

## Remarks on the Alphabetical Index and on the Systematic Thesaurus

### - Summary of observations by the Liaison Officers -

#### A. REMARKS ON THE ALPHABETICAL INDEX

##### NORWAY

It should contain only words and expressions with a legal content.

The use of adjectives should be avoided except in terms where the adjective combined with the substantive forms a legal concept.

In phrases starting with "Principle of" this expression should be left out (ex.: Principle of connexity" should be replaced by "Connexity").

#### B. REMARKS ON THE SYSTEMATIC THESAURUS

### 1. General proposals

(specific proposals have been included at the appropriate points of the thesaurus hereinafter)

##### BELGIUM

All the keywords of the Thesaurus should be numbered according to the system already used with a view to building up a data base. (For example "Constitution" under "Sources" under "1.1.3 Status of the members of the court" would be assigned number 1.1.3.1.1).

A list of frequently used words should be drawn up that points to keywords of the systematic thesaurus (e.g. "militia" would make a reference to "2.8 Institutions - Army and police forces - Army", "foreigners" would point to "3.1.2.1 Fundamental rights - Governing principles - Entitlement to rights - Nationals and foreigners").

The keyword "Other" should be deleted.

##### GERMANY

The Bulletin should be divided into a procedural part dealing with the structure of the courts, the types of litigation, the proceedings before the court and the effect of the decision and a separate part dealing with material questions.

In general, the user of the thesaurus will have a problem in ordinary law and will see to what extent this problem has constitutional implications. So, he might inquire after the constitutionality of special provisions of the criminal code, e.g. the conviction in absentia. The systematic thesaurus, therefore, has to be supplemented so that all relevant matters of law e.g. civil law, criminal law, administrative law, tax law etc. - are systematically categorised so that a lawyer which has a special problem may easily find an answer without being obliged to read all decisions concerning the respective constitutional provision which is involved. This, of course, means that the thesaurus has to be enlarged enormously.

##### POLAND

The keyword "Other" does not accurately represent the actual activity of the Polish tribunal and would lead to inaccurate stereotypes.

### 2. Specific proposals

#### 1. CONSTITUTIONAL JUSTICE

- - 1.1 Constitutional jurisdiction
    - 1.1.1 Statute and organisation
      - Sources
        - \* Constitution
        - \* Institutional Acts
        - \* Other legislation
        - \* Other
        - \* Rules of procedure
      - Autonomy
        - \* Statutory autonomy
        - \* Administrative autonomy
        - \* Financial autonomy
      - Other
    - 1.1.2 Composition, recruitment and structure
      - Number of members
      - The appointing authority

- Appointment of members [\[1\]](#)
- Appointment of the President [\[2\]](#)
- Subdivision into chambers or sections
- Relative position of members [\[3\]](#)
- "Organes d'instruction" [\[4\]](#)
- Staff [\[5\]](#)
- Auxiliary services
- Administrative personnel
- Other

#### 1.1.3 Status of the members of the court

- Sources
  - \* Constitution
  - \* Institutional Acts
  - \* Other legislation
  - \* Other
- Term of office of Members
- Term of office of the President
- Privileges and immunities
- Professional disqualifications
- Disciplinary measures
- Remuneration
- Resignation
- Members having a particular status [\[6\]](#)
- Staff [\[7\]](#)
- Other

#### 1.1.4 Relations with other institutions

- Head of State
- Legislative bodies
- Executive bodies
- Courts
- Other bodies

### 1.2 Types of litigation

**PORTUGAL** Do 1.2.1 - 1.2.3 cover also "Types of claim"(1.4.1)? This should be clarified.

**POLAND** It does not include the power of the Polish Constitutional Court to issue universally binding interpretation of laws.

#### 1.2.1 Litigation in respect of fundamental rights and freedoms

#### 1.2.2 Litigation in respect of the distribution of powers between State authorities [\[8\]](#)

**PORTUGAL** It should be reduced to "Distribution of powers between State authorities".

#### 1.2.3 Litigation in respect of the distribution of powers between central government and its subdivisions [\[9\]](#)

**PORTUGAL** It should be reduced to "Distribution of powers between central government and its subdivisions" (Are federated states, regions and local .... included under this keyword?).

