



Strasbourg, 12 December 2014

**CDL-JU(2014)019cor**  
Or. Engl./Fr.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**SYSTEMATIC THESAURUS**  
**VERSION 22**

**Applicable as of Bulletin 2014/3**

The Systematic Thesaurus is a system of classification in the field of constitutional law, which is used to index decisions of constitutional courts and equivalent bodies (in the *Bulletin on Constitutional Case-Law* and the database CODICES) as well as individual articles of constitutions and laws on the courts (in the database CODICES). The Systematic Thesaurus has been developed by the Venice Commission and the liaison officers appointed by the courts and is regularly updated by the Joint Council on Constitutional Justice.

The Thesaurus is made up of five chapters displayed in an arborescent structure.

**Chapter 1 of the Thesaurus** is the longest of the five chapters and covers the body of constitutional jurisdiction on which the decision is indexed (Constitutional Court, Supreme Court, Constitutional Council etc.). This Chapter should be used sparingly, as the keywords therein should only be used if a relevant procedural question is discussed by the Court. This Chapter is therefore not to be used to establish statistical data; rather, the *Bulletin* reader or user of the CODICES database should only look for decisions in this Chapter when the subject of the keyword is an issue in the case. For this reason the indexing of decisions should be done 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 are found in 1.4. Questions of procedural guarantees before lower instance courts are found in Chapter 5.3.13 of the Thesaurus. If the type of decision to be made 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 appears in 3.21. It should be noted, however, that this keyword should only be used when the principle of equality is not applied to individuals, but to institutions (e.g. municipalities). 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 (5.1.1) and limitations on fundamental rights (5.1.4). Chapter 5.2 covers the principle of equality applied to individuals. Chapter 5.5 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.

## Indexing

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*.

## 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**

...  
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 elements. 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, you should not 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 inserts 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 V21".

**Examples of keyword chains****I. Wrong (shortcut of keyword chain):**

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

**Correct:**

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

**II. Wrong (joinder of two keyword chains):**

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

**Correct:**

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

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

**III. Wrong (invention of keyword):**

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

**Correct:**

5.3.31 **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.

- 1 **Constitutional Justice<sup>1</sup>**
- 1.1 **Constitutional jurisdiction<sup>2</sup>**
  - 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 Court<sup>3</sup>
    - 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 Necessary qualifications<sup>4</sup>
    - 1.1.2.2 Number of members
    - 1.1.2.3 Appointing authority
    - 1.1.2.4 Appointment of members<sup>5</sup>
    - 1.1.2.5 Appointment of the President<sup>6</sup>
    - 1.1.2.6 Functions of the President / Vice-President
    - 1.1.2.7 Subdivision into chambers or sections
    - 1.1.2.8 Relative position of members<sup>7</sup>
    - 1.1.2.9 Persons responsible for preparing cases for hearing<sup>8</sup>
    - 1.1.2.10 Staff<sup>9</sup>
      - 1.1.2.10.1 Functions of the Secretary General / Registrar
      - 1.1.2.10.2 Legal Advisers
  - 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 Irremovability
    - 1.1.3.7 Remuneration
    - 1.1.3.8 Non-disciplinary suspension of functions
    - 1.1.3.9 End of office
    - 1.1.3.10 Members having a particular status<sup>10</sup>
    - 1.1.3.11 Status of staff<sup>11</sup>
  - 1.1.4 Relations with other institutions
    - 1.1.4.1 Head of State<sup>12</sup>

<sup>1</sup> This chapter – as the Systematic Thesaurus in general – should be used sparingly, as the keywords therein should only be used if a relevant procedural question is discussed by the Court. This chapter is therefore not used to establish statistical data; rather, the Bulletin reader or user of the CODICES database should only look for decisions in this chapter, the subject of which is also the keyword.

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

<sup>3</sup> For example, rules of procedure.

<sup>4</sup> For example, age, education, experience, seniority, moral character, citizenship.

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

<sup>6</sup> Including the conditions and manner of such appointment (election, nomination, etc.).

