

Prof. Dr. Arne Marjan Mavcic<sup>1</sup>  
Nova vas 23A  
4205 Preddvor  
Slovenia/Europe  
Tel.: +386 (0)4 255 60 10  
Fax: +386 (0)4 255 60 11  
GSM: +386 (0) 40 255 399  
E-mail: amavcic@concourts.net  
Internet: <http://www.concourts.net>

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## **VENICE COMMISSION AND ITS ACTIVITIES**

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### **INTERNATIONAL ASSOCIATIONS OF BODIES EXERCISING CONSTITUTIONAL/JUDICIAL REVIEW**

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<sup>1</sup> The Author

Arne Mavčič, LLD, completed his Bachelor of Law degree at the University of Ljubljana Law School from which, after completing his post-graduate studies at the Universities of Zagreb and Ljubljana Law Schools, he was awarded a Doctorate of Law. As head of the Information Department and the Analysis and International Cooperation Department of the Constitutional Court of the Republic of Slovenia from 1976 to 2009, Senior Expert Counselor to the University of Ljubljana Law School from 1981 and Professor of Human Rights Law, Constitutional Law and Comparative Constitutional Law at the School of Government and European Studies, Brdo, Slovenia, from 2001 and at the European Law School, Nova Gorica, Slovenia, from 2003, he specializes in legal information systems, (comparative) constitutional law and human rights law ([www.concourts.net](http://www.concourts.net)). Dr Mavčič was the liaison officer for Slovenia to the Commission for Democracy through Law (the Venice Commission) under the Council of Europe from 1991 to 2009, the national correspondent for Slovenia to the ACCPUF Paris from 1998 to 2009. He was a member on Slovenia to the EU Network of Experts for Human Rights, 2002 – 2006 and he was a member for Slovenia of the EU FRALEX from 2006 to 2010. He was a Fulbright Scholar in 2001/2002 and an editor of the Collected Slovenian Constitutional Case-Law series from 1992 to 2009. He has been a national author for Slovenia of Kluwer's Encyclopedia of Constitutional Law from 1998. As the editor and author of several other publications in the field of constitutional law as well as the author of over 270 papers and reports of national and international character (<http://izumbib.izum.si/bibliografije/Y20120309222357-19597.html>), Dr Mavčič has predominantly been engaged in practical and promotional activities in the fields of comparative constitutional review and human rights law.

Generally speaking, the role of constitutional review has been expanding; at the same time individual constitutional courts increasingly share more common elements regarding organization, proceedings, and rationales for their decisions and opinions. An important stimulus is provided also by the international tendencies in constitutional justice.

An example of such a semi-official conduit is the European Conference of Constitutional Courts established in 1972 in Dubrovnik in the former Yugoslav Federation, which includes almost 40 European and non-European countries. 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 is, in many respects, of far-reaching importance. They contribute to the strengthening and better articulation of constitutional case-law.

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

The first 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. The first conference of this group of countries was also held there. In addition, a Group of Spanish Speaking Constitutional Courts was established some later. 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. The first conference adopted the Charter of the Group regulating its organization 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 European and non-European countries. The first conference of this Association was held in Paris in 1997, the second in Beirut in September 1998.

THE VENICE COMMISSION

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 first attempts to establish the Venice Commission were presented at the European Conference of Constitutional Courts, which was held in 1987 in Lisbon. The greatest supporters of this idea were the then 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 sub-commissions, 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.

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 Social Welfare State, 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 specialized seminars, the so-called *UniDem* seminars, where global problems are discussed which concern all constitutional systems, e.g. human rights protection, referendums, the federal structure of states, constitutional review, *etc*

The member states of the Council of Europe are not members of the Commission automatically. It is necessary to apply for membership on the basis of an appropriate document. The Commission homepage<sup>2</sup> also includes many links to Internet sites with information on constitutional courts or equivalent bodies of member states, associate members and Commission observers.

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Initially conceived as a tool for emergency constitutional engineering, the commission has become an internationally recognised independent legal think-tank. Today it contributes to the dissemination of the European constitutional heritage, based on the continent's fundamental legal values while continuing to provide “constitutional first-aid” to individual states. The Venice Commission also plays a unique and unrivalled role in crisis management and conflict prevention through constitution building and advice.

The Commission meets in plenary four times a year - in March, June, October and December - in Venice, in Scuola Grande di San Giovanni Evangelista.