#### 1.2.4 Electoral disputes

- Presidential elections
- Parliamentary elections
- BELGIUM** new keyword: Regional elections
- Local elections
- Elections of officers within various occupations
- Referendums
- BELGIUM** It should be rephrased "Referendums and popular consultations"
- Other

#### 1.2.5 Restrictive proceedings

- The banning of political parties

**PORTUGAL** It overlaps with 2.3.11 and 1.4.1 . Which keyword is to be used in non-repressive litigation concerning political parties?

- Withdrawal of civil rights
- Removal from office of Parliament
- Impeachment

#### 1.2.6 Litigation in respect of jurisdictional conflict

#### 1.2.7 Litigation in respect of the formal validity of normative measures [\[10\]](#)

**PORTUGAL** New keyword: Unconstitutionality by omission

#### 1.2.8 Other litigation [\[11\]](#)

**GERMANY** The example mentioned in footnote 11 is not correct because the question has to be qualified as an electoral dispute, referendum.

**GERMANY** proposes the rewriting of the whole point 1.2 as follows:

### 1.2 Types of litigation

A Litigation between constitutional organs (former 1.2.2)

B Federal litigations (former 1.2.3)

C Abstract review of a norm (review of law in general)

Initiated by constitutional organ regardless of a concrete case. Generally covers both the control of the formal validity of a normative measure and the review of its compatibility with the material norms of the constitution, f.e. the fundamental rights. Therefore Point 1.2.7 does not fit to this type of litigation because it mentions only the formal validity of normative measures which is in general only one aspect of the review.

D Review of a specific law

Initiated by a court which has doubts about the constitutionality of a specific norm in a specific case. Cannot be put under 1.2.7 or 1.2.1.

E Individual constitutional complaint (Amparo, Verfassungsbeschwerde)

Most important type of litigation in countries that have incorporated it. Required exhaustion of remedies has to be dealt with in the thesaurus. Question of possibility

for public body to initiate individual constitutional claim cannot be analysed using the thesaurus as it stands.

F Electoral disputes (former 1.2.4)

G Restrictive proceedings (former 1.2.5 but "withdrawal of civil rights" to be treated separately)

- The banning of political parties
- Removal from office of Parliament
- Impeachment

H Review of international norms

I Federal constitutional court as constitutional court of the federated states

Relationship between federal constitutional court and constitutional courts of federated states must be taken into account.

J Litigation in disciplinary measures

K Advisory opinions

L Claims of municipalities to protect their autonomy

M Preliminary review

Has not a special content, can be used in respect of all other litigations and can be categorised under effects of a decision. In a way annex to other litigations; should be at least mentioned.

N Other litigations (former 1.2.8)

- Admissibility

Should not be treated under 1.4 (constitutional proceedings) but under types of litigation. Has to be dealt with under each type of litigation taking into account the differences (e.g. individual constitutional complaint: exhaustion of remedies; conflict between organs: standing of subdivisions of these organs; review of a specific law: relevancy of this law in the proceeding a quo). Within the category "admissibility" all requirements have to be enumerated which have to be met in the respective type of litigation.

Structure for admissibility:

- Persons entitled to bring the respective claim
- Exhaustion of remedies
- Time limits
- Formal requirements of the document which contains the claim
- Standing

### 1.3 The subject of review

1.3.1 International treaties

1.3.2 Constitution

1.3.3 Quasi-constitutional legislation

1.3.4 Laws and other rules having the force of law

1.3.5 Presidential decrees

1.3.6 Legislative or quasi-legislative regulations

**PORTUGAL** It is sufficient "Regulations". Should "quasi-legislative regulations" be included under the keyword "Other"?

