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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

Presentation of précis

Revised version 1996

Presentation of précis

The précis must be presented *in chronological order*, using the following eight zones:

Zone 1 “Identification”: The zone contains the number of the précis and references of the decision.

It is divided into eight Sub-Zones, labelled **a)** to **h)**.

Zone 2 “Keywords of the systematic thesaurus”;

Zone 3 “Keywords of the alphabetical index”;

Zone 4 “Headnotes” (*Leitsätze, Massime*) of the reported decision;

Zone 5 “Summary” of the decision containing reasoning, circumstances, etc;

Zone 6 “Supplementary information” (optional);

Zone 7 “Cross-references”;

Zone 8 “Languages”.

No numbers shall be inserted in front of the titles of the zones. The titles should be immediately followed by the sign “:”. If a zone is not used, the title of the zone is omitted.

Please do not enter any formatting codes, page breaks, etc. except for italics because the précis are formatted automatically.

The titles are fixed whether there are one or more “keywords” or “languages”.

Zone 1 - Identification:

In addition to the identification number of the summary (*this number is given by the Secretariat in Strasbourg*), Zone 1 contains the references necessary for the identification of the decision presented. It is divided into eight Sub-Zones:

- a)** Country;
- b)** Name of the Court;
- c)** Chamber (if appropriate);
- d)** Date of decision given in DD.MM.YYYY (only one date is possible);
- e)** Number of decision;
- f)** Title (if appropriate) of decision;
- g)** Official publications (in the court's collection of decisions or in the Official Gazette);
- h)** Non-official publications (the full title of a publication shall be given, no abbreviations).

Official publications are cited in the original language in *Italic* followed by a translation into the language of the précis (English or French; see document CDL-JU (96) 3).

Non-official publications are cited in the original language in *italics* without translation in the language of the précis.

References of later publications should be communicated to the Secretariat to be included in the database CODICES. As for other modifications to be made in CODICES, those references should not be made in CODICES itself but be communicated to the Secretariat in a separate file or on

paper.

Terminate the Sub-Zones **a)** to **f)** of the Identification Zone with a slash "/"; Zone **h)** is terminated with a point ".".

The date, appearing under **d)**, is given in three parts separated by a stop: the first part gives the day of the month (for example "06"), the second the month of the year (for example "03" for March) and the third the year in full (for example "1993"), which for a decision of 6 March 1993, gives the entry "**d)** 06.03.1993 /".

The indication, under **e)**, of the number of the decision should be limited to this number only, not preceded by anything else, such as "Decision". The entry should simply be limited to, for example, "**e)** 2 BvR 2134/92 /". When reference is made to two or more decisions or judgments, they should be separated with a comma, e.g. G 1219-1244/95, G 13 03/95, V 76-101/95, V 110/95.

Thus for example, Zone 1 for decision 2 BvR 2134/92 of 12 October 1993 of the Federal Constitutional Court of Germany, will be as follows:

Identification: GER-93-3-004

a) Germany / **b)** Federal Constitutional Court / **c)** Second Chamber / **d)** 12.10.1993 / **e)** 2 BvR 2134/92, 2 BvR 259/92 / **f)** Maastricht / **g)** *Entscheidungen des Bundesverfassungsgerichts* (Official digest of the decisions of the Federal Constitutional Court), 89, 155 / **h)** *Europäische Grundrechte-Zeitschrift*, 1993, 429; *International Legal Materials*, 33 (1994), 388.

Zone 2 - Keywords of the systematic thesaurus:

Zone 2 gives the keywords of the systematic thesaurus, respecting the latter's tree structure, order and logic. The Sub-Commission decided that keywords with reference to procedural questions (title 1 of the thesaurus) should only be included if the procedural point is of interest.

The chain of the keywords of the systematic thesaurus may be terminated before the last keyword(s) whenever the last keyword(s) do(es) not correspond to the contents of the decision. It is however not permissible to make short-cuts within a chain of keywords or to mix different chains of keywords.

The parts of the keyword chain always begin with a capital letter; the chains are always terminated by a point ".".

The following three keyword-chains **would not be permissible**:

Constitutional justice - Decisions - Concurring opinions.

Institutions - Executive bodies - Territorial administrative decentralisation - Provinces - Municipalities.

Fundamental rights - Civil and political rights - Equality - Race - Criteria of distinction.

