԵՏԱԿԱՆ ՆԱԽԱՐԱՐ	DRŽAVNI MINISTER
STATE OF EMERGENCY	ЧРЕЗВЫЧАЙНОЕ ПОЛОЖЕНИЕ	ԱՐՏԱԿԱՐԳ ԴՐՈՒԹՅՈՒՆ	IZREDNE RAZMERE
STATE OF SOCIAL	СОЦИАЛЬНОЕ	ՍՈՑԻԱԼԱԿԱՆ	SOCIALNA DRŽAVA

WELFARE	ГОСУДАРСТВО	ՊԵՏՈՒԹՅՈՒՆ	
STATE ORGANISATION	ГОСУДАРСТВЕННОЕ УСТРОЙСТВО	ՊԵՏԱԿԱՆ ԿԱՌՈՒՑՎԱԾՔ	ORGANIZACIJA DRŽAVE
STATE SECURITY	ГОСУДАРСТВЕННАЯ БЕЗОПАСНОСТЬ	ՊԵՏԱԿԱՆ ԱՆՎՏԱՆԳՈՒԹՅՈՒՆ	DRŽAVNA OBLAST
STATE RELIGION	ГОСУДАРСТВЕННАЯ РЕЛИГИЯ	ՊԵՏԱԿԱՆ ԿՐՈՆ	DRŽAVNA VERA
STATE BORDER	ГОСУДАРСТВЕННАЯ ГРАНИЦА	ՊԵՏԱԿԱՆ ՍԱՀՄԱՆ	DRŽAVNA VARNOST
STATE SYMBOLS	СИМВОЛЫ ГОСУДАРСТВЕННЫЕ	ՊԵՏԱԿԱՆ ԽՈՐՀՐԴԱՆԻՇԵՐ	DRŽAVNI SIMBOLI
STATELESS PERSONS	ЛИЦА БЕЗ ГРАЖДАНСТВА	ՔԱՂԱՔԱՑԻՈՒԹՅՈՒՆ ՉՈՒՆԵՑՈՂ ԱՆՁԻՆՔ	OSEBE BREZ DRŽAVLJANSTVA
STATELESS PERSONS (PERSON WITHOUT CITIZENSHIP)	АПАТРИДЫ (ЛИЦА БЕЗ ГРАЖДАНСТВА)	ԱՊԱՏՐԻԴՆԵՐ (ՔԱՂԱՔԱՑԻՈՒԹՅՈՒՆ ՉՈՒՆԵՑՈՂ ԱՆՁԻՆՔ)	OSEBE BREZ DRŽAVLJANSTVA
STATELESSNESS	БЕЗГРАЖДАНСТВО	ՔԱՂԱՔԱՑԻՈՒԹՅՈՒՆ ՉՈՒՆԵՆԱԼ	OSEBE BREZ DRŽAVLJANSTVA
STATUS	СТАТУС	ԿԱՐԳԱՎԻՃԱԿ	POLOŽAJ
STATUS OF DEPUTY	СТАТУС ДЕПУТАТА	ՊԱՏԳԱՄԱՎՈՐԻ ԿԱՐԳԱՎԻՃԱԿ	POLOŽAJ POSLANCA
STATUTE	СТАТУТ	ՕՐԵՆՍԴՐԱԿԱՆ ԱԿՏ	STATUT
STRIKE	ЗАБАСТОВКА	ԳՈՐԾԱԴՈՒԼ	STAVKA
SUBJECT OF FEDERATION	СУБЪЕКТ ФЕДЕРАЦИИ	ԴԱՇՆՈՒԹՅԱՆ ՍՈՒԲՅԵԿՏ	SUBJEKT FEDERACIJE
SUBSIDY	ДОТАЦИЯ	ԴՈՏԱՑԻԱ, ՊԵՏԱԿԱՆ ՀԱՏԿԱՑՈՒՄ	DENARNA POMOČ
SUCCESSION (ASSIGNMENT)	ПРАВОПРЕЕМСТВО	ԻՐԱՎԱՀԱՋՈՐԴՈՒ-ԹՅՈՒՆ	NASLEDSTVO
SUPERVISION	НАДЗОР	ՀՍԿՈՂՈՒԹՅՈՒՆ	NADZOR
SUPERVISORY BODY	КОНТРОЛЬНАЯ ПАЛАТА	ՎԵՐԱՀՍԿՈՂԱԿԱՆ ՊԱՀԱՍ	NADZORSTVENI ORGAN
SUPREMACY OF LAW	ВЕРХОВЕНСТВО ЗАКОНА	ՕՐԵՆՔԻ ԳԵՐԱԿԱՅՈՒԹՅՈՒՆ	NADVLADA PRAVA
SUPREME COUNCIL OF MAGISTRATE	ВЫСШИЙ СОВЕТ МАГИСТРАТУРЫ	ՄԱԳԻՍՏՐԱՏՈՒՐԱՅԻ ԲԱՐՁՐԱԳՈՒՅՆ ԽՈՐՀՈՒՐԴ	VRHOVNI SODNI SVET
SUPREME COURT	ВЕРХОВНЫЙ СУД	ԳԵՐԱԳՈՒՅՆ ԴԱՏԱՐԱՆ	VRHOVNO SODIŠČE