1.3.7 Regional measures

1.3.8 Parliamentary rules

1.3.9 Rules issued by the executive

1.3.10 Rules issued by independent State bodies

1.3.11 Court decisions

1.3.12 Administrative acts

1.3.13 Acts of government [\[12\]](#)

**ESTONIA** new keyword: "Acts of local governments"

**GERMANY** new keyword: "Acts of the European Communities"

1.3.14 Other

### 1.4 Constitutional Proceedings

**GERMANY** Admissibility should be treated as separate item under "Types of litigation" (see above). All other questions - as e.g. composition of the court, challenging of a judge, preparation of the case for trial, inquiries into facts, types of decisions - mentioned under "constitutional proceedings" regard the special procedure before the court and are not connected with the admissibility. Therefore, they have to be dealt with separately under the category "procedure". With regard to the types of decisions, the declaration of incompatibility, the construction of a statute in conformity with the constitution and the very developed typisation of the Italian constitutional court should be reflected by the systematic thesaurus.

1.4.1 Types of claim

- Claim by a public body

**POLAND** It does not include the Ombudsman. In the Polish system he has the power to initiate proceedings before the Constitutional Court.

- \* Legislative bodies
- \* Executive bodies
- \* Organs of regional authorities
- \* Organs of decentralised authorities
- \* Other

- Claim by a private body or individual

**PORTUGAL** It should be reduced to "Claim by a private person".

- \* Natural person
- \* Non-profit-making corporate body
- \* Profit-making corporate body
- \* Political parties
- \* Other

- Referral by a court [\[13\]](#)

- Type of review

- \* Preliminary review
- \* Ex post facto review

1.4.2 Procedure

- General characteristics
  - \* General conditions governing procedure
    - PORTUGAL It should be reduced to "General conditions".**
  - \* Other
- Summary procedure
- Time-limits for instituting proceedings
  - \* Ordinary time-limit
  - \* Special time-limits
  - \* Leave to appeal out of time
  - \* Other
- Originating document
  - \* Decision to act
  - \* Signature
  - \* Formal requirements
  - \* Annexes
  - \* Service of process
  - \* Other
- Grounds
  - \* Time-limits
  - \* Form
  - \* Other
- Documents lodged by the parties [\[14\]](#)
  - \* Time-limits
  - \* Decision to lodge the document
  - \* Signature
  - \* Formal requirements
  - \* Annexes
  - \* Service
  - \* Other
- Preparation of the case for trial
  - \* Receipt by the court
  - \* Notifications and publication
  - \* Time-limits
  - \* Preliminary proceedings
  - \* Opinions
  - \* Reports
  - \* Inquiries into the facts
  - \* Other
- Parties
  - \* Locus standi
  - \* Interest
  - \* Representation
    - \*\* The Bar
    - \*\* Legal representation other than the Bar
    - \*\* Representation by persons other than lawyers or jurists
    - \*\* Other
  - \* Other
- Interlocutory proceedings
  - \* Intervention
  - \* Plea of forgery
  - \* Resumption of proceedings after interruption
  - \* Discontinuance of proceedings
  - \* Joinder of similar cases
  - \* Challenging of a judge
    - \*\* Automatic disqualification
    - \*\* Challenge at the instance of a party
  - \* Other
- Hearing
  - \* Composition of the court
  - \* Procedure
  - \* In public
  - \* In camera
  - \* Report
  - \* Opinion
  - \* Address by the parties
- Special procedures
- Re-opening of hearing
- Costs
  - \* Waiver of court fees; legal aid or assistance
  - \* Party and party costs
  - \* Other

#### 1.4.3 Decisions

- Deliberation
  - \* Composition
  - \* Chair
  - \* Procedure
    - \*\* Quorum
    - \*\* Vote
    - \*\* Other
- Reasoning
- Form
- Types
  - \* Procedural decisions
  - \* Opinion
  - \* Annulment

- \* Suspension of application
- \* Modification
- \* Finding of constitutionality or unconstitutionality

