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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Guidelines 2001
for the presentation of contributions
to the Bulletin on Constitutional Case-Law
and CODICES

These guidelines for the presentation of contributions to the *Bulletin on Constitutional Case-law* and CODICES, consisting of statistics and summaries called *précis*, are intended to facilitate the production of these publications. 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.

Format

The Secretariat prefers the liaison officers to use the input mask which is provided by the Secretariat but standard text processing software (Word) can be used as well for sending the contribution in electronic form (diskette or 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 considerably slows down the production of the Bulletin. Besides, the contributions should always be accompanied by the full text of the judgments in the original language, and if possible in other languages (via e-mail and on paper or on diskette).

Respect of the norms of presentation

The *précis* are processed automatically by computer macros (programmes) 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).

Drafting

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 grammatical construction avoiding too many relative clauses. Also try to explain, for the foreign reader's sake, legal concepts which are particular to your country.

Statistics

The statistics are to cover all decisions handed down during the reference period, not only those important decisions which were selected by the liaison officers for publication in the *Bulletin*. **The statistics should be transmitted to the Secretariat even if liaison officers decide not to send any *précis*** for an issue of the *Bulletin* because the decisions handed down are not deemed important enough by the liaison officer. If the production of statistics three times a year proves too difficult for liaisons officers, they can send them for the whole year with their contribution to the Bulletin issue 3, i.e. reference period from September to December. The choice of format for the statistics remains with the liaison officer and can follow the structure of the statistics used at the Court.

ZONES

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

Zone 1 “Identification:”

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:” (explanation of the legal reasoning, of the factual circumstances, etc)

Zone 6 “Supplementary information:” (optional)

Zone 7 “Cross-references:” (optional)

Zone 8 “Languages:”

Title of zones

- in lowercase with a capital letter at the beginning
- immediately followed by a colon “:”
- No numbers in front of the titles
- If zones 6 or 7 are not used, the title of the zone should be omitted.

If you use the entry mask, use the codes “<IT+>” and “<IT->” to designate the beginning and end of the text to be italicised. Bold and underline are not used in the Bulletin for text formatting.

Please do not use footnotes and do not enter any formatting codes, page breaks, etc, except for Italics because précis are formatted automatically. In Word, do not use any style other than “Normal”.

The titles are always in the plural form even if there is only one “keyword” or or one “language”.

Please do not use abbreviations. They might be familiar in your country but could unknown in the country’s reader of the Bulletin. If you cannot avoid using them, please introduce the abbreviation in brackets following the first occurrence in the précis of the full wording: e.g. “German Democratic Republic (GDR).

Précis should in no case exceed 1200 words (including titles).

Zone 1 - Identification:

The zone 1 contains the identification number of the précis, e.g. “ITA-2001-1-001, (**this number is attributed by the Secretariat in Strasbourg**), and the references necessary for the identification of the decision which is presented. It is divided into eight Sub-Zones:

- a) Country
- b) Name of the Court
- c) Chamber (if appropriate)
- d) Date of decision given
- e) Number of the decision
- f) Title (if appropriate) of the decision
- g) Official publications
- h) Non-official publications

Separate the Sub-Zones a) to f) with space, slash, space “ / ”; and end Zone h) with a full stop “.”. There is no line break between the sub-zones a) to h).

All sub-zones should be present, even if empty. In the following example, zones f), g), h) are empty:

Identification : GRE-2000-3-001

a) Greece / b) Council of State / c) 3rd Section / d) 31.03.2000 / e) 1333/2000 / f) / g) / h).

Date

Under d), only **one** date is possible. If the précis covers several decisions, use the date of the oldest decision. The date is entered in three sections: day, month, year (DD.MM.YYYY) separated by a dot:

“d) 05.08.2001 / ” corresponds to a decision of 5 August 2001.

The first section, “05”, always made of two numbers, indicates the day, the second one “08” to the month, August in the example, and the third one to the year, indicated in full “2001”.

Decision’s number

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.

Official publications

Please use the citation of the official and non-official publication as stated in document [CDL-JU (2001) 6]. Please inform the Secretariat of publications that do not yet appear in that document so that it can be updated.

In the zone g), official publications, i.e. in the court's collection or else in the Official Gazette, are cited in the original language and in Italics, followed in brackets by the nature of the publication (Official Gazette) or (Official Digest).

Example: g) *Entscheidungen des Bundesverfassungsgerichts* (Official Digest), 89, 155 /

Non-official publications

Non-official publications in the last sub-zone h) are cited in the original language and in Italics without translation. The full title of a publication shall be given, no abbreviations.

Example: h) *Europäische Grundrechte-Zeitschrift*, 1993, 429; *International Legal Materials*, 33 (1994), 388.

Several publications are separated by a semi-colon “;”. References to publications that are known *a posteriori* once the contribution has been handed over, should be nevertheless communicated thereafter to the Secretariat to be included in the CODICES database.