<sup>7</sup> Vice-presidents, presidents of chambers or of sections, etc.

<sup>8</sup> For example, State Counsel, prosecutors, etc.

<sup>9</sup> (Deputy) Registrars, Secretaries General, legal advisers, assistants, researchers, etc.

<sup>10</sup> For example, assessors, office members.

<sup>11</sup> (Deputy) Registrars, Secretaries General, legal advisers, assistants, researchers, etc.

<sup>12</sup> Including questions on the interim exercise of the functions of the Head of State.

- 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
  - 1.2.1.2 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 court<sup>13</sup>
- 1.2.4 Initiation ex officio by the body of constitutional jurisdiction
- 1.2.5 Obligatory review<sup>14</sup>

## 1.3 Jurisdiction

- 1.3.1 Scope of review
  - 1.3.1.1 Extension<sup>15</sup>
- 1.3.2 Type of review
  - 1.3.2.1 Preliminary / *ex post facto* review
  - 1.3.2.2 Abstract / 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 authorities<sup>16</sup>
  - 1.3.4.3 Distribution of powers between central government and federal or regional entities<sup>17</sup>
  - 1.3.4.4 Powers of local authorities<sup>18</sup>
  - 1.3.4.5 Electoral disputes<sup>19</sup>
  - 1.3.4.6 Litigation in respect of referendums and other instruments of direct democracy<sup>20</sup>
    - 1.3.4.6.1 Admissibility
    - 1.3.4.6.2 Other litigation
  - 1.3.4.7 Restrictive proceedings
    - 1.3.4.7.1 Banning of political parties

<sup>13</sup> Referrals of preliminary questions in particular.

<sup>14</sup> Enactment required by law to be reviewed by the Court.

<sup>15</sup> Review *ultra petita*.

<sup>16</sup> Horizontal distribution of powers.

<sup>17</sup> Vertical distribution of powers, particularly in respect of states of a federal or regionalised nature.

<sup>18</sup> Decentralised authorities (municipalities, provinces, etc.).

<sup>19</sup> For questions other than jurisdiction, see 4.9.

<sup>20</sup> Including other consultations. For questions other than jurisdiction, see 4.9.

- 1.3.4.7.2 Withdrawal of civil rights
- 1.3.4.7.3 Removal from parliamentary office
- 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 enactments<sup>21</sup>
- 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 laws<sup>22</sup>
- 1.3.4.13 Universally binding interpretation of laws
- 1.3.4.14 Distribution of powers between the EU and member states
- 1.3.4.15 Distribution of powers between institutions of the EU
- 1.3.5 The subject of review
  - 1.3.5.1 International treaties
  - 1.3.5.2 Law of the European Union/EU Law
    - 1.3.5.2.1 Primary legislation
    - 1.3.5.2.2 Secondary legislation
  - 1.3.5.3 Constitution<sup>23</sup>
  - 1.3.5.4 Quasi-constitutional legislation<sup>24</sup>
  - 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 decentralisation<sup>25</sup>
    - 1.3.5.11.2 Sectoral decentralisation<sup>26</sup>
  - 1.3.5.12 Court decisions
  - 1.3.5.13 Administrative acts
  - 1.3.5.14 Government acts<sup>27</sup>
  - 1.3.5.15 Failure to act or to pass legislation<sup>28</sup>

#### 1.4 Procedure

- 1.4.1 General characteristics<sup>29</sup>
- 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
  - 1.4.4.1 Obligation to raise constitutional issues before ordinary courts

<sup>21</sup> 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).

<sup>22</sup> As understood in private international law.

<sup>23</sup> Including constitutional laws.

<sup>24</sup> For example, organic laws.

<sup>25</sup> Local authorities, municipalities, provinces, departments, etc.

<sup>26</sup> Or: functional decentralisation (public bodies exercising delegated powers).

<sup>27</sup> Political questions.

<sup>28</sup> Unconstitutionality by omission.

<sup>29</sup> Including language issues relating to procedure, deliberations, decisions, etc.

