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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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Systematic Thesaurus

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1 CONSTITUTIONAL JUSTICE¹

1.1 Constitutional jurisdiction²

1.1.1 Statute and organisation

1.1.1.1 Sources

1.1.1.1.1 Constitution

1.1.1.1.2 Institutional Acts

1.1.1.1.3 Other legislation

1.1.1.1.4 Rule issued by the executive

1.1.1.1.5 Rule adopted by the Court³

1.1.1.2 Independence

1.1.1.2.1 Statutory independence

1.1.1.2.2 Administrative independence

1.1.1.2.3 Financial independence

1.1.2 Composition, recruitment and structure

1.1.2.1 Number of members

1.1.2.2 Appointing authority

1.1.2.3 Appointment of members⁴

1.1.2.4 Appointment of the President⁵

1.1.2.5 Subdivision into chambers or sections

1.1.2.6 Relative position of members⁶

1.1.2.7 Persons responsible for preparing cases for hearing⁷

1.1.2.8 Staff⁸

1.1.3 Status of the members of the court

1.1.3.1 Term of office of Members

1.1.3.2 Term of office of the President

1.1.3.3 Privileges and immunities

1.1.3.4 Professional incompatibilities

1.1.3.5 Disciplinary measures

1.1.3.6 Remuneration

1.1.3.7 End of office

1.1.3.8 Members having a particular status⁹

1.1.3.9 Status of staff¹⁰

1.1.4 Relations with other institutions

1.1.4.1 Head of State¹¹

1.1.4.2 Legislative bodies

1.1.4.3 Executive bodies

1.1.4.4 Courts

1.2 Types of claim

1.2.1 Claim by a public body

1.2.1.1 Head of State

¹ This chapter – as the Systematic Thesaurus in general - should be used restrictively, as the keywords in it should only be used if a relevant 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.

² Constitutional Court or equivalent body (constitutional tribunal or council, supreme court etc).

³ E.g. Rules of procedure.

⁴ Including the conditions and manner of such appointment (election, nomination etc).

⁵ Including the conditions and manner of such appointment (election, nomination etc).

⁶ Vice-presidents, presidents of chambers or of sections etc.

⁷ E.g. State Counsel, prosecutors etc.

⁸ Registrars, assistants, auditors, general secretaries, researchers etc.

⁹ E.g. assessors, office members.

¹⁰ Registrars, assistants, auditors, general secretaries, researchers etc.

¹¹ Including questions on the interim exercise of the functions of the Head of State.

- 1.2.1.2 Legislative bodies
- 1.2.1.3 Executive bodies
- 1.2.1.4 Organs of federated or regional authorities
- 1.2.1.5 Organs of sectoral decentralisation
- 1.2.1.6 Local self-government body
- 1.2.1.7 Public Prosecutor or Attorney-General
- 1.2.1.8 Ombudsman
- 1.2.1.9 Member states of the European Union
- 1.2.1.10 Institutions of the European Union
- 1.2.1.11 Religious authorities
- 1.2.2 Claim by a private body or individual
 - 1.2.2.1 Natural person
 - 1.2.2.2 Non-profit-making corporate body
 - 1.2.2.3 Profit-making corporate body
 - 1.2.2.4 Political parties
 - 1.2.2.5 Trade unions
- 1.2.3 Referral by a court¹²
- 1.2.4 Initiation *ex officio* by the body of constitutional jurisdiction
- 1.2.5 Obligatory review¹³
- 1.3 Jurisdiction
 - 1.3.1 Scope of review
 - 1.3.1.1 Extension¹⁴
 - 1.3.2 Type of review
 - 1.3.2.1 Preliminary review
 - 1.3.2.2 *Ex post facto* review
 - 1.3.2.3 Abstract review
 - 1.3.2.4 Concrete review
 - 1.3.3 Advisory powers
 - 1.3.4 Types of litigation
 - 1.3.4.1 Litigation in respect of fundamental rights and freedoms
 - 1.3.4.2 Distribution of powers between State authorities¹⁵
 - 1.3.4.3 Distribution of powers between central government and federal or regional entities¹⁶
 - 1.3.4.4 Powers of local authorities¹⁷
 - 1.3.4.5 Electoral disputes
 - 1.3.4.5.1 Presidential elections
 - 1.3.4.5.2 Parliamentary elections
 - 1.3.4.5.3 Regional elections
 - 1.3.4.5.4 Local elections
 - 1.3.4.5.5 Elections of officers in professional bodies
 - 1.3.4.5.6 Referenda and other consultations¹⁸
 - 1.3.4.6 Admissibility of referenda and other consultations¹⁹
 - 1.3.4.6.1 Referenda on the repeal of legislation
 - 1.3.4.7 Restrictive proceedings
 - 1.3.4.7.1 Banning of political parties
 - 1.3.4.7.2 Withdrawal of civil rights
 - 1.3.4.7.3 Removal from parliamentary office

¹² Referrals of preliminary questions in particular.

¹³ Enactment required by law to be reviewed by the Court.

¹⁴ Review *ultra petita*.

¹⁵ Horizontal distribution of powers.

¹⁶ Vertical distribution of powers, particularly in respect of states of a federal or regionalised nature.

¹⁷ Decentralised authorities (municipalities, provinces etc).

¹⁸ This keyword concerns decisions on the procedure and results of referenda and other consultations.

¹⁹ This keyword concerns decisions preceding the referendum including its admissibility.

