

Strasbourg, 27 October 1997  
<s:\cdl\doc\97\cdl-ju\50.e.>

Restricted  
**CDL-JU (97) 50**  
**Or. Fr.**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**PROPOSALS FOR AMENDMENT  
OF VERSION 9 OF THE SYSTEMATIC THESAURUS**

**Note by the Secretariat**

### **PROPOSALS BY BELGIUM**

Suggestions to add the following keywords to the systematic thesaurus:

- the keyword 4.3.11 "Responsibility"; the same keyword "Responsibility" already exists under the headings 4.1 and 4.2 (Head of State" and "Legislative bodies"). This new entry 4.3.11 could be subdivided into two points: 4.3.11.1 "Legal responsibility" and 4.3.11.2 "Political responsibility".
- the keyword 4.4.13 "Responsibility", for the same reasons given above.
- the new keyword 4.5.4.2bis "Geographical distribution", in order to allow issues of the geographical distribution of powers to appear under the federal or regional category, and not simply issues of the distribution of powers by subject-matter, which fall under the current keyword 4.5.4.2.
- it would be advisable to discuss the maintenance within the verbo "Civil and political rights - Equality" of the keyword "Right to physical integrity" (5.2.3).
- We are questioning the necessity to maintain the last keyword at that point: would it not be more suitable to insert it directly under "Civil and political rights"?

### **PROPOSALS BY SWITZERLAND**

1. The right to consult a file, which is one of the aspects of the right to be heard taken from Article 4 of our Constitution, is not provided for in the existing thesaurus. Under "Fair trial" (5.2.9.2), some subdivisions relative to different aspects of this right do exist. Now the list is incomplete. Noticeably, are missing the aspects of the right to consult a file and the rights of notification of the decision.

We thus propose the adjunction of

- either a number **5.2.9.2.14, "Other aspects of fair trial"**.
- or a number **5.2.9.2.14, "Right to consult a file"**; this second solution has one inconvenient, which is the necessity to modify and complete the thesaurus every time a case referring to any new aspect of the right to fair trial arises.

Yet, one problem remains: where the right to consult a file is put forward outside a pending procedure, is the use of the generic keyword "Fair trial" still correct?

2. The Vienna Convention of 23 May 1969 on the Right of Treaties is missing from the list of written rules (ch. **2.1.1**) of categories of Sources of Constitutional Law.

**PROPOSALS BY THE SECRETARIAT**

- 2.1.1.11 **Sources of Constitutional Law** – Categories – Written rules – European Charter of Local Self-Government.
- 2.1.3 **Sources of Constitutional Law** – Categories – Case-law.
- 2.1.3.1 **Sources of Constitutional Law** – Categories – Case-law of other national courts.
- 2.1.3.2 **Sources of Constitutional Law** – Categories – International case-law.
- 2.1.3.2.1 **Sources of Constitutional Law** – Categories – International case-law – European Court of Human Rights.
- 2.1.3.2.2 **Sources of Constitutional Law** – Categories – International case-law – Court of Justice of the European Communities.
- 2.1.3.2.3 **Sources of Constitutional Law** – Categories – International case-law – Other international instances.
- 2.1.3.3 **Sources of Constitutional Law** – Categories – International case-law – Foreign case-law.
- Add to existing footnote:
- 2.3.2 **Sources of Constitutional Law** – Techniques of interpretation – Concept of constitutionality dependent on a specified interpretation.  
Text : ", attenuating interpretation"
- 3.13.1 **General Principles** – Equality – Interdiction of arbitrariness.
- 4.3.8.2.1 **Institutions** – Executive bodies – Territorial administrative decentralisation – Municipalities – Local self-government.
- 4.7 **Institutions** – Army, police forces, prison administration.
- 4.7.3 **Institutions** – Army, police forces, prison administration – Prison administration.
- 5.1.5 **Fundamental Rights** – General questions – Vested rights.
- Delete:
- ~~5.2.4.1.5 **Fundamental Rights** – Civil and political rights – Equality – Scope of application – Citizenship. (see 5.2.4.2.5)~~
- 5.2.4.2.5 **Fundamental Rights** – Civil and political rights – Equality – Criteria of distinction – Nationality.
- 5.2.4.2.6 **Fundamental Rights** – Civil and political rights – Equality – Criteria of distinction – Age.
- 5.2.5.1 **Fundamental Rights** – Civil and political rights – Individual liberty – Police custody.

5.2.5.1 **Fundamental Rights** – Civil and political rights – Individual liberty – Detention pending trial.

(Footnote: This keyword covers detention on remand)

5.2.9.2.2.1 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Rights of the defence – Right to be informed of the reasons of detention.

5.2.9.2.2.2 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Rights of the defence – Right to know the accusation.

5.2.9.2.2.3 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Rights of the defence – Right to have adequate time and facilities for the preparation of the defence.

5.2.9.2.2.4 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Rights of the defence – Right to counsel.

5.2.9.2.2.5 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Rights of the defence – Right to examine witnesses.

5.2.9.2.2.6 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Rights of the defence – Right to linguistic assistance.

Delete:

~~5.2.9.2.8 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Languages. (see 5.2.9.2.2.6)~~

5.2.9.2.8 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Adversarial hearings

Footnote: "*audiatur et altera pars* - adversarial principle"

Add footnote to:

5.2.9.2.10 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Double degree of jurisdiction.

Text: "This keyword covers the right of appeal to a judicial body."

5.2.9.2.11 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Prohibition of *reformatio in peius*.

5.2.9.2.12 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Fair trial – Right not to incriminate oneself.

Delete:

~~5.2.9.3 **Fundamental Rights** – Civil and political rights – Procedural safeguards – Detention pending trial. (see 5.2.5.2)~~

5.2.24.1 **Fundamental Rights** – Civil and political rights – Right to private life – Protection of data.

Add footnote:

5.2.14 **Fundamental Rights** – Civil and political rights – Freedom of expression.

Text: "This keyword also includes the right freely to communicate information".

5.2.27 **Fundamental Rights** – Civil and political rights – Confidentiality of communication.

5.2.27.1 **Fundamental Rights** – Civil and political rights – Confidentiality of communication – Confidentiality of correspondence.

5.2.27.2 **Fundamental Rights** – Civil and political rights – Confidentiality of communication – Confidentiality of telephonic communications.

Delete:

~~5.2.28 **Fundamental Rights** – Civil and political rights – Confidentiality of telephonic communications. (see 5.2.27.2)~~

Add footnote to keyword:

5.2.29 **Fundamental Rights** – Civil and political rights – Right of petition.

Text: "This keyword covers the right of appeal to a non-judicial body."

Add footnote to keyword:

5.2.30.1 **Fundamental Rights** – Civil and political rights – Non-retrospective effect of law – Criminal law.

Text: "This keyword also covers the principle *nullum crimen sine lege*."

5.3.7 **Fundamental Rights** – Economic, social and cultural rights – Contractual freedom.

Delete:

~~5.3.17 **Fundamental Rights** – Economic, social and cultural rights – Rights of control over computer facilities. (see 5.2.24.1)~~