- 1.4.5 Originating document
  - 1.4.5.1 Decision to act<sup>30</sup>
  - 1.4.5.2 Signature
  - 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 parties<sup>31</sup>
  - 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*<sup>32</sup>
  - 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 proceedings<sup>33</sup>
  - 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 EU
- 1.4.11 Hearing
  - 1.4.11.1 Composition of the bench
  - 1.4.11.2 Procedure
  - 1.4.11.3 In public / in camera
  - 1.4.11.4 Report

<sup>30</sup> For the withdrawal of proceedings, see also 1.4.10.4.

<sup>31</sup> Pleadings, final submissions, notes, etc.

<sup>32</sup> May be used in combination with Chapter 1.2. Types of claim.

<sup>33</sup> For the withdrawal of the originating document, see also 1.4.5.

- 1.4.11.5 Opinion
- 1.4.11.6 Address by the parties
- 1.4.12 Special procedures
- 1.4.13 Re-opening of hearing
- 1.4.14 Costs<sup>34</sup>
  - 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 unconstitutionality<sup>35</sup>
  - 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 Time limit
  - 1.5.6.3 Publication
    - 1.5.6.3.1 Publication in the official journal/gazette
    - 1.5.6.3.2 Publication in an official collection
    - 1.5.6.3.3 Private publication
  - 1.5.6.4 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

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<sup>34</sup> Comprises court fees, postage costs, advance of expenses and lawyers' fees.

<sup>35</sup> For questions of constitutionality dependent on a specified interpretation, use 2.3.2.

- 1.6.6.1 Body responsible for supervising execution
- 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

### 2.1 Categories<sup>36</sup>

- 2.1.1 Written rules
  - 2.1.1.1 National rules
    - 2.1.1.1.1 Constitution
    - 2.1.1.1.2 Quasi-constitutional enactments<sup>37</sup>
  - 2.1.1.2 National rules from other countries
  - 2.1.1.3 Law of the European Union/EU 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 Geneva Conventions of 1949
    - 2.1.1.4.4 European Convention on Human Rights of 1950<sup>38</sup>
    - 2.1.1.4.5 Geneva Convention on the Status of Refugees of 1951
    - 2.1.1.4.6 European Social Charter of 1961
    - 2.1.1.4.7 International Convention on the Elimination of all Forms of Racial Discrimination of 1965
    - 2.1.1.4.8 International Covenant on Civil and Political Rights of 1966
    - 2.1.1.4.9 International Covenant on Economic, Social and Cultural Rights of 1966
    - 2.1.1.4.10 Vienna Convention on the Law of Treaties of 1969
    - 2.1.1.4.11 American Convention on Human Rights of 1969
    - 2.1.1.4.12 Convention on the Elimination of all Forms of Discrimination against Women of 1979
    - 2.1.1.4.13 African Charter on Human and Peoples' Rights of 1981
    - 2.1.1.4.14 European Charter of Local Self-Government of 1985
    - 2.1.1.4.15 Convention on the Rights of the Child of 1989
    - 2.1.1.4.16 Framework Convention for the Protection of National Minorities of 1995
    - 2.1.1.4.17 Statute of the International Criminal Court of 1998
    - 2.1.1.4.18 Charter of Fundamental Rights of the European Union of 2000
    - 2.1.1.4.19 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

<sup>36</sup> Only for issues concerning applicability and not simple application.

<sup>37</sup> 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.).

<sup>38</sup> Including its Protocols.

- 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 Union
  - 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
  - 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 Law of the European Union/EU Law and domestic law
    - 2.2.1.6.1 EU primary law and constitutions
    - 2.2.1.6.2 EU primary law and domestic non-constitutional legal instruments
    - 2.2.1.6.3 EU secondary law and constitutions
    - 2.2.1.6.4 EU secondary law and domestic non-constitutional instruments
    - 2.2.1.6.5 Direct effect, primacy and the uniform application of EU Law
- 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 EU 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 interpretation<sup>39</sup>
- 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
- 2.3.10 Contextual interpretation
- 2.3.11 *Pro homine*/most favourable interpretation to the individual

## 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 democracy<sup>40</sup>

<sup>39</sup> Presumption of constitutionality, double construction rule.