- 1.3.4.7.4 Impeachment
- 1.3.4.8 Litigation in respect of jurisdictional conflict
- 1.3.4.9 Litigation in respect of the formal validity of enactments²⁰
- 1.3.4.10 Litigation in respect of the constitutionality of enactments
 - 1.3.4.10.1 Limits of the legislative competence
- 1.3.4.11 Litigation in respect of constitutional revision
- 1.3.4.12 Conflict of laws²¹
- 1.3.4.13 Universally binding interpretation of laws
- 1.3.4.14 Distribution of powers between Community and member states
- 1.3.4.15 Distribution of powers between institutions of the Community
- 1.3.5 The subject of review
 - 1.3.5.1 International treaties
 - 1.3.5.2 Community law
 - 1.3.5.2.1 Primary legislation
 - 1.3.5.2.2 Secondary legislation
 - 1.3.5.3 Constitution²²
 - 1.3.5.4 Quasi-constitutional legislation²³
 - 1.3.5.5 Laws and other rules having the force of law
 - 1.3.5.5.1 Laws and other rules in force before the entry into force of the Constitution
 - 1.3.5.6 Decrees of the Head of State
 - 1.3.5.7 Quasi-legislative regulations
 - 1.3.5.8 Rules issued by federal or regional entities
 - 1.3.5.9 Parliamentary rules
 - 1.3.5.10 Rules issued by the executive
 - 1.3.5.11 Acts issued by decentralised bodies
 - 1.3.5.11.1 Territorial decentralisation²⁴
 - 1.3.5.11.2 Sectoral decentralisation²⁵
 - 1.3.5.12 Court decisions
 - 1.3.5.13 Administrative acts
 - 1.3.5.14 Government acts²⁶
 - 1.3.5.15 Failure to act or to pass legislation²⁷
- 1.4 Procedure
 - 1.4.1 General characteristics
 - 1.4.2 Summary procedure
 - 1.4.3 Time-limits for instituting proceedings
 - 1.4.3.1 Ordinary time-limit
 - 1.4.3.2 Special time-limits
 - 1.4.3.3 Leave to appeal out of time
 - 1.4.4 Exhaustion of remedies
 - 1.4.5 Originating document
 - 1.4.5.1 Decision to act²⁸
 - 1.4.5.2 Signature

²⁰ Examination of procedural and formal aspects of laws and regulations, particularly in respect of the composition of parliaments, the validity of votes, the competence of law-making authorities etc (questions relating to the distribution of powers as between the State and federal or regional entities are the subject of another keyword 1.3.4.3).

²¹ As understood in private international law.

²² Including constitutional laws.

²³ For example organic laws.

²⁴ Local authorities, municipalities, provinces, departments etc.

²⁵ Or: functional decentralisation (public bodies exercising delegated powers).

²⁶ Political questions.

²⁷ Unconstitutionality by omission.

²⁸ For the withdrawal of proceedings, see also 1.4.10.4.

- 1.4.5.3 Formal requirements
- 1.4.5.4 Annexes
- 1.4.5.5 Service
- 1.4.6 Grounds
 - 1.4.6.1 Time-limits
 - 1.4.6.2 Form
 - 1.4.6.3 *Ex-officio* grounds
- 1.4.7 Documents lodged by the parties²⁹
 - 1.4.7.1 Time-limits
 - 1.4.7.2 Decision to lodge the document
 - 1.4.7.3 Signature
 - 1.4.7.4 Formal requirements
 - 1.4.7.5 Annexes
 - 1.4.7.6 Service
- 1.4.8 Preparation of the case for trial
 - 1.4.8.1 Registration
 - 1.4.8.2 Notifications and publication
 - 1.4.8.3 Time-limits
 - 1.4.8.4 Preliminary proceedings
 - 1.4.8.5 Opinions
 - 1.4.8.6 Reports
 - 1.4.8.7 Evidence
 - 1.4.8.7.1 Inquiries into the facts by the Court
 - 1.4.8.8 Decision that preparation is complete
- 1.4.9 Parties
 - 1.4.9.1 *Locus standi*³⁰
 - 1.4.9.2 Interest
 - 1.4.9.3 Representation
 - 1.4.9.3.1 The Bar
 - 1.4.9.3.2 Legal representation other than the Bar
 - 1.4.9.3.3 Representation by persons other than lawyers or jurists
 - 1.4.9.4 Persons or entities authorised to intervene in proceedings
- 1.4.10 Interlocutory proceedings
 - 1.4.10.1 Intervention
 - 1.4.10.2 Plea of forgery
 - 1.4.10.3 Resumption of proceedings after interruption
 - 1.4.10.4 Discontinuance of proceedings³¹
 - 1.4.10.5 Joinder of similar cases
 - 1.4.10.6 Challenging of a judge
 - 1.4.10.6.1 Automatic disqualification
 - 1.4.10.6.2 Challenge at the instance of a party
 - 1.4.10.7 Request for a preliminary ruling by the Court of Justice of the European Communities
- 1.4.11 Hearing
 - 1.4.11.1 Composition of the bench
 - 1.4.11.2 Procedure
 - 1.4.11.3 In public
 - 1.4.11.4 In camera
 - 1.4.11.5 Report
 - 1.4.11.6 Opinion
 - 1.4.11.7 Address by the parties

²⁹ Pleadings, final submissions, notes etc.

³⁰ May be used in combination with Chapter 1.2 Types of claim.

³¹ For the withdrawal of the originating document, see also 1.4.5.