**BELGIUM New keyword:**

**- Members' individual opinions**

\* General

\* Concurring opinions

\* Dissenting opinions

**- Pronouncement and publication**

\* Pronouncement

\* In open court

\* In camera

\* Publication

\*\* Publication in the official journal/gazette

\*\* Publication in an official collection

\*\* Private publication

\* Press

**- Effects**

**GERMANY Effects have nothing to do with constitutional procedure; they have to be treated separately.**

\* Scope

\* Determination of effects by the court

\* Effect erga omnes

\* Effect as between the parties

\* Temporal effect

\*\* Retrospective effect

\*\* Limit on retrospective effect

\*\* Postponement of temporal effect

\* Influence of judgments on the functioning of State organs and on everyday conduct

**BELGIUM New keywords:**

**- Consequences for other cases**

\* Consequences for on-going cases

\* Consequences for decided cases

## 1.5 Common principles or techniques of interpretation

**POLAND** According to Polish doctrine and constitutional jurisprudence these principles are rather considered basic principles of state governed by the rule of law.

**GERMANY 1.5.1-1.5.7 do not concern interpretation; are part of fundamental rights**

**PORTUGAL 1.5.1-1.5.6 are not principles of interpretation, but constitutional principles; they should include the principle of good faith and of the unity of the State.**

### 1.5.1 The social dimension of the rule of law

**BELGIUM** The corresponding French keyword seems ambiguous and it is subject to different interpretations. The English version (The social dimension of the rule of law) is clearer. The French text should be adapted including the notion of social organisation (l'Etat de droit, principe d'organisation sociale).

**PORTUGAL 1.5.1 is a repetition of 2.1.4**

### 1.5.2 Proportionality principle

### 1.5.3 Principle of reasonableness

**GERMANY 1.5.3 is a result of the principle of equality. Both principles should rather be included in the context of Fundamental Rights.**

### 1.5.4 Principles of legality

### 1.5.5 Principle of equality

**BELGIUM** It should be rephrased as follows:

**Principle of equality and non-discrimination**

### 1.5.6 Principle of fairness

### 1.5.7 Concept of manifest error in assessing evidence or exercising discretion

### 1.5.8 Concept of constitutionality dependent on a specified interpretation [\[15\]](#)

### 1.5.9 Author's intention

### 1.5.10 Interpretation by analogy

**ESTONIA new keyword: "Logical interpretation".**

### 1.5.11 Historical interpretation

### 1.5.12 Literal interpretation

### 1.5.13 Teleological interpretation

### 1.5.14 Natural Law

**GERMANY** Natural law is not a technique of interpretation but either a way of conceiving fundamental rights (to be put under 3.1 "Governing principles") or a source of law (to be put under 4.1.2. "Unwritten rules").

### 1.5.15 Balancing of interests

**SECRETARIAT new keyword: "Margin of appreciation"**

### 1.5.16 Other

**PORTUGAL** A separate chapter on constitutional principles could be added (general keywords: juridical force of principles, interpretation or application of principles, relations between norms and principles) with new keywords under each principle. Principle of the organisation of the State could be included.

## 2. INSTITUTIONS

**ESTONIA** A new keyword could be added: "Local governments and other autonomous bodies". It would include inter alia autonomy of minorities as well as autonomy of universities and scientific research institutions.

### 2.1 Principles of State organisation

**POLAND** It does not include the principle of justice, of citizens' confidence and of prohibition of ex post facto law.

#### 2.1.1 Sovereignty

#### 2.1.2 Democratic make-up of the State

#### 2.1.3 Separation of powers

#### 2.1.4 Rule of law

#### 2.1.5 Social State

- 2.1.6 Federal State
- 2.1.7 Relations between the State and bodies of a religious or ideological nature [\[16\]](#)
- 2.1.8 Territorial principles
- BELGIUM New keyword:**
  - Publication of statutes and regulations**
    - General
    - Linguistic aspects
  - Liability of a public authority**
    - General
    - Liability of executive bodies
    - Liability of legislative bodies
    - Liability of judicial bodies
- 2.1.9 Other

## 2.2 Head of State

**PORTUGAL** It should be developed, adding for example "Powers, Veto, relations with legislative bodies".

## 2.3 Legislative bodies

- 2.3.1 General structure
- 2.3.2 Parliaments
  - Structures [\[17\]](#)
  - Powers

**BELGIUM** This keyword concerns the possible specialisation of the powers of the Parliaments or their scope. The aspects of the powers of the legislative bodies as such are to be found further down, under the fourth item "2.3.4 Powers".