<sup>40</sup> Including the principle of a multi-party system.

- 3.4 **Separation of powers**
- 3.5 **Social State<sup>41</sup>**
- 3.6 **Structure of the State<sup>42</sup>**
  - 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 nature<sup>43</sup>**
- 3.8 **Territorial principles**
  - 3.8.1 Indivisibility of the territory
- 3.9 **Rule of law**
- 3.10 **Certainty of the law<sup>44</sup>**
- 3.11 **Vested and/or acquired rights**
- 3.12 **Clarity and precision of legal provisions**
- 3.13 **Legality<sup>45</sup>**
- 3.14 ***Nullum crimen, nulla poena sine lege*<sup>46</sup>**
- 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 interest<sup>47</sup>**
- 3.19 **Margin of appreciation**
- 3.20 **Reasonableness**
- 3.21 **Equality<sup>48</sup>**
- 3.22 **Prohibition of arbitrariness**
- 3.23 **Equity**

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<sup>41</sup> Includes the principle of social justice.

<sup>42</sup> See also 4.8.

<sup>43</sup> Separation of Church and State, State subsidisation and recognition of churches, secular nature, etc.

<sup>44</sup> Including maintaining confidence and legitimate expectations.

<sup>45</sup> Principle according to which general sub-statutory acts must be based on and in conformity with the law.

<sup>46</sup> Prohibition of punishment without proper legal base.

<sup>47</sup> Including compelling public interest.

<sup>48</sup> Only where not applied as a fundamental right (e.g. between state authorities, municipalities, etc.).

- 3.24 **Loyalty to the State**<sup>49</sup>
- 3.25 **Market economy**<sup>50</sup>
- 3.26 Fundamental principles of the Internal Market<sup>51</sup>
- 4 ***Institutions***
  - 4.1 **Constituent assembly or equivalent body**<sup>52</sup>
    - 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
    - 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 Vice-President / Regent
    - 4.4.2 Temporary replacement
    - 4.4.3 Powers
      - 4.4.3.1 Relations with legislative bodies<sup>53</sup>
      - 4.4.3.2 Relations with the executive bodies<sup>54</sup>
      - 4.4.3.3 Relations with judicial bodies<sup>55</sup>
      - 4.4.3.4 Promulgation of laws
      - 4.4.3.5 International relations
      - 4.4.3.6 Powers with respect to the armed forces
      - 4.4.3.7 Mediating powers
    - 4.4.4 Appointment
      - 4.4.4.1 Necessary qualifications
      - 4.4.4.2 Incompatibilities
      - 4.4.4.3 Direct/indirect election
      - 4.4.4.4 Hereditary succession
    - 4.4.5 Term of office
      - 4.4.5.1 Commencement of office
      - 4.4.5.2 Duration of office
      - 4.4.5.3 Incapacity
      - 4.4.5.4 End of office

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<sup>49</sup> Including questions of treason/high crimes.

<sup>50</sup> Including prohibition on monopolies.

<sup>51</sup> For sincere co-operation and subsidiarity see 4.17.2.1 and 4.17.2.2, respectively.

<sup>52</sup> Including the body responsible for revising or amending the Constitution.

<sup>53</sup> For example, presidential messages, requests for further debating of a law, right of legislative veto, dissolution.

<sup>54</sup> For example, nomination of members of the government, chairing of Cabinet sessions, countersigning.

<sup>55</sup> For example, the granting of pardons.