If you have transmitted the full text in electronic form to the Secretariat, the latter will add a reference to CODICES as a non-official publication in zone h), e.g. “CODICES (Dutch, French, German)” a decision for which the full text will be available in CODICES in these three languages.

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; CODICES (German).

Zone 2 - Keywords of the systematic thesaurus:

The Thesaurus includes five chapters with an arborescing structure.

Chapter 1 of the Thesaurus, which is moreover the longest of the five chapters, covers the body of constitutional jurisdiction of which the decision is being indexed (Constitutional Court, Supreme Court, Constitutional Council etc.). This chapter should be used restrictively, as the keywords in it should only be used if a relevant procedural question is raised. This chapter is thus not used to establish statistical data; rather, the *Bulletin* reader or user of the CODICES database should only find decisions under this chapter when the subject of the keyword is an

issue in the case. For this reason it is advisable to index in the reverse order of chapters, i.e. starting with chapter 5, then 4, then 3 etc.

Chapter 1.1 deals with the structure of the Court in question, 1.2 covers the different applicants, 1.3 speaks of the jurisdiction of the Court. Sub-chapter 1.3.5 deals with the enactment under review. The various procedural aspects before the Court can be found in 1.4. Questions of procedural guarantees before lower instance courts are to be found in chapter 5.3.13 of the Thesaurus. If the type of decision to be taken is at issue, chapter 1.5 should be used. Finally, chapter 1.6 deals with the effects of the decision if they are of interest.

Chapter 2 covers the sources of constitutional law. 2.1 covers national and international sources (treaties, case-law etc), questions of hierarchy between sources are dealt with in 2.2 and the various techniques of interpretation in 2.3.

Chapter 3 covers the general principles of constitutional law, such as democracy (3.3) or the separation of powers (3.4) The principle of equality also figures at 3.20. It should be noted, however, that this keyword is only to be used when the principle of equality is not applied to individuals (as a fundamental right). In that case the keyword "equality" in chapter 5.2 should be used.

Chapter 4 covers state institutions, especially the head of state (4.4), parliament (4.5), government (4.6) and courts other than the court with constitutional jurisdiction (4.7). Chapter 4.8 applies to states with a federal or regional structure. Chapter 4.9 deals with the various aspects of elections. Then follow the institutions such as public finances (4.10), armed forces, police forces and secret services (4.11), the Ombudsman (4.12) and other special cases. Chapter 4.17 deals with issues related to the institutions of the European Union.

Chapter 5 is subdivided in accordance with the two United Nations Covenants on civil and political rights (5.3) and economic, social and cultural rights (5.4). Chapter 5.1 covers general questions such as entitlement to rights (5.1.2) and limitations on fundamental rights (5.1.3). Chapter 5.2 covers the principle of equality applied to individuals. Chapter 5.4 gathers together certain rights known as collective rights.

Footnotes

The footnotes are a very important element in all five chapters of the Thesaurus. They serve to explain the keywords and to advise as to their correct use. In some cases they also contain cross-references to other keywords, which should be used.

Indexation

Another very important element is the indexing of what the reader will see. Usually it is the précis of the *Bulletin on Constitutional Case-Law* that are indexed. Thus only the elements appearing in the précis as it is to be published should be indexed, and not subjects which only appear in the full text of the decision. If such a subject is important enough to be indexed in the Thesaurus, then it should also be included in the précis. If it is not appropriate to include it in the précis, then it should not be indexed either.

Formal structure of the Systematic Thesaurus

The Systematic Thesaurus is subdivided into five chapters, like the branches of a tree (hence the branched, hierarchical structure of the Thesaurus). The major branches of this "tree" are subdivided into ever finer branches, and thus the subjects covered by the branches become more and more specific.

Take for example the word "equality" applied as a fundamental right:

5. Fundamental Rights

- ...
5.2. Equality
- ...
5.2.2 Criteria of distinction
 - 5.2.2.1 Gender
 - 5.2.2.2 Race
 - ...

When indexing, a complete “**chain of keywords**” must always be given without omitting intermediate links. For example, to indicate a decision dealing with discrimination based on gender:

“5.2.2.1 Fundamental Rights – Equality – Criteria of distinction – Gender.”

If there is no last term in the chain that corresponds to the contents of a decision, a chain of keywords in the systematic thesaurus may, however, be shortened to index for example a decision based on a criterion of distinction that is not given in the Thesaurus, such as an arbitrary date:

“5.2.2 Fundamental rights - Civil and political rights - Equality - Criteria of distinction.”

In this case the criterion should be added to the list of keywords in the Alphabetical Index. However, as stated above, it is not permissible to make shortcuts within chains or to mix keywords from different chains.

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

The data input mask automatically takes care of the correct numbering of the keywords. On the contrary, when using text processing software for the preparation of the contribution of the currently valid version of the Thesaurus, please add the number of the Thesaurus keyword manually (for example 5.3.13.12). In order to avoid confusion, please note the version of the thesaurus that you have been using at the top of your contribution, e.g. “Thesaurus V12”.

