
A. Mavčič

THE CONSTITUTIONAL REVIEW

This text is current as of April 2001

The Constitutional Review

Dr. Arne Mavčič

This text is current as of April 2001
Updated texts on: www.concourts.net

© 2001 Dr. Arne Mavčič – all rights reserved

DTP: Edo Milavec, MV d.o.o., Postojna

TABLE OF CONTENTS

THE AUTHOR.....	9
PREFACE	10
I. AN INTRODUCTION TO THE NATURE OF THE ORIGIN AND FUNCTION OF SYSTEMS OF CONSTITUTIONAL REVIEW	11
II. CONSTITUTIONAL JUSTICE AND PRACTICE:	13
A. THE CHARACTER OF SOCIAL RELATIONS AND THE CONSTITUTIONAL REVIEW.....	13
B. PARTICULARITIES OF THE CONSTITUTIONAL REVIEW DURING THE TRANSITIONAL PERIOD IN SLOVENIA.....	16
III. HISTORICAL STEPS IN THE DEVELOPMENT OF SYSTEMS OF CONSTITUTIONAL REVIEW AND PARTICULARITIES OF THEIR BASIC MODELS.....	18
A. HISTORY.....	18
1. <i>Development up to World War I</i>	18
2. <i>The Development Between the two Wars</i>	20
3. <i>The development after World War II</i>	20
4. <i>A new period of development in the Seventies</i>	21
5. <i>The Introduction of Constitutional Review in the New Democracy Countries</i>	21
B. MODELS OF CONSTITUTIONAL/JUDICIAL REVIEW	22
IV. RELATION OF CONSTITUTIONAL COURTS TO OTHER STATE INSTITUTIONS	29
Concerning the Legislature:.....	29
Concerning the Executive, the Head of State and the Government:	29
Concerning the Executive or Administrative Branch:	30
Concerning the Judiciary:.....	30
Concerning State bodies in general:.....	31
V. THE CONSTITUTIONAL COURT AND THE JUDICIAL BRANCH.....	32
VI. GUARANTEES OF THE INDEPENDENCE OF CONSTITUTIONAL JUSTICE	33
A. THE FINANCING (THE BUDGET) OF THE CONSTITUTIONAL COURT AS THE BASIS OF ITS INDEPENDENCE.....	33
Slovenia:.....	36
B. THE PAYMENT OF FEES IN CONSTITUTIONAL PROCEEDINGS AS A SOURCE OF CONSTITUTIONAL COURT FUNDING.....	38
C. THE POWERS OF CONSTITUTIONAL COURTS AS PROOF OF THEIR INDEPENDENCE....	38
D. IMMUNITIES, INCOMPATIBILITIES, MATERIAL INDEPENDENCE, AND PROTOCOL RANK.....	41
Some significant systems in force are, as follows:	41
E. THE APPOINTMENT/ELECTION OF JUDGES TO THE CONSTITUTIONAL COURT	45
F. PUBLIC CONTROL/THE PUBLIC NATURE OF THE ACTIVITIES OF THE CONSTITUTIONAL COURT	46
Public hearings;	46
The publication of Court decisions in official gazettes, official digests, as well as in legal journals;	47
The circulation of information through several computerized information systems;	48
VII. THE INDEPENDENCE AND THE AUTONOMY OF THE ORGANIZATION OF THE CONSTITUTIONAL COURT.....	49

VIII.	BODIES EXERCISING CONSTITUTIONAL REVIEW AND THE PARTICULARITIES OF THEIR ORGANIZATION	51
IX.	THE POWERS OF CONSTITUTIONAL COURTS AND OTHER BODIES OF CONSTITUTIONAL REVIEW	53
	Powers.....	53
	Particular Components of Constitutional Court Powers:.....	59
X.	THE OBJECTS AND SUBJECTS OF CONSTITUTIONAL REVIEW	62
XI.	THE VARIOUS FORMS OF CONSTITUTIONAL REVIEW AND THEIR IMPLEMENTATION IN PRACTICE	64
XII.	CONSTITUTIONAL REVIEW IN THE FIELD OF HUMAN RIGHTS PROTECTION	65
	A. THE INDIVIDUAL AS AN APPLICANT BEFORE THE CONSTITUTIONAL COURT	65
	B. BODIES EMPOWERED FOR HUMAN RIGHTS PROTECTION AND THE FORMS OF SUCH PROCEEDINGS	66
	C. THE CONSTITUTIONAL COMPLAINT AND ITS EXTENT IN THE WORLD	69
	D. THE FUNDAMENTALS OF THE CONSTITUTIONAL COMPLAINT	70
	E. VARIOUS INTERNATIONAL FORMS OF THE INDIVIDUAL COMPLAINT	73
	F. THE CORE OF THE JUDICIAL PROTECTION OF HUMAN RIGHTS	74
XIII.	THE PARTICULARITIES OF CURRENT CONSTITUTIONAL PROCEEDINGS.....	76
	A. THE DISSENTING/CONCURRING OPINION.....	76
	B. TEMPORARY ORDERS.....	77
	1. <i>The Abstract Review</i>	78
	2. <i>The Constitutional Complaint</i>	78
	3. <i>Other (Specific) Proceedings</i>	79
XIV.	THE CHARACTER OF THE DECISIONS OF CONSTITUTIONAL COURTS AND THEIR PUBLICATION	80
	A. CONTENTS AND THE EFFECTS OF DECISIONS.....	80
	1. <i>Contents</i>	80
	2. <i>The Appointment of a Body Empowered to Implement Court Decisions</i>	82
	3. <i>Effects</i>	82
	B. THE PUBLICATION OF CONSTITUTIONAL COURT DECISIONS.....	86
	1. <i>Publication</i>	86
	2. <i>The Effect of Publication</i>	86
XV.	PARTICULARITIES OF THE CONSTITUTIONAL REVIEW IN SOME COUNTRIES.....	87
	A. CONSTITUTIONAL REVIEW IN THE NEW DEMOCRACIES	87
	B. THE ARAB COUNTRIES.....	94
	C. AFRICA	95
	1. <i>Francophone Africa</i>	95
	2. <i>Anglophone Africa</i>	96
	3. <i>Lusophone Africa</i>	98
	4. <i>Hispanophone Africa</i>	98
	5. <i>Some Countries with the Longest State Tradition</i>	99
	D. THE COMPOSITION OF BODIES EMPOWERED TO CARRY OUT CONSTITUTIONAL REVIEW	99