Zone 3 - Keywords of the alphabetical index:

Zone 3 contains the keywords of the alphabetical index. The liaison officers are free to add new keywords to the alphabetical index. A repetition of keywords of the systematic thesaurus should be avoided. Keywords may consist of more than one word but **their total length must not exceed 50 characters** including spaces between words.

The keywords should be in alphabetical order separated by space, slash, space " / " and start with a capital letter. The list of keywords is terminated by a dot".

The most important element of keyword entries should be placed first in order to determine the place in which it appears in the index at the end of the Bulletin.

Example: "Administration of local collectivities" becomes "Local collectivities, administration".

This rule, however, does not apply to well determined legal terms.

Example: "Free movement of persons".

Zone 4 - Headnotes:

Zone 4 contains a short summary with the headnotes (*Leitsätze, Massime*) of the decision. It is recalled that the contributions should always be accompanied by the full text of the judgments in its original language (on diskette and on paper).

The Headnotes should not contain extracts of the decision, but a summary of the main contents of it. Each legal issue considered in the decision should be summarised in one paragraph. This information should be general and **not contain any reference to the particular facts of the case**. The main legal elements of the case should be briefly presented in the form of full sentences. A mere enumeration of points raised should find its place in the systematical thesaurus or in the alphabetical index.

As a general rule, headnotes should indicate the content of legal norms (e.g. "freedom of expression"). Their citation (e.g. "Article 3 of the Constitution") may be added. For this citation, see below "Zone 5 - Summary".

Example:

"The constitutionally protected right to vote and to stand for elections (Article 38 of the Constitution) forbids a transfer of duties and responsibilities of the Federal Parliament, such as to weaken the legitimization of State power gained through an election, and the influence of the people on the exercise of such power, to the extent that the principle of democracy is violated".

Zone 5 - Summary:

This zone contains a summary of the decision which should briefly describe the main facts of the case, the procedure followed, the decision taken, and, if available, information on dissenting opinions. Additional information on the legal reasoning (*ratio decidendi*) behind the decision may be given without, however, repeating the headnotes.

Legal texts should be referred to in the following way: "Article 3, section 2, sub-section a" becomes "Article 3.2.a"; for legal texts, in particular internal legislation, which do not use articles, "Section" or the sign "§" can be used.

Examples: "Section 28.2.a of the Civil Code" or "§ 45.2.a of the Judiciary Act".

A series of Articles shall be referred to in the following form: "Articles 17, 32, 69 and 117 of the Constitution".

Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms, its Protocols and Articles of the Treaty establishing the European Community should be cited using the abbreviations "ECHR" "Protocol * ECHR" and "EC treaty", e.g. "Article 6.3 ECHR", "Article 1 Protocol 1 ECHR", or "Article 177 EC treaty". This uniform citation will allow to automatically create links between the précis and the relevant texts.

Zone 6 - Supplementary information:

Zone 6 contains additional information that, in contrast to zone 6, is not part of the decision itself. This zone is optional and may be used to put the reported cases in context, for example by using such entries as "as a consequence of this decision, the Law on ... has been amended" or "settled case-law". Liaison officers might also wish to give information about the general political context of a decision.

It may also be used to indicate the articles of the Constitution or other legislation referred to in the decision.

Example: "Legal norms referred to: Articles 3, 5, 6 and 80 of the Constitution".

Zone 7 - Cross-references:

Zone 7 can be used for cross-references to decisions of the same court or other courts, whether published or not. If the identification number of Zone 1 of a précis published in the Bulletin is known, it should be added in brackets.

Example: "decision 94-354 DC of 11.01.1991, *Bulletin* 95/1 [FRA-95-1-003]".

The citation of the page number should be omitted as from Bulletin 95/1.

Zone 8 - Languages:

Zone 8 shall indicate all languages in which a decision is available; followed, if appropriate, by the mention "(translation by the Court)". References to published translations in Zone 1 h) are possible.

Example: "Croatian, English (translation by the Court), German (translation, see above zone h)".

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Example:

Identification: GER-93-3-004

a) Germany / **b)** Federal Constitutional Court / **c)** Second Chamber / **d)** 12.10.1993 / **e)** 2 BvR 2134/92 and 2 BvR 259/92 / **f)** Maastricht / **g)** *Entscheidungen des Bundesverfassungsgerichts*, (Official digest of the decisions of the Federal Constitutional Court), 89, 155 / **h)** *Europäische Grundrechte-Zeitschrift*, 1993, 429; *International Legal Materials*, 33 (1994), 388.

Keywords of the systematic thesaurus:

Constitutional justice - Types of claim - Claim by a private body or individual.