- Organisation [\[18\]](#)
- Finance [\[19\]](#)
- 2.3.3 Review of validity of elections

**PORTUGAL** Is this keyword not already included under 1.2.4?

- 2.3.4 Powers
- 2.3.5 Law-making procedure
- TURKEY New entry: "Delegated legislation"**
- PORTUGAL New entry: "Delegated legislation"**
- 2.3.6 Guarantees as to the exercise of power
- 2.3.7 Relations with the Head of State
- 2.3.8 Relations with executive bodies
- 2.3.9 Relations with the courts
- 2.3.10 Liability

**BELGIUM** the proposal of new keywords concerning liability of public authorities, for example the executive body, is to be found under keyword 2.1

- 2.3.11 Political parties

**BELGIUM New keywords:**

- Composition**
  - General
  - Status of members of legislative bodies (as for example incompatibilities, parliamentary immunity, exemption from jurisdiction and others)

- 2.3.12 Other aspects

## 2.4 Executive bodies

**PORTUGAL** The keyword "Government" should be added because it can be used either as a legislative or an executive authority.

- 2.4.1 Hierarchy
- ESTONIA new keyword**
  - Decentralisation and concentration**
- 2.4.2 Powers
- 2.4.3 Composition
- 2.4.4 Organisation
- 2.4.5 Relations with legislative bodies
- 2.4.6 Relations with the courts
- 2.4.7 Territorial administrative decentralisation [\[20\]](#)
  - Provinces
  - Municipalities
  - Supervision
  - Other
- 2.4.8 Decentralisation by department [\[21\]](#)
- 2.4.9 The civil service [\[22\]](#)
- 2.4.10 Other aspects

## 2.5 Courts

- 2.5.1 General organisation
- 2.5.2 Procedural safeguards

**PORTUGAL** Procedural safeguards are applicable to all types of jurisdiction. Should criminal safeguards, as presumption of innocence, right to a lawyer; and other safeguards deriving from the accusatorial system and the right to fully defend a criminal change be included under "Civil and political rights"?

- Legal provisions for access to courts
- PORTUGAL repetition of 3.2.27 (right to access to court)**
- Fair trial
- PORTUGAL repetition of 3.2.28 (right to fair trial)**
- Rights of the defence
- Public hearings
- Public judgments

- Trial within reasonable time
- Independence
- Impartiality
- Languages
- Detention pending trial
- Other

**BELGIUM** The whole keyword 2.5.2 should be rephrased as follows:

#### 2.5.2 Procedural safeguards

- General
- Legal provisions for access to courts
  - \* General
  - \* Habeas corpus
- Fair trial
  - \* General
    - \* Scope (this keyword aims at covering jurisprudence referring to the notions of "civil rights and obligations" and "the determination of any criminal charge" as provided under article 6 of the European Convention on Human Rights).
    - \* Rights of the defence
    - \* Public hearings
    - \* Public judgments
    - \* Trial within reasonable time
    - \* Independence
    - \* Impartiality
    - \* Languages
    - \* Equality of arms (including for example the right to subpoena defence witnesses)
    - \* Double degree of jurisdiction
    - \* Presumption of innocence
    - \* Rules of evidence
- Detention pending trial

#### 2.5.3 Ordinary courts

- Organisation
- Jurisdiction
- Procedure
- Supreme court
- Civil courts
- Criminal courts
- Courts of limited jurisdiction
- The judiciary
- Public prosecutor
- Registry
- Status of judges
- Discipline
- Officers of the court
- Other aspects

#### 2.5.4 Administrative courts

- Organisation
- Jurisdiction
- Procedure
- Supreme court
- Judges
- State counsel
- Registry
- Status of judges
- Discipline
- Officers of the court
- Other aspects