E. THE POWERS OF CONSTITUTIONAL REVIEW BODIES.....	99
1. <i>General</i>	99
2. <i>The Particular Systems of Constitutional Review</i>	100
Algeria.....	100
Angola.....	102
Benin (the former Republic of Dahomey).....	102
Botswana.....	103
Burkina Faso.....	103
Burundi.....	104
Cameroon.....	105
Cape Verde.....	107
The Central African Republic.....	108
Chad.....	109
Comoros.....	111
Congo.....	111
Djibouti.....	113
Egypt.....	113
Equatorial Guinea.....	114
Eritrea.....	115
Ethiopia.....	115
Gabon.....	116
Gambia.....	118
Ghana.....	118
Guinea.....	119
The Ivory Coast.....	119
Madagascar.....	120
Mali.....	121
Morocco.....	122
Mauritania.....	123
Mauritius.....	123
Mozambique.....	124
Namibia.....	124
Niger.....	124
Nigeria.....	125
Rwanda.....	126
Senegal.....	126
The Seychelles.....	128
Sierra Leone.....	128
South Africa.....	128
Kwazulu-Natal/The Federal Republic of South Africa.....	131
Sudan.....	132
Togo.....	132
Tunisia.....	133
Uganda.....	133
Zaire.....	133
Zambia.....	134
Zimbabwe.....	135

F.	ASIA	136
1.	<i>General</i>	136
2.	<i>The Particular Systems of Constitutional Review</i>	137
	Bangladesh	137
	Brunei	137
	Cambodia	137
	China	138
	Hong Kong.....	140
	India	141
	Indonesia.....	141
	Japan.....	142
	Malaysia.....	143
	Mongolia.....	144
	Nepal	144
	North Korea	146
	Pakistan	146
	The Philippines.....	147
	Singapore	147
	South Korea.....	148
	Sri Lanka.....	150
	Taiwan (the Republic of China).....	151
	Thailand	153
	Vietnam.....	154
G.	CENTRAL AND SOUTH AMERICA	155
1.	<i>General</i>	155
2.	<i>The Particular Systems of Constitutional Review</i>	157
	Argentina.....	157
	Belize.....	159
	Bolivia.....	159
	Brazil.....	159
	Chile.....	162
	Colombia.....	162
	Costa Rica	165
	Ecuador	165
	El Salvador.....	167
	Guatemala	167
	Honduras	169
	Mexico.....	170
	Nicaragua	170
	Panama	171
	Paraguay	172
	Peru.....	172
	Uruguay.....	174
	Venezuela.....	175
	The Former British Colonies of Latin America (The West Indies).....	176
H.	SYSTEMS OF CONSTITUTIONAL REVIEW IN COUNTRIES WITH	
A	FEDERAL STATE STRUCTURE	177
	Germany.....	178
	The Russian Federation	179
	Argentina.....	181
	The Former SFRY and Present FR of Yugoslavia.....	181
	Bosnia and Herzegovina.....	185

XVI. INTERNATIONAL ASSOCIATIONS OF BODIES EXERCISING CONSTITUTIONAL/ JUDICIAL REVIEW:	187
XVII. THE BASIC GOALS, SOME TENDENCIES AND THE LOGIC OF THE DEVELOPMENT OF SYSTEMS OF CONSTITUTIONAL REVIEW	193
XVIII. CONCLUSION.....	196
ENCLOSED MATERIALS	196
1. <i>Bibliography on Comparative Constitutional/Judicial Review General:</i>	196
2. <i>Bibliography on Africa:</i>	198
3. <i>Bibliography Concerning Asia:</i>	200
4. <i>Bibliography Concerning Central and South America:</i>	201
APPENDIX I - EVOLUTION DE LA JUSTICE CONSTITUTIONNELLE	203
A. MODELES ACTUELS DE JUSTICE CONSTITUTIONNELLE.....	205
B. BIBLIOGRAPHIE - CONFERENCE DES COURS CONSTITUTIONNELLES EUROPEENNES	208
C. CHRONOLOGIE DES CONFERENCES DES COURS CONSTITUTIONNELLES EUROPEENNES TENUES JUSQU'À CE JOUR.....	209
APPENDIX II - A TABULAR PRESENTATION OF CONSTITUTIONAL/ JUDICIAL REVIEW AROUND THE WORLD	211
INDEX	234