Examples of keyword chains

I. Wrong (shortcut of keyword chain):

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

Correct:

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

II. Wrong (joinder of two keyword chains):

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

Correct:

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

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

III. Wrong (invention of keyword):

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

Correct:

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

And add the use of a separate keyword "Libel" in the alphabetical index.

Zone 3 - Keywords of the alphabetical index:

The alphabetical index is used to index concepts that are not found in the Systematic Thesaurus, which only covers constitutional law issues. The alphabetical index thus serves for the indexing of other branches of law (civil, criminal etc) as well as to refine or narrow down a keyword of the Thesaurus (see the "libel" example above). It is used especially to index legal keywords, but may also cover factual matters such as "housing" or "forest".

Liaison officers are free to add new keywords to the alphabetical index. It is nonetheless advisable to use keywords that have been used previously. The computerised entry mask suggests a list of such keywords. This mask will also include a list of cross-references to other keywords that should be used (for example, not "termination of pregnancy" but "abortion") as well as cross-references to

the Systematic Thesaurus (for example, do not use "Police" in the index but rather "4.11.2 Institutions - Armed forces, police forces and secret services - Police forces" in the Thesaurus). If possible, plural forms should be avoided for the keywords of the alphabetical index.

A repetition of keywords of the systematic thesaurus should be avoided, but elements figuring in the footnotes to the thesaurus may be used in the alphabetical index.

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 element of the keyword should be placed first followed by a comma. Prepositions at the end of such inverted keywords are deleted:

Example: "Administration of local communities" becomes

"Local community, administration" (*the keywords are inverted to place the most important element first; the preposition "of" is deleted and the keyword is singular*)

These rules do not apply, however, to composite terms designating a well defined legal concept.

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. They 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 systematic 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 legitimisation 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 should briefly describe the main facts of the case, the procedure followed, details on who appealed to the Court, what the law under scrutiny dealt with; the arguments put forward by the petitioner; the Court's assessment of the petitioner's arguments; the reasons given by the Court for its decision, including what factors it considered to be decisive in the case and why, 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.

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

The harmonising of citations is very important, because it allows for the automatic creation of links from the précis to the relevant texts. Below are certain rules to be followed:

1. Quoting of legal texts

Please refrain from repeatedly citing your Constitution or your Court in full throughout the text as in most cases it is clear from the context which Constitution or Court you are referring 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 them 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".

2. Quoting in the original language

If you wish to use the name of a national institution in the original language, cite it at the first occurrence in a précis between brackets and in italics preceded by the generic term of this institution (e.g. "Parliament (*Nationalrat*)". In the following citations within the same précis, please use the generic term only (e.g. "Parliament").

3. Quoting of articles

When you cite articles, try not to use the abbreviation "Art.". It is better to write "Article" in full.

On the other hand, sub-divisions of articles should be referred to in the following way:

"Article 3.2.a" rather than "Article 3, section 2, sub-section a"

"According to Article 1.3" rather than "according to Article 1 item 3"

Only the citation of specific sentences remains in full, for example

"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 symbol "§" can be used: (*Note that in French "section" or "§" will be translated to "article"*)

"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".

References to 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 made using the abbreviations "ECHR" "Protocol ECHR" and "EC":

"Article 6.3 ECHR", "Article 1 Protocol 1 ECHR", or "Article 177 EC".

Do not use the prepositions "of the" before "ECHR" but "ECHR" only.

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".

Please do not use abbreviations for the legislation.

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 11.01.1995, *Bulletin* 1995/1 [FRA-1995-1-003]".

The citation of the page number should be omitted as from Bulletin 1995/1, which was the first Bulletin using identification numbers.

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)".

A N N E X

EXAMPLE OF A CONTRIBUTION

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) / h) *Europäische Grundrechte-Zeitschrift*, 1993, 429; *International Legal Materials*, 33 (1994), 388; CODICES (German).

Keywords of the systematic thesaurus:

1.2.2 Constitutional Justice – Types of claim – Claim by a private body or individual.
1.3.5.1 Constitutional Justice – Jurisdiction – The subject of review – International treaties.
2.2.1.6.2 Sources of Constitutional Law – Hierarchy – Hierarchy as between national and non-national sources – Community law and domestic law – Primary Community legislation and domestic non-constitutional legal instruments.
3.1 General Principles – Sovereignty.
3.3 General Principles – Democracy.
4.5.2 Institutions – Legislative bodies – Powers.
4.16 Institutions – Transfer of powers to international organisations.
4.17 Institutions – European Union.
5.3.39 Fundamental Rights – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Community of States / International Organisation / Treaty, Maastricht / *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 legitimisation 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 legitimisation 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 legitimised 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 group of politicians and professors and 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 legitimisation 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 by the Court).