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

- the establishment of a common documentation centre;
- a collection of data concerning the activities of constitutional courts, in English, French and in national languages;
- the CODICES database (case-law, systemic legislation, literature) on the internet and on the CD-ROM;
- the Bulletin on Constitutional Case-Law and special Bulletins containing the national regulation on constitutional review, in English and French;
- a systematic thesaurus in French and English, which is implemented as a standard in the preparation of different documents for a common data base;

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<sup>2</sup> <http://www.venice.coe.int/>

- the Venice Forum – a network for the cooperation of liaison officers of bodies exercising constitutional review, on the Internet and through the e-mail;
- a connection with other associations of constitutional courts and equivalent bodies (e.g. the Association of French speaking constitutional courts, A.C.C.P.U.F.);
- the *UniDem* seminars, other seminars, conferences 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.*).

The work of the European Commission for Democracy through Law aims at upholding the three underlying principles of Europe's constitutional heritage: democracy, human rights and the rule of law - the cornerstones of the Council of Europe. Accordingly, the Commission works in the following four key-areas:

- Constitutional assistance
- Elections and referendums, political parties
- Co-operation with constitutional courts and ombudspersons
- Transnational studies, reports and seminars

The Venice Commission's primary task is to give legal advice to individual countries on laws that are important for the democratic functioning of institutions. Generally, the request for an opinion is made by the state itself. The Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council Europe and the Secretary General, or any international organisation or body participating in the Venice Commission's work, may also make a request for an opinion.

The working method adopted by the Commission when providing opinions is to appoint a working group of rapporteurs (primarily from amongst its members) which advises national authorities in the preparation of the relevant law. After discussions with the national authorities and stakeholders in the country, the working group prepares a draft opinion on whether the legislative text meets the democratic standards in its field and on how to improve it on the basis of

common experience. The draft opinion is discussed and adopted by the Venice Commission during a plenary session, usually in the presence of representatives from that country. After adoption, the opinion becomes public and is forwarded to the requesting body.

Although its opinions are generally reflected in the adopted legislation, the Venice Commission does not impose its solutions, but adopts a non-directive approach based on dialogue. For this reason the working group, as a rule, visits the country concerned and meets with the different political actors involved in the issue in order to ensure the most objective view of the situation.

A political agreement settling a conflict should be supported by a viable legal text. It may also be possible for an agreement on a legal text to foster a political solution. For this reason the Venice Commission pays particular attention to countries which are going through or have gone through ethno-political conflicts.

In this context, at the European Union's request, the Venice Commission has played an important role in developing and interpreting the constitutional law of Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Serbia and Montenegro as well as that of the province of Kosovo. It has also been involved in efforts to settle the conflicts on the status of Abkhazia and South Ossetia in Georgia and Transnistria in Moldova.

## THE WORLD CONFERENCE

Since 1996, the Venice Commission has established co-operation with a number of regional or language based groups of constitutional courts, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Judges Commission, the Conference of Constitutional Control Organs of Countries of New Democracy, a number of Asian constitutional courts, the Union of Arab Constitutional Courts and Councils and the Ibero-American Conference of Constitutional Justice.

In the pursuit of the goal of uniting these groups and their members, the Commission organised for the first time a Congress of the World Conference on Constitutional Justice, which was held in Cape Town, South Africa on 23-24

January 2009 in co-operation with the Constitutional Court of South Africa and which gathered together 9 regional or linguistic groups some 90 courts.

On the basis of a declaration adopted at this occasion, the Venice Commission assisted a Bureau in the establishment of the World Conference as a permanent body. At their first meeting in Mexico in April 2009, the Bureau prepared a draft statute, which was discussed at other meetings of the Bureau on 12 December 2009 and 5 June 2010 in Venice together with questions of the organisation a second Congress.

Eighty eight Constitutional Courts, Constitutional Councils and Supreme Courts as well as the 10 regional and linguistic groups of courts from Africa, the Americas, Asia and Europe gathered for a 2nd Congress of the World Conference on Constitutional Justice on the "Separation of Powers and Independence of Constitutional Courts and Equivalent Bodies" hosted by the Federal Supreme Court of Brazil in co-operation with the Venice Commission (Rio de Janeiro, Brazil, 16-18 January 2011). The draft statute was amended at this occasion and finally adopted at another meeting of the Bureau on 23 May 2011 on the occasion of the XVth Congress of the Conference of European Constitutional Courts.

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