THE AUTHOR

Dr. Arne Mavčič

Arne Mavčič¹, D. Law (born 4 August 1948), completed his Bachelor of Law at the University of Ljubljana Law School, Slovenia in 1970, from which, after having completed his post-graduate studies in civil law at the Universities of Zagreb and Ljubljana Law Schools, he was awarded a Doctorate of Law in 1979.

From 1970 to 1973 he was legal advisor to the Slovenian Parliament, from 1974 to 1977 he was Head of the International Department of the Slovenian Health Insurance Association. Since 1978 he has been the Director of the Legal Information Center of the Constitutional Court of the Republic of Slovenia, a Senior Expert Councillor to the University of Ljubljana Law School, specializing in legal information systems and constitutional law, and a Senior Expert Counsellor to the Institute on Labour Law of the University of Ljubljana Law School.

Dr. Mavčič is the liaison officer for Slovenia on constitutional law and legal information systems to the (Venice) Commission for Democracy through Law under the Council of Europe, the liaison officer for Slovenia on constitutional law and legal information systems to the ACCPUF Paris, and Secretary of the Slovenian Constitutional Law Society, Secretary of the Slovenian Jurists Commission, a member of the Slovenian Labour Law and Social Security Association, a member of the International Constitutional Law Association, a member and the national President for Slovenia of the World Jurist Association, a member of the Law Association for Asia and the Pacific, a member of the Slovenian Informatics Society, a Fulbright Scholar, an editor of the Collected Slovenian Constitutional Case-Law series, national editor of the East European Case Reporter of Constitutional Law and national author for Slovenia of Kluwer's Encyclopaedia of Constitutional Law.

He is the editor and author of several other publications in the field of constitutional law as well as an author of over 200 papers and reports on national and international conferences, seminars and workshops. Of late, Dr. Mavčič has predominantly been engaged in practical and promotional activities in the fields of comparative constitutional judiciary and legal information systems.

PREFACE

This comparative survey of constitutional systems is current as of April 2001. This book represents a reprint and up-dated version of author's part of a book entitled *The Constitutional Review and its Development in the Modern World (A Comparative Constitutional Analysis)* written together with Mr. G. Harutyunyan, which was published in Yerevan in 1999.

The author would like to take this opportunity to thank his English language editor Mr. Dean De Vos and his French language editor Mrs. Marie-Claude Oberti-Zupančič, whose expert linguistic help proved invaluable throughout the project.

The author is also extremely grateful to Mr. Edo Milavec for helping him with the computer aided editing and graphic design of tables and maps that the author was unable to work out by himself.

I. 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 ordered in such a way that basic human rights are guaranteed. The principle of material constitutionality has to be realized 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 socio-political 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.

XVIII. CONCLUSION

Enclosed Materials

I. BIBLIOGRAPHY ON COMPARATIVE CONSTITUTIONAL/JUDICIAL REVIEW GENERAL:

Boeckenfoerde, Ernst Wolfgang, *Verfassungsgerichtsbarkeit: Strukturfragen, Organization, Legitimation*, NJW 1999, Heft 1, p. 9-17

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-1/I-11.

Mavčič, A., *Slovenian Constitutional Review, Its Position in the World and Its Role in the Transition to a New Democratic System*, Ljubljana. Založba Nova revija, 1995

Mavčič, A., *The Slovenian Constitutional Review, An Exception Among Systems and Experiences in the New Democracies*, *Journal of Constitutional Law in Central and Eastern Europe*, No. 4/2 (1997), p. 169

Mavčič, A., *The Citizen as an Applicant Before the Constitutional Court*, Report on the Seminar organised by the European Commission for Democracy through Law, in conjunction with the Constitutional Court of Georgia on Contemporary Problems of Constitutional Justice, Tbilissi, Georgia, 1-3 December 1996, Offprint.

Mavčič, A., *The Role of the Slovenian Constitutional Court in Legal Transition*, Report on the Conference on Constitutional Transition, CCT'97, Hong Kong, 29 May - 1 June, 1997, Offprint.

Mavčič, A., *The Nature and Effects of Decisions of the Slovenian Constitutional Court, the Temporary Order as an Element of the Constitutional Review Proceedings*, Report on the Colloquium ueber Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und Osteuropa, das Max-Planck-Institut fuer auslaendisches oeffentliches Recht und Voelkerrecht, Heidelberg, 17-18 April, 1997, Offprint.

