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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**SECRETARIAT PROPOSALS FOR
VERSION 18 OF
THE SYSTEMATIC THESAURUS**

Brief introduction

Having reconsidered version 17 of the Systematic Thesaurus, the Secretariat decided that it might be useful to update this document, taking into account - among others - suggestions received and new terms encountered. Such updates are important as they permit to improve and simplify the indexing system by, for instance, bringing together certain terms and eliminating others. You will find explanations in italics for each change proposed in bold, below. Each proposal and its explanations is separated by three asterisks.

Suggested changes (in bold)

A.

1.1.2.10 Constitutional Justice – Constitutional jurisdiction – Composition, recruitment and structure – Staff - footnote: (Deputy) registrars, secretaries general, legal advisers, assistants, **auditors**, researchers etc.

[In French : Justice constitutionnelle – Juridiction constitutionnelle – Composition, recrutement et structure – Personnel – note de bas de page: Greffiers (adjoints), **secrétaires généraux**, référendaires, ~~secrétaires généraux~~, assistants, service d'étude, etc.]

The suggestion made was to reconsider the translation from the French word “référendaires” to “auditors” in English, as it is an incorrect translation.

B.

1.3.2.1 Constitutional Justice – Jurisdiction – Type of review – Preliminary review / ***Ex post facto* review**

A suggestion was made to merge 1.3.2.1 (Preliminary review) and 1.3.2.2 (Ex post facto review) to simplify the indexing.

C.

1.4.1 Constitutional Justice – Procedure – General characteristics

1.4.1.1 Constitutional Justice – Procedure – General characteristics – **working language of courts**

The Secretariat suggests that this addition be made on the basis that it could point to minority rights, the availability of translation of proceedings etc.

D.

1.5.6 Constitutional Justice – Decisions – Delivery and publication

1.5.6.1 Constitutional Justice – Decisions – Delivery and publication – Delivery (**new footnote: in open court / in camera**)

~~1.5.6.1.1 Constitutional Justice – Decisions – Delivery and publication – Delivery – In open court / in camera~~

The Secretariat suggests that this point be deleted as we feel that 1.5.6.1 could be understood as covering it and that a reference in a footnote would suffice.

E.

2.1.1.4 Sources of Constitutional Law – Categories – Written rules – International instruments

The Secretariat suggests the following six international instruments be added, as they are referred to in the constitutional case-law of many states:

2.1.1.4.2 Sources of Constitutional Law – Categories – Written rules – International instruments – **American Declaration of the Rights and Duties of Man of 1948**

See Précis: ARG-2002-1-001, ARG-2001-1-003, IAC-2004-1-003.

2.1.1.4.8 Sources of Constitutional Law – Categories – Written rules – International instruments – **International Convention on the Elimination of All Forms of Racial Discrimination of 1965**

See Précis: AUT-1995-2-007, BEL-1998-3-010, BIH-2005-1-002, BIH-2004-1-002, ECH-1994-3-014, USA-2003-1-002.

2.1.1.4.13 Sources of Constitutional Law – Categories – Written rules – International instruments – **Convention on the Elimination of all Forms of Discrimination against Women of 1979**

See Précis: ARG-1999-3-010, LES-2005-D-001.

2.1.1.4.17 Sources of Constitutional Law – Categories – Written rules – International instruments – **European Charter for Regional or Minority Languages of 1992**

See Précis: FRA-1999-2-005, ROM-2000-1-004, ROM-2000-1-003, BIH-2005-2-003.

2.1.1.4.18 Sources of Constitutional Law – Categories – Written rules – International instruments – **Framework Convention for the Protection of National Minorities of 1995**

See Précis: CRO-2001-1-005, BIH-2000-3-003, CRO-2003-3-016, ROM-2000-1-004, ECH-2001-1-001.

2.1.1.4.20 Sources of constitutional law – Categories – Written rules – International instruments – **Charter of Fundamental Rights of the European Union of 2000**

See Précis: ITA-2005-1-001, POL-2005-1-003, ESP-2000-3-035, EST-2004-1-006, EST-2003-2-002, ECH-2002-3-008, ECJ-2005-2-017, ECJ-2005-2-012.

F.