#### 2.5.5 Military courts

- Organisation
- Jurisdiction
- Procedure
- Court of last instance
- Judges
- Prosecutor
- Registry
- Status of judges

**BELGIUM** "judges" should be replaced by "members"

- Discipline
- Officers of the court
- Other aspects

#### 2.5.6 Special courts

- Organisation
- Competence
- Procedure
- Court of last instance
- Judges
- Prosecutor/State counsel
- Registry
- Status of judges
- Discipline
- Officers of the court
- Other aspects

#### 2.5.7 Other courts

#### 2.5.8 Legal assistance

- The Bar
  - \* In general
  - \* Organisation

- \* Powers of ruling bodies
- \* Role of members of the Bar
- \* Status of members of the Bar
- \* Discipline
- \* Other aspect
- Assistance other than by the Bar
  - \* Solicitors
  - \* Legal assistance bodies

## 2.6 Federalism and regionalism

- 2.6.1 Basic principles
- 2.6.2 Institutional aspects
  - Deliberative assembly
  - Executive
  - Courts
  - Administrative authorities
  - Other
- 2.6.3 Budgetary and financial aspects
  - Finance
  - Arrangements for distributing the financial resources of the State
  - Budget
  - Mutual support arrangements
  - Other
- 2.6.4 Distribution of powers
  - System
  - Supervision
  - Co-operation
  - Other aspects

**BELGIUM** The whole keyword should be rephrased as follows:

- 2.6.4 Distribution of powers**
  - System
  - Subjects
  - Supervision
  - Co-operation
  - International relations
    - \* General
    - \* Conclusion of treaties
    - \* Participation to European Communities bodies

## 2.7 Public finances

- 2.7.1 In general
- 2.7.2 Governing principles
- 2.7.3 Budget
- 2.7.4 Accounts
- BELGIUM** New keywords:
  - Currency**
  - Central Bank**
  - Auditing body (for example the court of Auditors)**
- 2.7.5 Taxation
  - Governing principles
  - other

## 2.8 Army and police forces

- 2.8.1 Army
  - In general
  - Functions
  - Structure
  - Militia
  - Other
- 2.8.2 Police forces
  - In general
  - Functions
  - Structure
  - Other

## 2.9 Economic duties of the State

## 2.10 Mediation [\[23\]](#)

- 2.10.1 Statute
- 2.10.2 Duration of office
- 2.10.3 Organisation
- 2.10.4 Relations with the Head of State
- 2.10.5 Relations with the legislature
- 2.10.6 Relations with the executive
- ESTONIA** new keyword
  - Relations with the state audit office**
- 2.10.7 Relations with the courts
- 2.10.8 Relations with federal or regional authorities

## 2.11 Transfer of powers to international institutions

## 2.12 Miscellaneous

- 2.12.1 Political parties
- 2.12.2 Other

**BELGIUM** The whole keyword 2.12 is to be deleted ("Political parties" is included, f.e., under 2.3)

### 3. FUNDAMENTAL RIGHTS

#### - 3.1 Governing principles

- 3.1.1 Nature of the list of fundamental rights [\[24\]](#)

**BELGIUM** The whole keyword should be formulated as follows

##### 3.1.1 Basic principles

- General
  - Nature of the list of fundamental rights (open-ended or finite)
  - Equality and non-discrimination ("Equality" should be displaced from 3.2.3, because the principles of equality and of non-discrimination concern all rights and can be also considered as autonomous rights).
  - Certainty of the law
- Non bis in idem

- 3.1.2 Entitlement to rights

- Nationals and foreigners
- Natural and legal persons
- Protection of minorities and persons belonging to minorities
- Private law bodies
- Public law bodies

**BELGIUM** New entry:

- Minors

- 3.1.3 Effects

- Vertical effects
- Horizontal effects [\[25\]](#)

- 3.1.4 Limits and restrictions

- 3.1.5 Emergency situations

#### 3.2 Civil and political rights

- 3.2.1 Right to life

- 3.2.2 Prohibition of torture and inhuman and degrading treatment

- 3.2.3 Equality

**BELGIUM** To be deleted because it should be included under 3.1.1

**GERMANY** Subdivision of equality. Equality is not only understood as a right to equal treatment, but a cornerstone of control of all state actions. Review of laws with respect to reasonableness. To be taken into account by the thesaurus.