Mavčič, A., *The Protection of Fundamental Rights by the Constitutional Court and the Practice of the Constitutional Court of the Republic of Slovenia*, Report on the Seminar "The Protection of Fundamental Rights by the Constitutional Court", Venice Commission of the Council of Europe, Brioni, Croatia, 23-25 September 1995, Proceedings, p. 204.

Mavčič, A., *The Protection of Fundamental Rights by the Constitutional Court*, Report on the Constitutional Dimension of Judicial Reform and Judicial Organization Seminar, Kirgyszstan, Bishkek, 17-18 June 1997, Offprint.

Mavčič, A., *The Issue of the Judicial Review of the Constitutionality of the Laws in a Newly Emerged Democracy: Slovenia*, The EU/Tacis Program Support to the Constitutional Court of Uzbekistan, Seminar in Tashkent, 11-15 September 1997, organised by the European Commission and the Greek Research Institute Center of European Constitutional Law, Themistocles and Dimitris Tsasos Foundation, Offprint.

Mavčič, A., *Human Rights Protection with the Help of the Individual Complaint*, The Venice Commission of the Council of Europe, Workshop on the Functioning of the Constitutional Court of the Republic of Latvia, Riga/Latvia, 3-4 July 1997, organized by the Constitutional Court of the Republic of Latvia, Offprint.

Mavčič, A., *The Constitutional Court, Different Models of Operation as Regards Systems of Federal States*, The Venice Commission of the Council of Europe, Workshop on the Relationship between Central Constitutional Courts and Constitutional Courts of Federal Entities, Petrozavodsk, the Republic of Karelia (Russian Federation), 22-24 September 1997, Offprint.

Mavčič, A., *The Development and Functions of Constitutional Courts, The Use of Case Law, The Rule of Law, The Use of the European Convention on Human Rights, Standards Used to Review Government Actions, the Equal Protection Clause*, Workshop organised by the European Union, Council of Europe, International Human Rights Group, Office of the High Representative, Sarajevo, Bosnia and Herzegovina, 24-25 November 1997, Offprint.

Mavčič, A., *The Budget of the Constitutional Court, Control and Management with Respect to the Independence and Autonomy of the Court*, Workshop organised by the Venice Commission of the Council of Europe, Kiev, Ukraine, 19-21 January 1998, Offprint and Proceedings.

Mavčič, A., *The Protection of Human Rights by Bodies Exercising Constitutional/Judicial Review*, Conference of Constitutional Courts, organised by the CIS, Minsk, Belarus, 3-4 June 1998, Offprint and Proceedings.

Mavčič, A., *The Particularities of the Legal Information System of the Constitutional Court of Slovenia*, International conference organised by the Association pour le développement de l'informatique juridique, Paris, France, 22-23 October 1998, Offprint and Proceedings.

Mavčič, A., *The Slovenian Constitutional Review as an Example of a System in the Process of Transition*, International conference organised by the Pontificia Universidad Católica de Chile, Facultad de Derecho, Santiago, Chile, 5-7 November 1998, Offprint and Proceedings.

Mavčič, A., *The Presentation of Constitutional Review Matters on the Internet*, International conference organised by the Istituto per la Documentazione Giuridica del Consiglio Nazionale delle Ricerche, Florence, Italy, 2-5 December 1998, Offprint and Proceedings, CD-ROM.

APPENDIX I

EVOLUTION DE LA JUSTICE CONSTITUTIONNELLE

L'institution d'organes juridictionnels suprêmes pour veiller à la constitutionnalité et à la légalité n'est pas une découverte des Etats modernes.

Le droit de la Grèce antique distinguait le *nomos* (que l'on pourrait dans un certain sens comparer aux lois constitutionnelles actuelles) du *psephisma* qui pourrait à notre époque être appelé règlement.¹⁷¹ Les Grecs avaient introduit le principe fondamental selon lequel le règlement (*psephisma*), indépendamment de son contenu, ne devait pas être en contradiction avec le *nomos*, ni dans sa forme ni dans son contenu. L'adoption d'un *psephisma* inconstitutionnel avait deux conséquences. En premier lieu, le membre de l'organe législatif qui avait proposé un règlement inconstitutionnel était responsable pénalement, ce qui pouvait donner motif au droit général de recours. En second lieu, les *psephismata* qui étaient contraires aux *nomoi* étaient considérés comme nuls. Dans leurs décisions, les juges athéniens, bien que liés en principe aux deux fondements, c'est-à-dire aux lois et aux règlements, n'étaient tenus aux règlements que si ceux-ci étaient conformes aux lois constitutionnelles.

Dans l'ancien Empire germanique, des éléments de justice constitutionnelle sont relevés dès 1180. Les organes juridictionnels de l'époque statuaient surtout à propos de litiges portant sur la compétence entre les détenteurs du pouvoir, mais aussi partiellement sur les violations des droits. Le contrôle de la constitutionnalité des lois est apparu sous diverses formes tout au long de l'histoire du droit allemand, avant d'être introduit par la Constitution de Weimar dans le sens compris aujourd'hui. Par ailleurs, des formes antécédentes de justice constitutionnelle existaient en France jusqu'au milieu du XIII^e siècle. Au Portugal, le Code Philippe a introduit la justice constitutionnelle au début du XVII^e siècle.