- 1.4.12 Special procedures
- 1.4.13 Re-opening of hearing
- 1.4.14 Costs³²
 - 1.4.14.1 Waiver of court fees
 - 1.4.14.2 Legal aid or assistance
 - 1.4.14.3 Party costs
- 1.5 Decisions
 - 1.5.1 Deliberation
 - 1.5.1.1 Composition of the bench
 - 1.5.1.2 Chair
 - 1.5.1.3 Procedure
 - 1.5.1.3.1 Quorum
 - 1.5.1.3.2 Vote
 - 1.5.2 Reasoning
 - 1.5.3 Form
 - 1.5.4 Types
 - 1.5.4.1 Procedural decisions
 - 1.5.4.2 Opinion
 - 1.5.4.3 Finding of constitutionality or unconstitutionality³³
 - 1.5.4.4 Annulment
 - 1.5.4.4.1 Consequential annulment
 - 1.5.4.5 Suspension
 - 1.5.4.6 Modification
 - 1.5.4.7 Interim measures
 - 1.5.5 Individual opinions of members
 - 1.5.5.1 Concurring opinions
 - 1.5.5.2 Dissenting opinions
 - 1.5.6 Delivery and publication
 - 1.5.6.1 Delivery
 - 1.5.6.2 In open court
 - 1.5.6.3 In camera
 - 1.5.6.4 Publication
 - 1.5.6.4.1 Publication in the official journal/gazette
 - 1.5.6.4.2 Publication in an official collection
 - 1.5.6.4.3 Private publication
 - 1.5.6.5 Press
- 1.6 Effects
 - 1.6.1 Scope
 - 1.6.2 Determination of effects by the court
 - 1.6.3 Effect *erga omnes*
 - 1.6.3.1 *Stare decisis*
 - 1.6.4 Effect *inter partes*
 - 1.6.5 Temporal effect
 - 1.6.5.1 Entry into force of decision
 - 1.6.5.2 Retrospective effect (*ex tunc*)
 - 1.6.5.3 Limitation on retrospective effect
 - 1.6.5.4 *Ex nunc* effect
 - 1.6.5.5 Postponement of temporal effect
 - 1.6.6 Execution
 - 1.6.6.1 Body responsible for supervising execution

³² Comprises court fees, postage costs, advance of expenses and lawyers' fees.

³³ For questions of constitutionality dependent on a specified interpretation, use 2.3.2.

- 1.6.6.2 Penalty payment
- 1.6.7 Influence on State organs
- 1.6.8 Influence on everyday life
- 1.6.9 Consequences for other cases
 - 1.6.9.1 Ongoing cases
 - 1.6.9.2 Decided cases

2 SOURCES OF CONSTITUTIONAL LAW

2.1 Categories³⁴

2.1.1 Written rules

2.1.1.1 National rules

2.1.1.1.1 Constitution

2.1.1.1.2 Quasi-constitutional enactments³⁵

2.1.1.2 National rules from other countries

2.1.1.3 Community law

2.1.1.4 International instruments

2.1.1.4.1 United Nations Charter of 1945

2.1.1.4.2 Universal Declaration of Human Rights of 1948

2.1.1.4.3 European Convention on Human Rights of 1950³⁶

2.1.1.4.4 Geneva Convention on the Status of Refugees of 1951

2.1.1.4.5 European Social Charter of 1961

2.1.1.4.6 International Covenant on Civil and Political Rights of 1966

2.1.1.4.7 International Covenant on Economic, Social and Cultural Rights of 1966

2.1.1.4.8 Vienna Convention on the Law of Treaties of 1969

2.1.1.4.9 American Convention on Human Rights of 1969

2.1.1.4.10 African Charter on Human and Peoples' Rights of 1981

2.1.1.4.11 European Charter of Local Self-Government of 1985

2.1.1.4.12 Convention on the Rights of the Child of 1989

2.1.1.4.13 International conventions regulating diplomatic and consular relations

2.1.2 Unwritten rules

2.1.2.1 Constitutional custom

2.1.2.2 General principles of law

2.1.2.3 Natural law

2.1.3 Case-law

2.1.3.1 Domestic case-law

2.1.3.2 International case-law

2.1.3.2.1 European Court of Human Rights

2.1.3.2.2 Court of Justice of the European Communities

2.1.3.2.3 Other international bodies

2.1.3.3 Foreign case-law

2.2 Hierarchy

2.2.1 Hierarchy as between national and non-national sources

2.2.1.1 Treaties and constitutions

2.2.1.2 Treaties and legislative acts

2.2.1.3 Treaties and other domestic legal instruments

³⁴ Only for issues concerning applicability and not simple application.

³⁵ This keyword allows for the inclusion of enactments and principles arising from a separate constitutional chapter elaborated with reference to the original Constitution (declarations of rights, basic charters etc).

³⁶ Including its Protocols.

- 2.2.1.4 European Convention on Human Rights and constitutions
- 2.2.1.5 European Convention on Human Rights and non-constitutional domestic legal instruments
- 2.2.1.6 Community law and domestic law
 - 2.2.1.6.1 Primary Community legislation and constitutions
 - 2.2.1.6.2 Primary Community legislation and domestic non-constitutional legal instruments
 - 2.2.1.6.3 Secondary Community legislation and constitutions
 - 2.2.1.6.4 Secondary Community legislation and domestic non-constitutional instruments
- 2.2.2 Hierarchy as between national sources
 - 2.2.2.1 Hierarchy emerging from the Constitution
 - 2.2.2.1.1 Hierarchy attributed to rights and freedoms
 - 2.2.2.2 The Constitution and other sources of domestic law
- 2.2.3 Hierarchy between sources of Community law
- 2.3 Techniques of review
 - 2.3.1 Concept of manifest error in assessing evidence or exercising discretion
 - 2.3.2 Concept of constitutionality dependent on a specified interpretation³⁷
 - 2.3.3 Intention of the author of the enactment under review
 - 2.3.4 Interpretation by analogy
 - 2.3.5 Logical interpretation
 - 2.3.6 Historical interpretation
 - 2.3.7 Literal interpretation
 - 2.3.8 Systematic interpretation
 - 2.3.9 Teleological interpretation

3 GENERAL PRINCIPLES

- 3.1 Sovereignty
- 3.2 Republic/Monarchy
- 3.3 Democracy
 - 3.3.1 Representative democracy
 - 3.3.2 Direct democracy
 - 3.3.3 Pluralist democracy³⁸
- 3.4 Separation of powers
- 3.5 Social State³⁹
- 3.6 Structure of the State⁴⁰
 - 3.6.1 Unitary State
 - 3.6.2 Regional State
 - 3.6.3 Federal State
- 3.7 Relations between the State and bodies of a religious or ideological nature⁴¹
- 3.8 Territorial principles
 - 3.8.1 Indivisibility of the territory

³⁷ Presumption of constitutionality, double construction rule.

