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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Guidelines for the
presentation of précis
Revised version 1998

Introduction

These guidelines for the presentation of *précis* are intended to facilitate the production of the Bulletin on Constitutional Case-law and the database CODICES of the Venice Commission. The liaison officers can choose to use the input mask which is provided by the Secretariat or standard text processing software (Word/WordPerfect) for sending the contribution in electronic form (diskette, e-mail). In the case where a Court does not send the contributions in electronic form, these have to be manually retyped by the Secretariat, a procedure which, of course, slows down the production of the Bulletin.

Please take into account that *précis* in respect of one country will in most cases be read by people in other countries. Therefore, please draft your *précis* in a more simple language than you would do for readers in your own country who probably know the legal background of the case. Thus, please try to write simple sentences using a straightforward construction avoiding too many relative clauses. Also try to explain, for the foreign reader's sake, legal concepts which are particular to your country.

The *précis* are processed automatically by computer programmes/macros in order to feed them into the database CODICES. This is why it is important to respect the norms for writing zones titles, keywords of the Systematic Thesaurus and the Alphabetical Index (slashes, spacing etc.); otherwise these elements would not be properly recognised by the macros. The same is true for citations of constitutions where links to the texts of the corresponding article are established automatically (see zone 5 "Summary" below). It is recalled that the contributions should always be accompanied by the full text of the judgments in the original language, and if possible in other languages (on diskette/via e-mail and on paper).

The Secretariat and the Venice Commission are grateful to the liaison officers for respecting these guidelines because doing so considerably helps smoothing the production of the Bulletin and CODICES.

ZONES

The *précis* should 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*) key legal principles that emerge from the case
- Zone 5** "Summary:" containing an explanation of the legal reasoning, of the factual circumstances, etc
- Zone 6** "Supplementary information:" (optional)
- Zone 7** "Cross-references:" (optional)
- 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 ":". They should be written in small letters with a capital letter at the beginning. 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 always in plural whether there is one or more "keywords" or "languages".

Précis should in no case exceed 1200 words.

Zone 1 - Identification:

In addition to the identification number of the summary (*this number is attributed 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 the decision;
- f)** Title (if appropriate) of the 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 Italics followed by a translation into the language of the précis (English or French; see CDL-JU (98) 17).

Non-official publications are cited in the original language in Italics without translation.

References to publications that are known only after the publication of the Bulletin 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 your copy of CODICES itself but be communicated to the Secretariat in a separate file or on paper.

End the Sub-Zones **a)** to **f)** of the Identification Zone with space, slash, space " / "; Zone **h)** finishes with a full stop ".". There is no line break between the sub-zones a) to h).

The date, appearing under **d)**, is entered in three sections separated by a dot: the first section indicates the day (for example "06"), the second one the month (for example "03" for March) and the third one the year in full (for example "1993"), which for a decision of 6 March 1993, is entered as follows: "**d)** 06.03.1993 /".

The indication, under **e)**, of the decision's number should be limited to this number only, not preceded by anything else, such as "Decision" or "Number". The entry should simply be limited to the number itself, 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. There should be no "and" before the last number.

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-1993-3-***

a) Germany / **b)** Federal Constitutional Court / **c)** Second Panel / **d)** 12.10.1993 / **e)** 2 BvR 2134/92, 2 BvR 259/92 / **f)** Maastricht / **g)** *Entscheidungen des Bundesverfassungsgerichts* (Official digest), 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. Keywords with reference to procedural questions (Chapter 1 of the thesaurus) should only be included if the procedural point is of interest.

The whole chapter 1 is therefore to be used very restrictively. All keywords in chapter 1 only apply to the procedure before the Constitutional Court or equivalent body and not to the procedure at lower instances. You will find keywords relating to many of these issues in chapter 5 of the Thesaurus (fair trial).

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 shortcuts within a chain of keywords or to mix different chains of keywords.

Please add the number of the Thesaurus keyword chain.

The keyword chain always begins with a capital letter and ends with a full stop ".".