La Cour fédérale autrichienne est en 1867 devenue compétente pour résoudre les litiges concernant la compétence et la protection des droits politiques de l'individu face à l'administration. Parallèlement, la Cour d'Etat statuait alors sur les accusations mettant en cause l'Etat et ses lois. La Cour constitutionnelle avec compétence exclusive de statuer sur la constitutionnalité des lois a été fondée par la Constitution de 1920, avant tout grâce aux théoriciens du droit autrichiens, Adolf Merkel et Hans Kelsen. La Constitution fédérale suisse de 1848 prévoyait certes l'introduction de la justice constitutionnelle, mais c'est la Constitution révisée en 1874 qui attribua à la Cour suprême des compétences de justice constitutionnelle plus étendues.

En Norvège, à partir de 1890, la jurisprudence a introduit le contrôle de la constitutionnalité des lois. Avant la Première Guerre mondiale, la Roumanie a mis en place la justice constitutionnelle suivant le modèle américain et avant la Seconde

¹⁷¹ Capeletti, M., *The Judicial Process in Perspective*, Chapt. 3, pub. dans 58 Cal. L. Rev. 1017 (1970), pub. aussi dans Beatty D., *Comparative Constitutional Law* Faculty of Law, University of Toronto, Spring 1994, p. 1-6.

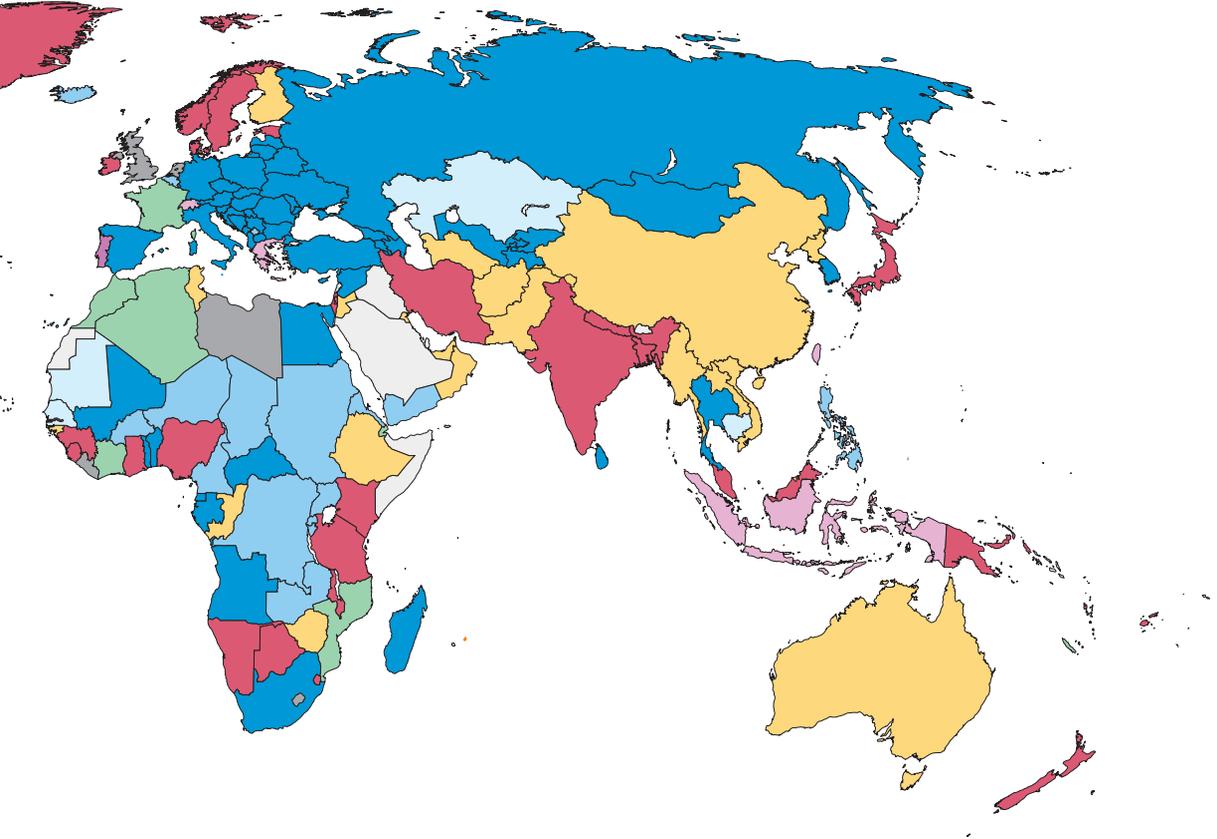
APPENDIX II

A TABULAR PRESENTATION OF CONSTITUTIONAL/ JUDICIAL REVIEW AROUND THE WORLD

Here follows a tabular presentation of different models of constitutional courts as special bodies that as protectors of constitutionality enjoy a certain legal superiority in relation to the other branches of power. From an organisational point of view, it is possible to distinguish different current models of constitutional/judicial review. Furthermore, constitutional courts are here also presented from the point of view of their powers exercised in accordance with constitutional and statutory regulations in force. In addition, a map presents the mentioned constitutional and judicial review models arranged by main regions: Europe, Eastern Europe, Africa, Asia, the Middle East as well as North, Central and South America. These models are presented by different colours.