³⁸ Including the principle of a multi-party system.

³⁹ Includes the principle of social justice.

⁴⁰ See also 4.8.

⁴¹ Separation of Church and State, State subsidisation and recognition of churches, secular nature etc.

- 3.9 Rule of law
- 3.10 Certainty of the law⁴²
- 3.11 Vested and/or acquired rights
- 3.12 Clarity and precision of legal provisions
- 3.13 Legality⁴³
- 3.14 *Nullum crimen, nulla poena sine lege*⁴⁴
- 3.15 Publication of laws
 - 3.15.1 Ignorance of the law is no excuse
 - 3.15.2 Linguistic aspects
- 3.16 Proportionality
- 3.17 Weighing of interests
- 3.18 General interest⁴⁵
- 3.19 Margin of appreciation
- 3.20 Reasonableness
- 3.21 Equality⁴⁶
- 3.22 Prohibition of arbitrariness
- 3.23 Equity
- 3.24 Loyalty to the State⁴⁷
- 3.25 Market economy⁴⁸
- 3.26 Principles of Community law
 - 3.26.1 Fundamental principles of the Common Market
 - 3.26.2 Direct effect⁴⁹
 - 3.26.3 Genuine co-operation between the institutions and the member states

4 INSTITUTIONS

- 4.1 Constituent assembly or equivalent body⁵⁰
 - 4.1.1 Procedure
 - 4.1.2 Limitations on powers
- 4.2 State Symbols
 - 4.2.1 Flag
 - 4.2.2 National holiday
 - 4.2.3 National anthem
 - 4.2.4 National emblem
 - 4.2.5 Motto

⁴² Including maintaining confidence and legitimate expectations.

⁴³ Principle according to which sub-statutory acts must be based on and in conformity with the law.

⁴⁴ Prohibition of punishment without proper legal base.

⁴⁵ Including compelling public interest.

⁴⁶ Only where not applied as a fundamental right.

⁴⁷ Including questions of treason/high crimes.

⁴⁸ Including prohibition on monopolies.

⁴⁹ For the principle of primacy of Community law, see 2.2.1.6.

⁵⁰ Including the body responsible for revising or amending the Constitution.

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- 4.2.6 Capital city
 - 4.3 Languages
 - 4.3.1 Official language(s)
 - 4.3.2 National language(s)
 - 4.3.3 Regional language(s)
 - 4.3.4 Minority language(s)
 - 4.4 Head of State
 - 4.4.1 Powers
 - 4.4.1.1 Relations with legislative bodies⁵¹
 - 4.4.1.2 Relations with the executive powers⁵²
 - 4.4.1.3 Relations with judicial bodies⁵³
 - 4.4.1.4 Promulgation of laws
 - 4.4.1.5 International relations
 - 4.4.1.6 Powers with respect to the armed forces
 - 4.4.1.7 Mediating powers
 - 4.4.2 Appointment
 - 4.4.2.1 Necessary qualifications
 - 4.4.2.2 Incompatibilities
 - 4.4.2.3 Direct election
 - 4.4.2.4 Indirect election
 - 4.4.2.5 Hereditary succession
 - 4.4.3 Term of office
 - 4.4.3.1 Commencement of office
 - 4.4.3.2 Duration of office
 - 4.4.3.3 Incapacity
 - 4.4.3.4 End of office
 - 4.4.3.5 Limit on number of successive terms
 - 4.4.4 Status
 - 4.4.4.1 Liability
 - 4.4.4.1.1 Legal liability
 - 4.4.4.1.1.1 Immunity
 - 4.4.4.1.1.2 Civil liability
 - 4.4.4.1.1.3 Criminal liability
 - 4.4.4.1.2 Political responsibility
 - 4.5 Legislative bodies
 - 4.5.1 Structure⁵⁴
 - 4.5.2 Powers⁵⁵
 - 4.5.2.1 Competences with respect to international agreements
 - 4.5.2.2 Powers of enquiry⁵⁶
 - 4.5.2.3 Delegation to another legislative body⁵⁷
 - 4.5.2.4 Negative incompetence⁵⁸
 - 4.5.3 Composition
 - 4.5.3.1 Election of members
 - 4.5.3.2 Appointment of members

⁵¹ For example presidential messages, requests for further debating of a law, right of legislative veto, dissolution.

⁵² For example nomination of members of the government, chairing of Cabinet sessions, countersigning.

⁵³ For example the granting of pardons.

⁵⁴ Bicameral, monocameral, special competence of each assembly, etc.

⁵⁵ Including specialised powers of each legislative body and reserved powers of the legislature.

⁵⁶ In particular commissions of enquiry.

⁵⁷ For delegation of powers to an executive body, see keyword 4.6.3.2.

⁵⁸ Obligation on the legislative body to use the full scope of its powers.