**Special problem of equality of sexes and affirmative action to be treated as a separate point.**

- 3.2.4 Personal liberty

**BELGIUM** The aspects related to personal liberty concerning detention pending trial are included under 2.5.2, in fine. This key word should include identity check, personal search, administrative arrest and others.

- 3.2.5 Freedom of movement

**SECRETARIAT** new keyword: "Right to emigrate"

- 3.2.6 Security of the person

- 3.2.7 Rights of domicile and establishment

- 3.2.8 Freedom of conscience

**BELGIUM** This keyword should cover freedom of religion as an individual right. Its collective aspects are included under the keyword 3.2.10 Freedom of worship.

- 3.2.9 Freedom of opinion

- 3.2.10 Freedom of worship

- 3.2.11 Freedom of expression

- 3.2.12 Freedom of the written press

- 3.2.13 Rights in respect of the audiovisual media and other means of mass communication

**BELGIUM** It should be rephrased as follows:

**Rights in respect of the audiovisual media and means of mass communication other than press.**

**PORTUGAL** It should be reduced to "Rights in respect of audiovisuals".

- 3.2.14 Right to information

- 3.2.15 Right to a nationality

- 3.2.16 National service [\[26\]](#)

- 3.2.17 Freedom of association

- 3.2.18 Freedom of assembly

- 3.2.19 Right to participate in political activity

- 3.2.20 Right to respect for one's honour and reputation

- 3.2.21 Right to private life

- 3.2.22 Right to family life

**BELGIUM** to be added under 3.2.22

- General
- Descent
- Name
- Succession items

- 3.2.23 Inviolability of the home

- 3.2.24 Confidentiality of correspondence

- 3.2.25 Confidentiality of telephonic communications

- 3.2.26 Right of petition

- 3.2.27 Right of access to courts [\[27\]](#) (Reference to 2.5.2)

- 3.2.28 Right to a fair trial (Reference to 2.5.2)

**SECRETARIAT** new keyword: "Right to a trial within a reasonable period" (Reference to 2.5.2)

- 3.2.29 Non-retrospective effect of law

- General
- Non-retrospective effect of criminal law
- Non-retrospective effect of civil law
- Non-retrospective effect of taxation law
- Other

#### 3.2.30 Right to property

- General
- Expropriation
- Nationalisation
- Privatisation
- Other

#### 3.2.31 Linguistic freedom

#### 3.2.32 Electoral rights

**PORTUGAL** Does it include the principles of majority and proportionality, the right to be elected?

#### 3.2.33 Rights in respect of taxation

#### 3.2.34 Right of asylum

**PORTUGAL** Does it include extradition and expulsion of foreigners?

**BELGIUM** To be rephrased as follows:

**Rights of refugees and right of asylum**

**BELGIUM** New entry:

**Protection of minors**

#### 3.2.35 Other

### 3.3 Economic, social and cultural rights

#### 3.3.1 Freedom to teach

#### 3.3.2 Right to be taught

#### 3.3.3 Right to work

#### 3.3.4 Freedom to choose one's profession

#### 3.3.5 Freedom to work for remuneration

**BELGIUM** To be deleted

#### 3.3.6 Commercial and industrial freedom

**BELGIUM** It covers also freedom to work for remuneration (3.3.5)

#### 3.3.7 Right of access to the public service

#### 3.3.8 Right to strike

#### 3.3.9 Freedom of trade unions

#### 3.3.10 Right to intellectual property

#### 3.3.11 Right to housing

#### 3.3.12 Right to social security

#### 3.3.13 Right to just and decent working conditions

#### 3.3.14 Right to a sufficient standard of living

#### 3.3.15 Right to health

#### 3.3.16 Right to culture

#### 3.3.17 Rights of control over computer facilities

#### 3.3.18 Scientific freedom

#### 3.3.19 Artistic freedom

#### 3.3.20 Other

**GERMANY** Inclusion of the "general freedom" or "freedom to develop one's personality"

### 3.4 Collective rights

#### 3.4.1 Right to the environment

#### 3.4.2 Right to development

#### 3.4.3 Right to peace

#### 3.4.4 Right to self-determination

#### 3.4.5 Other

**GERMANY** New category "Protection of minorities" - not only a governing principle but in many constitutions already concretised by special provisions