The Secretariat suggests that the following terms be regrouped under the principle of the “Rule of Law” rather than be listed separately, as these terms form a part of this principle:

3.9 General principles – Rule of Law

3.9.1 General principles – Rule of Law - **Certainty of the Law**3.9.2 General principles – Rule of Law - **Clarity and precision of legal provisions**3.9.3 General principles – Rule of Law - **Legality**3.9.4 General principles – Rule of Law – **Prohibition of arbitrariness**3.9.5 General principles – Rule of Law - *Nullum crimen, nulla poena sine lege*3.10 General principles - ~~**Certainty of the Law**~~3.12 General principles - ~~**Clarity and precision of legal provisions**~~3.13 General principles - ~~**Legality**~~3.14 General principles - ~~*Nullum crimen, nulla poena sine lege*~~3.22 General principles - ~~**Prohibition of arbitrariness**~~¹

G.**5.1.2 More favourable protection**

A suggestion was made to add the above-mentioned principle, which applies in particular to criminal law, where in case of doubt the law which is more favourable for the offender should be applied. This suggestion is based on the following:

See Précis: SUI-1989-C-001, BIH-2000-1-002, GER-1997-1-003, ROM-2001-3-007

Constitutions, e.g. Czech Republic, Charter of Fundamental Rights and Freedoms, Article 40.6 “The question whether an act is punishable or not shall be considered and penalties shall be imposed in accordance with the law in force at the time when the act was committed. A subsequent law shall be applied if it is more favourable for the offender.”

Also as an exception to the principle of non-retroactivity, e.g. Constitution of Romania, Article 15.2: “The law shall only act for the future, except for the more favourable criminal or administrative law.”

H.

The Secretariat suggests that “Positive obligation” be added under “Fundamental Rights” – a term that was missing from the Systematic Thesaurus:

5.1.3 Fundamental rights – General questions – Positive obligation.

I.

The Secretariat suggests that a footnote be added to further clarify what is covered by “Elections”:

5.2.1.4 Fundamental rights – Equality – Scope of application – Elections (**new footnote: Principle of equal voting power**)

J.

This suggestion was already made during the last meeting of the Working Group and we decided to return to this issue during our next meeting. It concerns the ambiguity of the term “national”, which can refer to citizenship and ethnicity, and that this word should be deleted as follows:

5.2.2.3 Fundamental rights – Equality – Criteria of distinction – ~~National or~~ ethnic origin

5.2.2.4 Fundamental rights – Equality – Criteria of distinction – ~~Citizenship or~~ **nationality**

(new footnote: According to the European Convention on Nationality of 1997, CETS No. 166: ‘nationality’ means the legal bond between a person and a State and does not indicate the person’s ethnic origin” (Article 2) and “...with regard to the effects of the Convention, the terms ‘nationality’ and ‘citizenship’ are synonymous” (paragraph 23, Explanatory Memorandum)).

In order to support this proposal, the Secretariat would like to refer to the European Convention on Nationality (CETS No. 166, 1997)², which states:

*(Article 2) “nationality” means the legal bond between a person and a State and **does not indicate the person’s ethnic origin**;*

(Explanatory Memorandum)

23. “Nationality” is defined in Article 2 of the Convention as “the legal bond between a person and a State and does not indicate the person’s ethnic origin”. It thus refers to a specific legal relationship between an individual and a State which is recognised by that State [...] with regard to the effects of the Convention, the terms “nationality” and “citizenship” are synonymous.

24. Throughout the text of the Convention, when translating the term “nationals” into French, the word ressortissants was preferred, rather than nationaux. For the purposes of the Convention, the term ressortissants includes only persons having the nationality of a State Party concerned and not persons under the jurisdiction of the country concerned.

K.

The Secretariat also suggests a change to the order of the chapters in the Systematic Thesaurus, as follows: 5, 3, 4, 2, 1 - due to the fact that reference is too often made to chapter 1

² Entered into force on 1 March 2000 and has been ratified by 15 ratifications (Albania, Austria, Bulgaria, Czech Republic, Denmark, Germany, Hungary, Iceland, Moldova, Netherlands, Portugal, Romania, Slovakia, Sweden and “The former Yugoslav Republic of Macedonia”) and signed by 12 countries (Bosnia and Herzegovina, Croatia, Finland, France, Greece, Italy, Latvia, Malta, Norway, Poland, Russia and Ukraine).

(Constitutional Justice) when, for instance, a reference to chapter 3 (General Principles) or chapter 5 (Fundamental Rights) would have been more appropriate. By changing the order of the chapters, those chapters that should be referred to first in the contributions would appear at the beginning of the Systematic Thesaurus, thereby facilitating its use.

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