T			
TAXES	НАЛОГИ	ՀԱՐԿԵՐ	DAVKI
TEMPORARY ABSENCE	ВРЕМЕННОЕ ОТСУТСТВИЕ	ԺԱՄԱՆԱԿԱՎՈՐ ԲԱՑԱԿԱՅՈՒԹՅՈՒՆ	ZAČASNA ODSOTNOST
TEMPORARY DISABILITY	ВРЕМЕННАЯ НЕТРУДОСПОСОБНОСТЬ	ԺԱՄԱՆԱԿԱՎՈՐ ԱՆԱՇԽԱՏՈՒՆԱ–ԿՈՒԹՅՈՒՆ	ZAČASNA NESPOSOBNOST
TERRITORY	ТЕРРИТОРИЯ	ՏԱՐԱԾՔ	OZEMLJE
THE BAR	АДВОКАТУРА	ՓԱՍՏԱԲԱՆՈՒԹՅՈՒՆ	ODVETNIŠTVO
THE ELDEST DEPUTY	СТАРЕЙШИЙ ДЕПУТАТ	ԱՍԵՆԱՎԱԳ ՊԱՏԳԱՄԱՎՈՐ	NAJSTAREJŠI POSLANEC
TRANSPARENCY	ГЛАСТНОСТЬ	ՀՐԱՊԱՐԱԿԱՅՆՈՒԹՅՈՒՆ	JAVNOST
TRANSITIONAL PROVISIONS	ПЕРЕХОДНЫЕ ПОЛОЖЕНИЯ	ԱՆՑՈՒՄԱՅԻՆ ԴՐՈՒՅԹՆԵՐ	PREHODNE DOLOČBE
TREASON	ИЗМЕНА	ԴԱՎԱՃԱՆՈՒԹՅՈՒՆ	VELEIZDAJA
TREASON TO NATIVE LAND	ИЗМЕНА РОДИНЕ	ՀԱՅՐԵՆԻՔԻ ԴԱՎԱՃԱՆՈՒԹՅՈՒՆ	VELEIZDAJA DOMOVINE
TREATY (CONTRACT)	ДОГОВОРЫ	ՊԱՅՄԱՆԱԳՐԵՐ	POGODBA
U			
UNITARY STATE	УНИТАРНОЕ ГОСУДАРСТВО	ՈՒՆԻՏԱՐ ՊԵՏՈՒԹՅՈՒՆ	UNITARNA DRŽAVA
V			
VACANCY OF THE OFFICE OF PRESIDENT	ВАКАНТНОСТЬ ПОСТА ПРЕЗИДЕНТА	ՆԱԽԱԳԱՀԻ ՊԱՇՏՈՆԻ ԹԱՓՈՒՐՈՒԹՅՈՒՆ	PROSTA FUNKCIJA PREDSEDNIKA
VETO	ВЕТО	ՎԵՏՈ	VETO
VICE - PRESIDENT	ВИЦЕ-ПРЕЗИДЕНТ	ՓՈԽՆԱԽԱԳԱՀ	PODPREDSEDNIK
VOTE OF CONFIDENCE	ВОТУМ ДОВЕРИЯ	ՎՍՏԱՀՈՒԹՅԱՆ ՔՎԵ	ZAUPNICA
VOTING	ГОЛОСОВАНИЕ	ՔՎԵԱՐԿՈՒԹՅՈՒՆ	GLASOVANJE
VOTING DISTRICT	ИЗБИРАТЕЛЬНЫЕ ОКРУГА	ԸՆՏՐԱԿԱՆ ՏԱՐԱԾՔՆԵՐ	VOLILNO OKROŽJE
W			
WAR	ВОЙНА	ՊԱՏԵՐԱԶՄ	VOJNA

WARRANTY	ГАРАНТИЯ	ԵՐԱՇԽԻՔ	WARRANTY

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