- 4.5.3.3 Term of office of the legislative body
 - 4.5.3.3.1 Duration
 - 4.5.3.4 Term of office of members
 - 4.5.3.4.1 Characteristics⁵⁹
 - 4.5.3.4.2 Duration
 - 4.5.3.4.3 End
 - 4.5.4 Organisation⁶⁰
 - 4.5.4.1 Rules of procedure
 - 4.5.4.2 President/Speaker
 - 4.5.4.3 Sessions⁶¹
 - 4.5.4.4 Committees⁶²
 - 4.5.5 Finances⁶³
 - 4.5.6 Law-making procedure⁶⁴
 - 4.5.6.1 Right to initiate legislation
 - 4.5.6.2 Quorum
 - 4.5.6.3 Majority required
 - 4.5.6.4 Right of amendment
 - 4.5.6.5 Relations between houses
 - 4.5.7 Relations with the executive bodies
 - 4.5.7.1 Questions to the government
 - 4.5.7.2 Questions of confidence
 - 4.5.7.3 Motion of censure
 - 4.5.8 Relations with judicial bodies
 - 4.5.9 Liability
 - 4.5.10 Political parties
 - 4.5.10.1 Creation
 - 4.5.10.2 Financing
 - 4.5.10.3 Role
 - 4.5.10.4 Prohibition
 - 4.5.11 Status of members of legislative bodies⁶⁵
- 4.6 Executive bodies⁶⁶
 - 4.6.1 Hierarchy
 - 4.6.2 Powers
 - 4.6.3 Application of laws
 - 4.6.3.1 Autonomous rule-making powers⁶⁷
 - 4.6.3.2 Delegated rule-making powers
 - 4.6.4 Composition
 - 4.6.4.1 Appointment of members
 - 4.6.4.2 Election of members
 - 4.6.4.3 End of office of members
 - 4.6.4.4 Status of members of executive bodies
 - 4.6.5 Organisation
 - 4.6.6 Relations with judicial bodies

⁵⁹ Representative/imperative mandates.

⁶⁰ Presidency, bureau, sections, committees etc.

⁶¹ Including the convening, duration, publicity and agenda of sessions.

⁶² Including their creation, composition and terms of reference.

⁶³ State budgetary contribution, other sources etc.

⁶⁴ For the publication of laws, see 3.15.

⁶⁵ For example incompatibilities arising during the term of office, parliamentary immunity, exemption from prosecution and others. For questions of eligibility see 4.9.5.

⁶⁶ For local authorities see 4.8.

⁶⁷ Derived directly from the constitution.

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- 4.6.7 Administrative decentralisation⁶⁸
 - 4.6.8 Sectoral decentralisation⁶⁹
 - 4.6.8.1 Universities
 - 4.6.9 The civil service⁷⁰
 - 4.6.9.1 Conditions of access
 - 4.6.9.2 Reasons for exclusion
 - 4.6.9.2.1 Lustration⁷¹
 - 4.6.9.3 Remuneration
 - 4.6.9.4 Personal liability
 - 4.6.9.5 Trade union status
 - 4.6.10 Liability
 - 4.6.10.1 Legal liability
 - 4.6.10.1.1 Immunity
 - 4.6.10.1.2 Civil liability
 - 4.6.10.1.3 Criminal liability
 - 4.6.10.2 Political responsibility
 - 4.7 Judicial bodies⁷²
 - 4.7.1 Jurisdiction
 - 4.7.1.1 Exclusive jurisdiction
 - 4.7.1.2 Universal jurisdiction
 - 4.7.1.3 Conflicts of jurisdiction⁷³
 - 4.7.2 Procedure
 - 4.7.3 Decisions
 - 4.7.4 Organisation
 - 4.7.4.1 Members
 - 4.7.4.1.1 Qualifications
 - 4.7.4.1.2 Appointment
 - 4.7.4.1.3 Election
 - 4.7.4.1.4 Term of office
 - 4.7.4.1.5 End of office
 - 4.7.4.1.6 Status
 - 4.7.4.1.6.1 Incompatibilities
 - 4.7.4.1.6.2 Discipline
 - 4.7.4.1.6.3 Irremovability
 - 4.7.4.2 Officers of the court
 - 4.7.4.3 Prosecutors / State counsel⁷⁴
 - 4.7.4.3.1 Powers
 - 4.7.4.3.2 Appointment
 - 4.7.4.3.3 Election
 - 4.7.4.3.4 Term of office
 - 4.7.4.3.5 End of office

⁶⁸ See also 4.8.

⁶⁹ The vesting of administrative competence in public law bodies having their own independent organisational structure, independent of public authorities, but controlled by them. For other administrative bodies, see also 4.6.7 and 4.13.

⁷⁰ Civil servants, administrators etc.

⁷¹ Practice aiming at removing from civil service persons formerly involved with a totalitarian regime.

⁷² Other than the body delivering the decision summarised here.

⁷³ Positive and negative conflicts.

⁷⁴ Notwithstanding the question to which to branch of state power the prosecutor belongs.