Interactive and updated tables @: www.concourts.net/tab/tabI.php

Tables also available in French, Spanish, Russian and Slovenian



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 the particular country are entitled to not apply laws deemed as not in conformity with the *Constitution*.

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).

Other Bodies with the Power of Constitutional/Judicial Review (the National Council, Parliament or specialized parliamentary bodies, etc.).

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.

Constitutional principles

Social Welfare State, 190

Costa Rica, 25, 53, 54, 55, 156, 191

Court of EFTA, 28

Croatia, 25, 35, 54, 55, 56, 57, 58, 59, 65, 71, 77, 88

Cuba, 27, 54, 55, 59, 157

Cyprus, 21, 25, 29, 53, 54, 55, 56, 57, 58, 59, 60

Czech Republic, 25, 30, 41, 49, 54, 55, 57, 58, 59, 88, 91, 92

Czechoslovakia, 20, 21, 87

D

Denmark, 18, 24, 29

dissenting opinion, 76, 77, 162

Djibouti, 27, 53, 55, 57, 58, 113

Dominican Republic, 24

E

Eastern Europe, 64, 65, 71, 87

Ecuador, 26, 53, 54, 55, 56, 57, 58, 59, 156, 157, 164, 166

Egypt, 20, 25, 54, 56, 57, 59, 94, 113, 191

El Salvador, 26, 54, 55, 56, 58

Equatorial Guinea, 25, 54, 56, 57, 58, 98, 99, 115

Estonia, 24, 53, 54, 55, 88

Ethiopia, 27

Europe, 19, 24, 25, 26, 27, 47, 64, 68, 69, 76, 88, 189, 190, 192

European Community Law, 28

European Conference of Constitutional, 187, 189

European Court of Human Rights, 27, 74, 77, 185

F

Finland, 27, 53, 60

France, 18, 19, 21, 27, 29, 34, 46, 51, 52, 53, 56, 57, 58, 59, 60, 142, 188

French model, 60, 95, 108

FRY, 25, 46, 52, 54, 55, 56, 57, 58, 59, 71, 88, 91, 92, 179, 184

G

Gabon, 25, 53, 55, 56, 57

Gambia, 24

German Reich, 18

Germany, 21, 25, 33, 38, 39, 46, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 69, 71, 72, 77, 177, 178, 188, 189

Ghana, 24, 118

Great Britain, 27, 73, 97

Greece, 18, 20, 21, 26, 30, 54, 57, 58, 77

Grenada, 24

Guatemala, 26, 53, 54, 55, 56, 58, 59, 156, 157, 167, 168, 173, 191

Guinea, 24, 27, 53, 57, 98, 119

Guinea Bissao, 98

Guyana, 24

H

Haiti, 24

Hessen (German province), 25, 56, 57, 58, 59, 179

Honduras, 26, 54, 55, 58, 169, 170

Hong Kong, 24, 27, 30, 136, 140, 177

Human rights' protection

Amparo, 156, 157, 167, 170, 171, 176

constitutional complaint, 16, 18, 23, 26, 32, 51, 58, 61, 62, 63, 65, 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 80, 81, 83, 89, 91, 92, 94, 100, 144, 149, 150, 157, 158, 163, 165, 184

International forms

European Convention for the Protection of Human rights and Fundamental Freedoms

European complaint, 27, 74

*Regular Court proceedings**Habeas corpus*, 66, 142, 157, 160*Habeas data*, 66*Respondeat superior*, 67

Slovenian system, 32, 36, 40, 72, 78, 80

History, 18

Hungary, 25, 33, 52, 53, 54, 55, 56, 57, 58, 59, 60, 77, 88, 91, 92

I

Iceland, 25, 73

India, 21, 24, 57, 136, 141, 177

Indonesia, 26, 53, 56, 136, 142

Iran, 24, 55, 68

Iraq (former), 25, 94

Ireland, 20, 24, 29, 53, 59, 60, 73

Israel, 24, 58, 68

Italy, 21, 25, 30, 34, 41, 46, 51, 52, 53, 54, 55, 56, 57, 59, 61, 188, 189, 190

Ivory Coast, 27, 53, 57, 59

J

Jamaica, 24, 176

Japan, 21, 24, 29, 49, 68, 76, 136

Jurisdictional disputes (see Constitutional Court/Powers), 23

INDEX

A

A.C.C.P.U.F., 48, 192
Abstract review (see Constitutional Court/Powers), 23, 54
 Afghanistan, 27, 53, 54, 59
 Africa, 21, 24, 25, 26, 27, 68, 69, 73, 87, 95, 96, 98, 129, 130
 African constitutionalism, 95
African Court, 28
 Albania, 25, 29, 53, 54, 55, 56, 57, 58, 88
 Algeria, 21, 27, 53, 54, 55, 57, 58, 59, 95, 100
 American model, 19, 66, 67, 97, 136, 137, 141, 147, 156, 159
 Andorra, 25, 29, 52, 53, 56, 58
 Angola, 25, 54, 98, 102
 Arab Countries, 94
 Argentina, 21, 24, 25, 53, 55, 57, 58, 59, 68, 156, 157, 164, 177, 181
 Asia, 21, 24, 25, 26, 27, 68, 87, 136
 AUSTRALIA, 27
 Austria, 20, 21, 25, 29, 34, 38, 41, 46, 52, 53, 54, 55, 56, 57, 58, 59, 60, 71, 72, 177, 188
 Austrian Federal Court, 18
 Austrian model, 20, 76, 136, 166, 173