## 4. SOURCES OF CONSTITUTIONAL LAW

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### 4.1 Categories

#### 4.1.1 Written rules

- Constitution
- Quasi-constitutional legislation and norms <sup>[28]</sup> (It allows to include norms and principles of an enlarged "bloc de constitutionnalité")
- European Convention on Human Rights
- European Community law
- Other international sources

**BELGIUM** new keywords:

- European Social Charter
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural rights
- Geneva Convention on the status of refugees
- Convention on the rights of the child

#### 4.1.2 Unwritten rules

- Constitutional custom
- General principles
- other

### 4.2 Hierarchy

#### 4.2.1 Hierarchy as between national and non-national sources

- Treaties and constitutions
- Treaties and other domestic legal instruments

**BELGIUM** To be rephrased as follows:

- Treaties and legislative acts

**BELGIUM** New keyword:

- Treaties and domestic legal instruments other than constitution or legislative acts

- European Convention on Human Rights and constitutions

**PORTUGAL** It should be used only "ECHR"

- European Convention on Human Rights and other domestic legal instruments

- Primary Community law and constitutions

- Primary Community law and other domestic legal instruments

**PORTUGAL** It should be reduced to "Primary Community Law and domestic law"

- Subordinate Community law and constitutions

- Subordinate Community law and other domestic legal instruments

#### 4.2.2 Hierarchy as between national sources

- Hierarchy emerging from the Constitution

\* In general

\* Hierarchy attributed to rights and freedoms

\* Other

- The Constitution and other sources of domestic law

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[1] Including the conditions and manner of such appointment (election, nomination, etc...).

[2] Including the conditions and manner of such appointment (election, nomination, etc...).

[3] Vice-presidents, presidents of chambers or of sections, etc...

[4] Persons or bodies vested with authority to prepare the case, e.g. Ministère public, audiorat, parquet, etc...

[5] Registrars, assistants, auditors, general secretaries, researchers, other personnel, etc...

[6] E.g., assessors.

[7] Registrars, assistants, auditors, general secretaries, researchers, other personnel, etc...

[8] Horizontal distribution of powers.

[9] Vertical distribution of powers, particularly in respect of states of a federal or regionalised nature.

[10] Examination of procedural and formal aspects of laws and regulations, particularly in respect of the composition of parliaments, the validity of votes, the competence of law-making authorities, etc... (questions relating to the distribution of powers as between the State and its constituent organs are the subject of another keyword).

[11] E.g., validity of the petition for a referendum in Italy.

[12] Political questions.

[13] Preliminary references in particular.

[14] Pleadings, final submissions, notes, etc...

[15] Presumption of constitutionality, double construction rule.

[16] Separation of Church and State, State subsidisation and recognition of churches, secular nature, etc...

[17] Bicameral, monocameral, special competence of each assembly, etc...

[18] Presidency, bureau, sections, committees, etc...

[19] State budgetary contribution, other sources, etc...

[20] Local authorities.

[21] The vesting of administrative competence in public law bodies independent of public authorities, but controlled by them.

[22] Civil servants, administrators, etc...

[23] Ombudsman, etc...

[24] Open-ended or finite.

[25] The question of "Drittwirkung".

[26] Militia, conscientious objection, etc...

[27] Including in particular the legal provision for a right of access to a judge.

[28] This keyword allows for the inclusion of norms and principles arising from a separate constitutional chapter elaborated with reference to the original Constitution (Declarations of rights, Basic Charters, etc...).