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- 4.7.4.3.6 Status
 - 4.7.4.4 Languages
 - 4.7.4.5 Registry
 - 4.7.4.6 Budget
 - 4.7.5 Supreme Judicial Council or equivalent body⁷⁵
 - 4.7.6 Relations with bodies of international jurisdiction
 - 4.7.7 Supreme court
 - 4.7.8 Ordinary courts
 - 4.7.8.1 Civil courts
 - 4.7.8.2 Criminal courts
 - 4.7.9 Administrative courts
 - 4.7.10 Financial courts⁷⁶
 - 4.7.11 Military courts
 - 4.7.12 Special courts
 - 4.7.13 Other courts
 - 4.7.14 Arbitration
 - 4.7.15 Legal assistance and representation of parties
 - 4.7.15.1 The Bar
 - 4.7.15.1.1 Organisation
 - 4.7.15.1.2 Powers of ruling bodies
 - 4.7.15.1.3 Role of members of the Bar
 - 4.7.15.1.4 Status of members of the Bar
 - 4.7.15.1.5 Discipline
 - 4.7.15.2 Assistance other than by the Bar
 - 4.7.15.2.1 Legal advisers
 - 4.7.15.2.2 Legal assistance bodies
 - 4.7.16 Liability
 - 4.7.16.1 Liability of the State
 - 4.7.16.2 Liability of judges
 - 4.8 Federalism, regionalism and local self-government
 - 4.8.1 Federal entities⁷⁷
 - 4.8.2 Regions and provinces
 - 4.8.3 Municipalities⁷⁸
 - 4.8.4 Basic principles
 - 4.8.4.1 Autonomy
 - 4.8.4.2 Subsidiarity
 - 4.8.5 Definition of geographical boundaries
 - 4.8.6 Institutional aspects
 - 4.8.6.1 Deliberative assembly
 - 4.8.6.1.1 Status of members
 - 4.8.6.2 Executive
 - 4.8.6.3 Courts
 - 4.8.7 Budgetary and financial aspects
 - 4.8.7.1 Finance
 - 4.8.7.2 Arrangements for distributing the financial resources of the State
 - 4.8.7.3 Budget
 - 4.8.7.4 Mutual support arrangements

⁷⁵ For example, Judicial Service Commission, *Conseil supérieur de la magistrature*.

⁷⁶ Comprises the Court of Auditors in so far as it exercises judicial power.

⁷⁷ See also 3.6.

⁷⁸ And other units of local self-government.

- 4.8.8 Distribution of powers
 - 4.8.8.1 Principles and methods
 - 4.8.8.2 Implementation
 - 4.8.8.2.1 Distribution *ratione materiae*
 - 4.8.8.2.2 Distribution *ratione loci*
 - 4.8.8.2.3 Distribution *ratione temporis*
 - 4.8.8.2.4 Distribution *ratione personae*
 - 4.8.8.3 Supervision
 - 4.8.8.4 Co-operation
 - 4.8.8.5 International relations
 - 4.8.8.5.1 Conclusion of treaties
 - 4.8.8.5.2 Participation in international organisations or their organs
- 4.9 Elections and instruments of direct democracy⁷⁹
 - 4.9.1 Electoral Commission⁸⁰
 - 4.9.2 Referenda and other instruments of direct democracy
 - 4.9.3 Electoral system⁸¹
 - 4.9.4 Constituencies
 - 4.9.5 Eligibility⁸²
 - 4.9.6 Representation of minorities
 - 4.9.7 Preliminary procedures
 - 4.9.7.1 Electoral rolls
 - 4.9.7.2 Voter registration card
 - 4.9.7.3 Registration of parties and candidates⁸³
 - 4.9.7.4 Ballot papers⁸⁴
 - 4.9.8 Electoral campaign and campaign material⁸⁵
 - 4.9.8.1 Financing
 - 4.9.8.2 Campaign expenses
 - 4.9.8.3 Protection of party logos
 - 4.9.9 Voting procedures
 - 4.9.9.1 Polling stations
 - 4.9.9.2 Polling booths
 - 4.9.9.3 Voting⁸⁶
 - 4.9.9.4 Identity checks on voters
 - 4.9.9.5 Record of persons having voted⁸⁷
 - 4.9.9.6 Casting of votes⁸⁸
 - 4.9.9.7 Method of voting⁸⁹
 - 4.9.9.8 Counting of votes
 - 4.9.9.9 Electoral reports
 - 4.9.9.10 Minimum participation rate required
 - 4.9.9.11 Announcement of results

⁷⁹ See also keywords 5.3.41 and 5.2.1.4.

⁸⁰ Organs of control and supervision.

⁸¹ Proportional, majority, preferential, single-member constituencies, etc.

⁸² For aspects related to fundamental rights, see 5.3.41.2.

⁸³ For the creation of political parties, see 4.5.10.1.

⁸⁴ E.g. Names of parties, order of presentation, logo, emblem or question in a referendum.

⁸⁵ Tracts, letters, press, radio and television, posters, nominations etc.

⁸⁶ Impartiality of electoral authorities, incidents, disturbances.

⁸⁷ E.g. signatures on electoral rolls, stamps, crossing out of names on list.

⁸⁸ E.g. in person, proxy vote, postal vote, electronic vote.

⁸⁹ E.g. *Panachage*, voting for whole list or part of list, blank votes.

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- 4.10 Public finances
 - 4.10.1 Principles
 - 4.10.2 Budget
 - 4.10.3 Accounts
 - 4.10.4 Currency
 - 4.10.5 Central bank
 - 4.10.6 Auditing bodies⁹⁰
 - 4.10.7 Taxation
 - 4.10.7.1 Principles
 - 4.10.8 State assets
 - 4.10.8.1 Privatisation
 - 4.11 Armed forces, police forces and secret services
 - 4.11.1 Armed forces
 - 4.11.2 Police forces
 - 4.11.3 Secret services
 - 4.12 Ombudsman⁹¹
 - 4.12.1 Appointment
 - 4.12.2 Guarantees of independence
 - 4.12.2.1 Term of office
 - 4.12.2.2 Incompatibilities
 - 4.12.2.3 Immunities
 - 4.12.2.4 Financial independence
 - 4.12.3 Powers
 - 4.12.4 Organisation
 - 4.12.5 Relations with the Head of State
 - 4.12.6 Relations with the legislature
 - 4.12.7 Relations with the executive
 - 4.12.8 Relations with auditing bodies⁹²
 - 4.12.9 Relations with judicial bodies
 - 4.12.10 Relations with federal or regional authorities
 - 4.13 Independent administrative authorities⁹³
 - 4.14 Activities and duties assigned to the State by the Constitution⁹⁴
 - 4.15 Exercise of public functions by private bodies
 - 4.16 International relations
 - 4.16.1 Transfer of powers to international institutions
 - 4.17 European Union
 - 4.17.1 Institutional structure
 - 4.17.1.1 European Parliament
 - 4.17.1.2 Council
 - 4.17.1.3 Commission
 - 4.17.1.4 Court of Justice of the European Communities⁹⁵

⁹⁰ E.g. Auditor-General.