B

Bahamas, 24
 Bangladesh, 24, 136
 Barbados, 24, 176
 Belarus, 25, 30, 33, 35, 41, 42, 49, 53, 88, 90
 Belgium, 21, 25, 34, 46, 52, 54
 Benin, 25, 54, 58, 100, 102, 191
Bill of Rights, 137
 Bolivia, 24, 54, 55, 57, 59, 164
 Bosnia, 25, 29, 46, 52, 54, 55, 56, 57, 88, 177, 185, 186
 Botswana, 24
 Brazil, 21, 26, 54, 56, 57, 58, 66, 67, 156, 157, 158, 161, 164, 177
 Brunei, 27, 136
 Bulgaria, 25, 30, 33, 41, 52, 53, 54, 55, 56, 57, 58, 59, 88, 91
 Burkina Faso, 25, 53, 57, 103
 Burma, 21, 27, 136
 Burundi, 25, 29, 52, 53, 56, 57, 58, 59, 93, 104

C

Cameroon, 25, 53, 54, 56, 57, 96, 105
 Canada, 24, 30, 177
 Cape Verde, 26, 53, 54, 55, 58, 98

Central African Republic, 25, 53, 56, 57, 58, 59
 Chad, 25, 53, 54, 56, 57, 59, 110
 Chile, 25, 53, 54, 57, 58, 59, 67, 77, 156, 164, 173
 China, 27, 136, 140, 152, 177
 CIS Conference, 191
 Colombia, 26, 54, 58, 59, 67, 156, 157, 162, 164, 173
Comision y la Corte Interamericanas de los Derechos Humanos, 28
 Commonwealth, 21, 24, 64, 76, 97, 123, 136, 137, 176
 Comoros, 27, 53, 54, 57, 59, 177
 Congo, 27, 53, 54, 55, 57, 58, 100, 111, 112, 133
 Constitutional Court, 16, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 96, 98, 99, 102, 104, 105, 108, 109, 112, 113, 114, 115, 117, 118, 120, 121, 122, 126, 128, 129, 130, 131, 132, 133, 134, 144, 145, 148, 149, 150, 153, 154, 156, 158, 159, 162, 165, 166, 167, 172, 173, 174, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 189, 190, 191, 192
 Composition, 22, 46, 99
 Conference of Constitutional Courts, 187, 189
Decision-making
 Concurring opinion, 22
Effect of judgments
 Erga omnes, 23
 Inter partes, 23
Immunities, 22, 41, 43
Organisation, 33, 34, 35, 36, 38, 49, 50, 51, 100
 Powers, 16, 38, 51, 53, 59, 80, 87, 99, 184, 190
 Impeachment, 23, 30, 163
 Jurisdictional disputes, 23
 Legislative initiative, 56
 Preventive review, 23
 Repressive review, 60
 Proceedings, 22, 30, 33, 34, 35, 36, 38, 49, 65, 66, 76, 79, 82, 83, 144, 167, 168, 170, 175, 184
 Petition/individual petition/subjective constitutional review
 constitutional complaint, 16, 18, 23, 26, 32, 51, 58, 61, 62, 63, 65, 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 80, 81, 83, 89, 91, 92, 94, 100, 144, 149, 150, 157, 158, 163, 165, 184

K

Kenya, 24, 73, 97
 Kiribati, 24
 Kwazulu-Natal, 177

L

Latvia, 25, 30, 35, 49, 54, 55, 88
 Lesotho, 27
 Liberia, 27, 99
 Libya, 27
 Liechtenstein, 20, 25, 54, 55, 58
 Lithuania, 25, 33, 34, 53, 54, 55, 57, 58, 59, 88, 91
 Luxembourg, 21, 25, 27, 77

M

Macedonia, 25
 Madagascar, 25, 53, 54, 55, 56, 57, 59, 96, 120
 Malawi, 24, 54, 96
 Malaysia, 24, 54, 55, 57, 136, 143, 148, 177
 Mali, 25, 53, 55, 56, 57, 58, 100, 121
 Malta, 25, 38, 55, 57, 58
Marbury v. Madison Case, 19
 Mauritania, 25, 54, 55, 57, 58, 59
 Mauritius, 24, 30, 53, 54, 57, 58, 97
 Mexico, 24, 57, 67, 156, 157, 158, 170, 191
 MIDDLE EAST, 24, 25, 27
Mixed Systems, 22, 45, 93
 Moldavia, 25, 53, 54, 55, 56, 57, 58, 59, 88, 91
 Mongolia, 25, 54, 55, 56, 57, 58, 59, 88, 91, 136
 Montenegro, 25, 46, 54, 55, 57, 58, 59, 71, 88, 184
 Morocco, 27, 53, 58, 95, 96
 Mozambique, 27, 54, 55, 56, 57, 58, 98