- 4.4.5.5 Limit on number of successive terms
- 4.4.6 Status
  - 4.4.6.1 Liability
    - 4.4.6.1.1 Legal liability
      - 4.4.6.1.1.1 Immunity
      - 4.4.6.1.1.2 Civil liability
      - 4.4.6.1.1.3 Criminal liability
    - 4.4.6.1.2 Political responsibility
- 4.5 **Legislative bodies**<sup>56</sup>
  - 4.5.1 Structure<sup>57</sup>
  - 4.5.2 Powers<sup>58</sup>
    - 4.5.2.1 Competences with respect to international agreements
    - 4.5.2.2 Powers of enquiry<sup>59</sup>
    - 4.5.2.3 Delegation to another legislative body<sup>60</sup>
    - 4.5.2.4 Negative incompetence<sup>61</sup>
  - 4.5.3 Composition
    - 4.5.3.1 Election of members
    - 4.5.3.2 Appointment of members
    - 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 Characteristics<sup>62</sup>
      - 4.5.3.4.2 Duration
      - 4.5.3.4.3 End
  - 4.5.4 Organisation
    - 4.5.4.1 Rules of procedure
    - 4.5.4.2 President/Speaker
    - 4.5.4.3 Sessions<sup>63</sup>
    - 4.5.4.4 Committees<sup>64</sup>
    - 4.5.4.5 Parliamentary groups
  - 4.5.5 Finances<sup>65</sup>
  - 4.5.6 Law-making procedure<sup>66</sup>
    - 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

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<sup>56</sup> For regional and local authorities, see Chapter 4.8.

<sup>57</sup> Bicameral, monocameral, special competence of each assembly, etc.

<sup>58</sup> Including specialised powers of each legislative body and reserved powers of the legislature.

<sup>59</sup> In particular, commissions of enquiry.

<sup>60</sup> For delegation of powers to an executive body, see keyword 4.6.3.2.

<sup>61</sup> Obligation on the legislative body to use the full scope of its powers.

<sup>62</sup> Representative/imperative mandates.

<sup>63</sup> Including the convening, duration, publicity and agenda of sessions.

<sup>64</sup> Including their creation, composition and terms of reference.

<sup>65</sup> State budgetary contribution, other sources, etc.

<sup>66</sup> For the publication of laws, see 3.15.

- 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 bodies<sup>67</sup>
- 4.6 **Executive bodies**<sup>68</sup>
  - 4.6.1 Hierarchy
  - 4.6.2 Powers
  - 4.6.3 Application of laws
    - 4.6.3.1 Autonomous rule-making powers<sup>69</sup>
    - 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
  - 4.6.7 Administrative decentralisation<sup>70</sup>
  - 4.6.8 Sectoral decentralisation<sup>71</sup>
    - 4.6.8.1 Universities
  - 4.6.9 The civil service<sup>72</sup>
    - 4.6.9.1 Conditions of access
    - 4.6.9.2 Reasons for exclusion
      - 4.6.9.2.1 Lustration<sup>73</sup>
    - 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 bodies**<sup>74</sup>
  - 4.7.1 Jurisdiction
    - 4.7.1.1 Exclusive jurisdiction
    - 4.7.1.2 Universal jurisdiction
    - 4.7.1.3 Conflicts of jurisdiction<sup>75</sup>
  - 4.7.2 Procedure
  - 4.7.3 Decisions
  - 4.7.4 Organisation

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<sup>67</sup> For example, incompatibilities arising during the term of office, parliamentary immunity, exemption from prosecution and others. For questions of eligibility, see 4.9.5.

<sup>68</sup> For local authorities, see 4.8.

<sup>69</sup> Derived directly from the Constitution.

<sup>70</sup> See also 4.8.

<sup>71</sup> 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.

<sup>72</sup> Civil servants, administrators, etc.

<sup>73</sup> Practice aiming at removing from civil service persons formerly involved with a totalitarian regime.

<sup>74</sup> Other than the body delivering the decision summarised here.

<sup>75</sup> Positive and negative conflicts.

- 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 counsel<sup>76</sup>
  - 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
  - 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 body<sup>77</sup>
- 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 courts<sup>78</sup>
- 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 entities<sup>79</sup>
- 4.8.2 Regions and provinces

<sup>76</sup> Notwithstanding the question to which to branch of state power the prosecutor belongs.