⁹¹ Parliamentary Commissioner, Public Defender, Human Rights Commission etc.

⁹² E.g. Court of Auditors.

⁹³ The vesting of administrative competence in public law bodies situated outside the traditional administrative hierarchy. See also 4.6.8.

⁹⁴ *Staatszielbestimmungen*.

⁹⁵ Institutional aspects only: questions of procedure, jurisdiction, composition etc are dealt with under the keywords of Chapter 1.

- 4.17.2 Distribution of powers between Community and member states
- 4.17.3 Distribution of powers between institutions of the Community
- 4.17.4 Legislative procedure

4.18 State of emergency and emergency powers⁹⁶

5 FUNDAMENTAL RIGHTS⁹⁷

5.1 General questions

5.1.1 Entitlement to rights

5.1.1.1 Nationals

5.1.1.1.1 Nationals living abroad

5.1.1.2 Citizens of the European Union and non-citizens with similar status

5.1.1.3 Foreigners

5.1.1.3.1 Refugees and applicants for refugee status

5.1.1.4 Natural persons

5.1.1.4.1 Minors⁹⁸

5.1.1.4.2 Incapacitated

5.1.1.4.3 Prisoners

5.1.1.4.4 Military personnel

5.1.1.5 Legal persons

5.1.1.5.1 Private law

5.1.1.5.2 Public law

5.1.2 Effects

5.1.2.1 Vertical effects

5.1.2.2 Horizontal effects⁹⁹

5.1.3 Limits and restrictions¹⁰⁰

5.1.3.1 Non-derogable rights

5.1.3.2 General/special clause of limitation

5.1.3.3 Subsequent review of limitation

5.1.4 Emergency situations¹⁰¹

5.2 Equality

5.2.1 Scope of application

5.2.1.1 Public burdens¹⁰²

5.2.1.2 Employment

5.2.1.2.1 In private law

5.2.1.2.2 In public law

5.2.1.3 Social security

5.2.1.4 Elections

5.2.2 Criteria of distinction

5.2.2.1 Gender

5.2.2.2 Race

5.2.2.3 National or ethnic origin¹⁰³

5.2.2.4 Citizenship or nationality

5.2.2.5 Social origin

5.2.2.6 Religion

⁹⁶ Including state of war, martial law, declared natural disasters etc; for human rights aspects, see also keyword 5.1.3.1.

⁹⁷ Positive and negative aspects.

⁹⁸ For rights of the child, see 5.3.44.

⁹⁹ The question of “*Drittwirkung*”.

¹⁰⁰ The criteria of the limitation of human rights (legality, legitimate purpose/general interest, proportionality) are indexed in chapter 3.

¹⁰¹ Includes questions of the suspension of rights. See also 4.18.

¹⁰² Taxes and other duties towards the state.

¹⁰³ Here, the term “national” is used to designate ethnic origin.

- 5.2.2.7 Age
- 5.2.2.8 Physical or mental disability
- 5.2.2.9 Political opinions or affiliation
- 5.2.2.10 Language
- 5.2.2.11 Sexual orientation
- 5.2.2.12 Civil status¹⁰⁴
- 5.2.3 Affirmative action
- 5.3 Civil and political rights
 - 5.3.1 Right to dignity
 - 5.3.2 Right to life
 - 5.3.3 Prohibition of torture and inhuman and degrading treatment
 - 5.3.4 Right to physical and psychological integrity
 - 5.3.4.1 Scientific and medical treatment and experiments
 - 5.3.5 Individual liberty¹⁰⁵
 - 5.3.5.1 Deprivation of liberty
 - 5.3.5.1.1 Arrest¹⁰⁶
 - 5.3.5.1.2 Non-penal measures
 - 5.3.5.1.3 Detention pending trial
 - 5.3.5.1.4 Conditional release
 - 5.3.5.2 Prohibition of forced or compulsory labour
 - 5.3.6 Freedom of movement¹⁰⁷
 - 5.3.7 Right to emigrate
 - 5.3.8 Right to citizenship or nationality
 - 5.3.9 Right of residence¹⁰⁸
 - 5.3.10 Rights of domicile and establishment
 - 5.3.11 Right of asylum
 - 5.3.12 Security of the person
 - 5.3.13 Procedural safeguards, rights of the defence and fair trial
 - 5.3.13.1 Scope
 - 5.3.13.1.1 Constitutional proceedings
 - 5.3.13.1.2 Civil proceedings
 - 5.3.13.1.3 Criminal proceedings
 - 5.3.13.1.4 Litigious administrative proceedings
 - 5.3.13.1.5 Non-litigious administrative proceedings
 - 5.3.13.2 Effective remedy
 - 5.3.13.3 Access to courts¹⁰⁹
 - 5.3.13.3.1 *Habeas corpus*
 - 5.3.13.4 Double degree of jurisdiction¹¹⁰
 - 5.3.13.5 Suspensive effect of appeal
 - 5.3.13.6 Right to a hearing
 - 5.3.13.7 Right to participate in the administration of justice¹¹¹
 - 5.3.13.8 Right of access to the file

¹⁰⁴ For example, discrimination between married and single persons.

¹⁰⁵ This keyword also covers "Personal liberty" It includes for example identity checking, personal search and administrative arrest.

¹⁰⁶ Detention by police.

¹⁰⁷ Including questions related to the granting of passports or other travel documents.