Examples

A. Incorrect (shortcut of keyword chain):

5.2.9.8 **Fundamental Rights** – Civil and political rights – Impartiality.

Correct:

5.2.9.9 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Impartiality.

B. Incorrect (joinder of two keyword chains):

5.2.9.8 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Independence – Impartiality.

Correct:

5.2.9.8 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Independence.

5.2.9.9 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Impartiality.

C. Incorrect (invention of keyword):

5.2.25 **Fundamental Rights** – Civil and political rights – Right to respect for one's honour and reputation – Libel.

Correct:

5.2.25 **Fundamental Rights** – Civil and political rights – Right to respect for one's honour and reputation.

and separate keyword "Libel" in alphabetical index.

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 80 characters** including spaces between words.

The keywords should be separated by space, slash, space " / " and begin with a capital letter. The list of keywords ends with a full stop ".".

The most important keyword entry should be placed first in order to determine the place in which it appears in the index at the end of the Bulletin. Prepositions at the end of inverted keywords are deleted.

Example: "Administration of local collectivities" becomes "Local collectivities, administration" (the preposition "of" is deleted)

This rule, however, does not apply to fixed legal terms.

Example: "Free movement of persons" is correct.

Zone 4 - Headnotes:

Zone 4 contains a short summary with the headnotes (*Leitsätze, Massime*), key legal principles that emerge from the case.

The Headnotes should not contain extracts of the decision, but a summary of the main contents. Each legal issue considered in the decision should be summarised in one paragraph. This information should be abstract and **not contain any reference to the particular facts of the case**. Consequently, there should be no mention of "The Constitutional Court decided that ...". 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 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".

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 can be given without, however, repeating the headnotes.

Please refrain from repeatedly citing your Constitution or your Court in full as it is in most cases clear from the context which Constitution or Court is being referred to e.g. not "the Constitutional Court of the Republic of XY" or "the Constitution of XY" but rather "the Constitutional Court" and "the Constitution". Of course, in cases where there is the possibility of confusion with other Constitutional Courts or Constitutions, please cite accordingly. Furthermore, please do not refer to "our" Court or "our Constitution". As the précis become part of CODICES, please do not refer to "now" in time but rather to "at the time of the decision".

Sub-divisions of articles should be referred to in the following way: "Article 3, section 2, sub-section a" becomes "Article 3.2.a". Accordingly "Article 1 item 3" becomes "Article 1.3". Only the citation of specific sentences remains in full, e.g. "Second Sentence of Article 1.3.3 of the Constitution". For legal texts, in particular internal legislation, which do not use articles, "Section" or the sign "§" can be used. (Note that in French "section" or "§" will be translated to "article").

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", e.g. "Article 6.3 ECHR", "Article 1 Protocol 1 ECHR", or "Article 177 EC". This uniform citation will allow to automatically create links between the précis and the relevant texts.

It is recalled that the whole précis must not exceed 1200 words.

Zone 6 - Supplementary information:

Zone 6 contains additional information, which in contrast to zone 5, 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 a decision has been published in the Bulletin, it should be cited in the following way:

Example: "decision 94-354 DC of 11.01.1991, *Bulletin* 1995/1 [FRA-1995-1-003]".

The citation of the page number should be omitted as from Bulletin 1995/1.

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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A N N E X

Example:

Identification: GER-1993-3-***

a) Germany / **b)** Federal Constitutional Court / **c)** Second Panel / **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.

Keywords of the systematic thesaurus:

- 1.2.2 **Constitutional justice** – Types of claim – Claim by a private body or individual.
- 1.4.1 **Constitutional justice** – The subject of review – International treaties.
- 2.2.1.6 **Sources of constitutional law** – Hierarchy – Hierarchy as between national and non-national sources – Primary Community law and constitutions.
- 3.1 **General principles** – Sovereignty.
- 3.2 **General principles** – Democracy.
- 4.2.2 **Institutions** – Legislative bodies – Powers.
- 4.10 **Institutions** – Transfer of powers to international institutions.
- 5.2.34 **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).