Constitutional justice - The subject of review - International treaties.

Sources of constitutional law – Hierarchy – Hierarchy as between national and non-national sources – Primary Community law and constitutions.

General principles - Sovereignty.

General principles - Democracy.

Institutions – Legislative bodies – Powers.

Institutions - Transfer of powers to international institutions.

Fundamental rights - Civil and political rights - Electoral rights.

Keywords of the alphabetical index:

Community of States / European Union / International Organisations / Maastricht Treaty / Sovereign powers, Transfer / *Staatenverbund* / Treaty on European Union.

Headnotes:

The constitutionally protected right to vote and to stand for elections (Article 38 of the Constitution) forbids a transfer of duties and responsibilities of the Federal Parliament, such as to weaken the legitimation of State power gained through an election, and the influence of the people on the exercise of such power, to the extent that the principle of democracy is violated.

Germany is not prohibited from becoming a member of a supranational intergovernmental community, provided that the legitimation and influence which derives from the people will be preserved within an alliance of States.

The programme of integration and the rights assigned to a supranational Community must be precisely specified.

The sovereignty of a “community of States” (*Staatenverbund*) must be legitimated through the member States' national parliaments. It is important that the democratic foundation upon which the European Union is based is extended concurrently with the process of integration, and that a living democracy is maintained in the member States while integration proceeds.

The Federal Constitutional Court and the European Court of Justice exercise jurisdiction in a “co-operative relationship”.

Summary:

The case was brought as a result of constitutional complaints filed by two classes of complainants - a. a group of politicians and professors and b. several German members of the European Parliament belonging to the Green Party. The complaints challenged the constitutionality of the Treaty on European Union (Maastricht Treaty). This Treaty provides for closer integration within the European Communities by, *inter alia*, setting various economic goals, introducing a single currency and a European Central Bank, implementing a common foreign and security policy, and introducing a Union citizenship that gives Union citizens the right to vote and stand in European and local elections in all Member States. The complainants alleged *inter alia* that the Treaty would lead to an unconstitutional transfer of powers which would result in the elimination of the constitutional order set forth in the German Constitution.

The Court found that only one complaint, relating to the diminution of democracy in the European Union, was admissible, but that it was not well-founded.

The Court ruled that an individual claim may be based on electoral rights, that is to say the right to vote and to stand for election (Article 38 of the Constitution), in respect of a treaty conferring sovereign rights on a supranational organisation. The electoral right prohibits the national Parliament from being deprived of its democratic functions by the transfer of powers to a supranational organisation to the extent that the

principle of democracy, which is declared inviolable by the Constitution, is violated. The principle of democracy does not, however, prevent Germany from becoming a member of a supranational community provided that the legitimation and influence which derive from the people will be preserved.

The electoral right is also violated if a national statute which opens up the national order to the direct application of the acts of a supranational organisation is not sufficiently clear. This means that essential subsequent changes to the Union Treaty will not be covered by the original statute of ratification.

The Court emphasised that the obligations of the German State deriving from the Maastricht Treaty remained foreseeable. The Treaty confirmed the principle of limited individual powers previously applied to the European Communities. It established a "community of States" (*Staatenverbund*), not a State. Germany did not subject itself to an uncontrollable, unforeseeable process that will lead inexorably towards monetary union. The assignment of tasks and powers to European institutions left the German Federal Parliament with sufficient tasks and powers of substantial political import.

The Court reserved the right to control acts of European organs with respect to the limits of their competences. The acts of a supranational organisation may affect the fundamental rights guarantees in Germany and are therefore subject to the jurisdiction of the Constitutional Court whose tasks are not limited to protecting fundamental rights *vis-à-vis* organs of the German State. However, the Constitutional Court exercises its jurisdiction on the application of secondary community law in a relationship of "co-operation" with the European Court of Justice.

The Court concluded that the Treaty established a new level of European integration without the corresponding intensification and extension of the principles of democracy.

Supplementary information:

The Federal President delayed the signature of the instrument of ratification in order for the Federal Constitutional Court to be able to pronounce on the constitutionality of the treaty.

Cross-references:

Former decisions concerning the relationship between national and community law: *Entscheidungen des Bundesverfassungsgerichts* (BVerfGE), 37, 271; 58, 1; 73, 376. The decision constitutes a departure from BVerfGE, 58, 1 as far as the possibility to challenge acts of a supranational organisation affecting fundamental rights is concerned.

Languages:

German, English (translation, see above zone h).