¹⁰⁸ May include questions of expulsion and extradition.

¹⁰⁹ Including the right of access to a tribunal established by law; for questions related to the establishment of extraordinary courts, see also keyword 4.7.12.

¹¹⁰ This keyword covers the right of appeal to a court.

¹¹¹ Including the right to be present at hearing.

- 5.3.13.9 Public hearings
- 5.3.13.10 Trial by jury
- 5.3.13.11 Public judgments
- 5.3.13.12 Right to be informed about the decision
- 5.3.13.13 Trial/decision within reasonable time
- 5.3.13.14 Independence¹¹²
- 5.3.13.15 Impartiality
- 5.3.13.16 Prohibition of *reformatio in peius*
- 5.3.13.17 Rules of evidence
- 5.3.13.18 Reasoning
- 5.3.13.19 Equality of arms
- 5.3.13.20 Adversarial principle
- 5.3.13.21 Languages
- 5.3.13.22 Presumption of innocence
- 5.3.13.23 Right to remain silent
 - 5.3.13.23.1 Right not to incriminate oneself
 - 5.3.13.23.2 Right not to testify against spouse/close family
- 5.3.13.24 Right to be informed about the reasons of detention
- 5.3.13.25 Right to be informed about the charges
- 5.3.13.26 Right to have adequate time and facilities for the preparation of the case
- 5.3.13.27 Right to counsel
 - 5.3.13.27.1 Right to paid legal assistance
- 5.3.13.28 Right to examine witnesses
- 5.3.14 *Ne bis in idem*
- 5.3.15 Rights of victims of crime
- 5.3.16 Principle of the application of the more lenient law
- 5.3.17 Right to compensation for damage caused by the State
- 5.3.18 Freedom of conscience¹¹³
- 5.3.19 Freedom of opinion
- 5.3.20 Freedom of worship
- 5.3.21 Freedom of expression¹¹⁴
- 5.3.22 Freedom of the written press
- 5.3.23 Rights in respect of the audiovisual media and other means of mass communication
- 5.3.24 Right to information
- 5.3.25 Right to administrative transparency
 - 5.3.25.1 Right of access to administrative documents
- 5.3.26 National service¹¹⁵
- 5.3.27 Freedom of association
- 5.3.28 Freedom of assembly
- 5.3.29 Right to participate in public affairs
 - 5.3.29.1 Right to participate in political activity
- 5.3.30 Right of resistance
- 5.3.31 Right to respect for one's honour and reputation
- 5.3.32 Right to private life
 - 5.3.32.1 Protection of personal data
- 5.3.33 Right to family life¹¹⁶
 - 5.3.33.1 Descent

¹¹² Including challenging of a judge.

¹¹³ Covers freedom of religion as an individual right. Its collective aspects are included under the keyword "Freedom of worship" below.

¹¹⁴ This keyword also includes the right to freely communicate information.

¹¹⁵ Militia, conscientious objection etc.

¹¹⁶ Aspects of the use of names are included either here or under "Right to private life".

- 5.3.33.2 Succession
- 5.3.34 Right to marriage
- 5.3.35 Inviolability of the home
- 5.3.36 Inviolability of communications
 - 5.3.36.1 Correspondence
 - 5.3.36.2 Telephonic communications
 - 5.3.36.3 Electronic communications
- 5.3.37 Right of petition
- 5.3.38 Non-retrospective effect of law
 - 5.3.38.1 Criminal law
 - 5.3.38.2 Civil law
 - 5.3.38.3 Social law
 - 5.3.38.4 Taxation law
- 5.3.39 Right to property¹¹⁷
 - 5.3.39.1 Expropriation
 - 5.3.39.2 Nationalisation
 - 5.3.39.3 Other limitations
 - 5.3.39.4 Privatisation
- 5.3.40 Linguistic freedom
- 5.3.41 Electoral rights
 - 5.3.41.1 Right to vote
 - 5.3.41.2 Right to stand for election¹¹⁸
 - 5.3.41.3 Freedom of voting
 - 5.3.41.4 Secret ballot
- 5.3.42 Rights in respect of taxation
- 5.3.43 Right to self fulfilment
- 5.3.44 Rights of the child
- 5.3.45 Protection of minorities and persons belonging to minorities

5.4 Economic, social and cultural rights

- 5.4.1 Freedom to teach
- 5.4.2 Right to education
- 5.4.3 Right to work
- 5.4.4 Freedom to choose one's profession¹¹⁹
- 5.4.5 Freedom to work for remuneration
- 5.4.6 Commercial and industrial freedom
- 5.4.7 Consumer protection
- 5.4.8 Freedom of contract
- 5.4.9 Right of access to the public service
- 5.4.10 Right to strike
- 5.4.11 Freedom of trade unions¹²⁰
- 5.4.12 Right to intellectual property
- 5.4.13 Right to housing
- 5.4.14 Right to social security
- 5.4.15 Right to unemployment benefits
- 5.4.16 Right to a pension
- 5.4.17 Right to just and decent working conditions
- 5.4.18 Right to a sufficient standard of living

¹¹⁷ Including compensation issues.

¹¹⁸ For institutional aspects, see 4.9.5.

¹¹⁹ This keyword also covers "Freedom of work".

¹²⁰ Includes rights of the individual with respect to trade unions, rights of trade unions and the right to conclude collective labour agreements.

- 5.4.19 Right to health
- 5.4.20 Right to culture
- 5.4.21 Scientific freedom
- 5.4.22 Artistic freedom

5.5 Collective rights

- 5.5.1 Right to the environment
- 5.5.2 Right to development
- 5.5.3 Right to peace
- 5.5.4 Right to self-determination
- 5.5.5 Rights of aboriginal peoples, ancestral rights