

Cases. Analyses and Presentation.

This is an attempt to provide practical guidance for comparative work in constitutional law. More information may be taken from examples and in rare cases from literature on such methodology, a list of which can be found here.

Here, you find a list of guiding questions you may address when you analyse a case and prepare to present it for discussion. Be aware that:

- Your reading is but one reading of the case.
- Many people do not know what you know, but know other things which may be very helpful in understanding. Therefore, you may have to explain some things, and leave others to your audience, in the form of questions.
- Time is precious. Therefore, you may want to be precise, structured, very focused, and short in your presentation – don't talk for more than 15 minutes! Additional information may be part of the discussion, or provided on a hand-out.
- Make sure people can follow you. Therefore, your audience may need excerpts from the case, or the law, or a map on the wall, or a picture, a logical image etc. But again: time is precious - your audience will not have time to read a lot in advance. Short excerpts are most useful here.

Structure of analyses / presentation

- facts of, around and behind the case
- institution which decides the case
- decision, argument, reasoning
- result, effect

FACTS

This sounds like the easy part – but is as crucial as it is complicated to comparative work. Most cases start with a statement of facts, but the statement is often not all there is to be seen. Here, you set the tone and focus of what will be an issue.

What are the facts – and what are related conflicts?

Why is the case interesting – not from a doctrinal and legal, but from a social point of view?

Who may be (abnd who may be not) interested in such a case, where (and where not), and why (or why not)?

How is the case presented? Are there facts “hidden” behind the official statement of facts?

Would a different set of facts raise the same social and legal issues, and evoke similar feelings towards the case?

Would different actors raise the same images in the “head” of the court – or in yours?

INSTITUTION, COURT

Constitutional cases may be decided by very different institutions – special consulting organs, human rights committees, regular courts or specific courts. The set up and composition of the institution is as relevant as its reputation in society or the procedures which enable actors to bring cases.

What kind of court is it?

What is the institutional standing of this court in the national and / or international context? Is it an authority – strong, or weak? Is it “political”, or “legal”, or “both”?

Who are the justices?

How do they become what they are?

Do they know of, or represent all relevant understandings in the context, or country, or legal community?

What is the procedure?

Who can go to court, with what kind of case?

Who does in fact go to court, and who does not, and why?

REASONING

A comparative reading of reasons given by different courts to similar cases is a very interesting part of comparative constitutional law. It reaches from an analyses of doctrines to an analyses of rhetoric and style.

Which rights and which principles are used by the court? In which order? Why? If helpful, provide excerpts from the constitutional text.

What method of interpretation (linguistic, historical, teleological, systematic, comparative, moral etc.) is used by the court(majority, dissent ...)? Is this part of the constitutional culture in the country? How is it the same or different from the court in the country you know best?

What kind of sources are explicitly and implicitly used by the Court?

What images and metaphors are used and raised by who in the decision? Why?

RESULT

Who wins – who looses in the case?

WHAT DO YOU THINK?

Why did you pick the case – or why would you have not picked it?

Would you be more convinced by a different decision, argument, choice of relevant rights?

Could you imagine a similar decision in the country you know best – how, why, or why not?