N

Namibia, 24, 53, 54, 56, 58, 59
 Nauru, 24
 Nepal, 24, 136
 Netherlands, 27, 48
 New Zealand, 24
 Nicaragua, 25, 54, 56, 57, 58, 59, 191
 Niger, 25, 53, 55, 56, 57, 58
 Nigeria, 24, 57, 58, 73, 97, 177
 North America, 19, 24
 North Korea, 27, 136
 Norway, 18, 19, 24, 73

O

Ombudsman, 63, 71

P

Pakistan, 27, 57, 136, 146
 Panama, 25, 54, 55, 58, 156
 Papua New Guinea, 24, 56, 58, 136
 Paraguay, 25, 54, 55, 156, 191
 Peru, 26, 30, 53, 54, 56, 57, 156, 157, 164, 172, 174, 191
 Philippines, 25, 54, 55, 56, 136, 147
 Poland, 25, 46, 53, 54, 55, 56, 57, 58, 60, 88, 91
 Portugal, 18, 21, 26, 29, 33, 38, 51, 52, 53, 56, 57, 58, 59, 60, 71, 72, 77, 188, 191

R

Romania, 19, 25, 30, 35, 52, 53, 55, 56, 57, 58, 60, 87, 88, 188
 rule of law, 14, 15, 194. *See*
 Rule of Law, 97, 190, 191
 Russia, 46, 52, 53, 54, 55, 56, 57, 58, 59, 60, 90, 91, 92, 177
 Rwanda, 25, 30, 54, 59, 126

S

Sao Tome and Principe, 27, 98
 Scandinavia, 76
 Senegal, 25, 29, 52, 54, 56, 58, 126
 Serbia, 25, 46, 54, 55, 57, 58, 88, 184
 Seychelles, 24, 54, 55, 56, 67
 Sierra Leone, 24
 Singapore, 24, 136, 147, 148
 Slovakia, 25, 30, 35, 54, 55, 56, 57, 58, 59, 88, 91, 93
 Slovenia, 16, 21, 25, 30, 36, 37, 38, 41, 42, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 65, 71, 77, 88, 91, 94, 177, 182, 183
 Social Welfare State, 190
 South Africa, 25, 29, 53, 54, 55, 56, 57, 58, 59, 128, 129, 130, 131, 177
 South America, 21, 24, 25, 26, 64, 68, 69, 76, 87, 155, 156, 181
 South Korea, 25, 54, 55, 56, 57, 58, 59, 136, 148, 150, 154
 Spain, 20, 21, 25, 30, 33, 38, 41, 46, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 71, 72, 77, 188, 191
 Spanish Speaking, 191
 Sri Lanka, 25, 53, 56, 58, 59, 136
 St. Christopher/Nevis, 24
 Sudan, 25, 30, 54, 55, 56, 58
 Surinam, 25, 156
 Sweden, 21, 24, 29, 73
 Swiss Federal Court, 19, 26, 178, 188
Switzerland, 19, 26, 38, 51, 52, 53, 57, 58, 69, 71, 72, 177, 178, 188

Syria, 21, 25, 53, 54, 58, 60, 94
 Systems/models of constitutional/judicial review
 Dutch system, 136
 Indian system, 123, 136, 141, 143, 147
 Mexican model, 156, 168
 Portuguese model, 98
 Slovenian model
 Particularities, 16, 18, 51, 76, 87, 180,
 181
 Concrete review, 23, 55
 Soviet model, 136
 Swiss system, 26

T

Taiwan, 26, 54, 55, 56, 58, 59, 136, 151, 152
 Tanzania, 24, 73, 97
 Thailand, 21, 25, 53, 55, 56, 136, 153
 Togo, 25, 53, 55, 58, 59, 177
Tribunal de Justicia del Acuerdo de Cartagena, 28
 Trinidad and Tobago, 24, 176
 Tucuman, 25, 29, 53, 54, 55, 57, 58, 59, 63, 156,
 158, 177
 Tunisia, 27, 53, 95
 Turkey, 21, 25, 29, 36, 38, 49, 53, 54, 55, 59, 60

U

Uganda, 25, 54, 55, 56, 73, 97
 Ukraine, 25, 30, 36, 38, 42, 50, 53, 54, 55, 56, 57,
 58, 59, 88, 91
 Uruguay, 21, 25, 54, 55, 156
 USA, 24, 29, 39, 52, 76, 141

V

Venezuela, 26, 53, 54, 156, 157, 164, 176, 191
 Venice Commission, 47, 185, 189, 190, 191, 192
 Vietnam, 27, 136, 154, 155

W

Weimar Constitution, 18

Y

Yemen, 25, 54, 55, 57, 58, 95

Z

Zaire, 25, 54, 56, 57, 58, 133
 Zambia, 25, 53, 54, 55, 96
 Zimbabwe, 27, 135