<sup>77</sup> For example, Judicial Service Commission, Haut Conseil de la Justice, etc.

<sup>78</sup> Comprises the Court of Auditors in so far as it exercises judicial power.

<sup>79</sup> See also 3.6.

- 4.8.3 Municipalities<sup>80</sup>
  - 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
  - 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 democracy**<sup>81</sup>
- 4.9.1 Competent body for the organisation and control of voting<sup>82</sup>
  - 4.9.2 Referenda and other instruments of direct democracy<sup>83</sup>
    - 4.9.2.1 Admissibility<sup>84</sup>
    - 4.9.2.2 Effects
  - 4.9.3 Electoral system<sup>85</sup>
    - 4.9.3.1 Method of voting<sup>86</sup>
  - 4.9.4 Constituencies
  - 4.9.5 Eligibility<sup>87</sup>
  - 4.9.6 Representation of minorities
  - 4.9.7 Preliminary procedures
    - 4.9.7.1 Electoral rolls
    - 4.9.7.2 Registration of parties and candidates<sup>88</sup>
    - 4.9.7.3 Ballot papers<sup>89</sup>
  - 4.9.8 Electoral campaign and campaign material<sup>90</sup>
    - 4.9.8.1 Campaign financing
    - 4.9.8.2 Campaign expenses

<sup>80</sup> And other units of local self-government.

<sup>81</sup> See also keywords 5.3.41 and 5.2.1.4.

<sup>82</sup> Organs of control and supervision.

<sup>83</sup> Including other consultations.

<sup>84</sup> For questions of jurisdiction, see keyword 1.3.4.6.

<sup>85</sup> Proportional, majority, preferential, single-member constituencies, etc.

<sup>86</sup> For example, Panachage, voting for whole list or part of list, blank votes.

<sup>87</sup> For aspects related to fundamental rights, see 5.3.41.2.

<sup>88</sup> For the creation of political parties, see 4.5.10.1.

<sup>89</sup> For example, names of parties, order of presentation, logo, emblem or question in a referendum.

<sup>90</sup> Tracts, letters, press, radio and television, posters, nominations, etc.

- 4.9.8.3 Access to media<sup>91</sup>
- 4.9.9 Voting procedures
  - 4.9.9.1 Polling stations
  - 4.9.9.2 Polling booths
  - 4.9.9.3 Voting<sup>92</sup>
  - 4.9.9.4 Identity checks on voters
  - 4.9.9.5 Record of persons having voted<sup>93</sup>
  - 4.9.9.6 Casting of votes<sup>94</sup>
- 4.9.10 Minimum participation rate required
- 4.9.11 Determination of votes
  - 4.9.11.1 Counting of votes
  - 4.9.11.2 Electoral reports
- 4.9.12 Proclamation of results
- 4.9.13 Judicial control
- 4.9.14 Non-judicial complaints and appeals
- 4.9.15 Post-electoral procedures
- 4.10 **Public finances**<sup>95</sup>
  - 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 bodies<sup>96</sup>
  - 4.10.7 Taxation
    - 4.10.7.1 Principles
  - 4.10.8 Public assets<sup>97</sup>
    - 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 **Ombudsman**<sup>98</sup>
  - 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

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<sup>91</sup> For the access of media to information, see 5.3.23, 5.3.24, in combination with 5.3.41.

<sup>92</sup> Impartiality of electoral authorities, incidents, disturbances.

<sup>93</sup> For example, signatures on electoral rolls, stamps, crossing out of names on list.

<sup>94</sup> For example, in person, proxy vote, postal vote, electronic vote.

<sup>95</sup> This keyword covers property of the central state, regions and municipalities and may be applied together with Chapter 4.8.

<sup>96</sup> For example, Auditor-General.

<sup>97</sup> Includes ownership in undertakings by the state, regions or municipalities.

<sup>98</sup> Parliamentary Commissioner, Public Defender, Human Rights Commission, etc.

- 4.12.8 Relations with auditing bodies<sup>99</sup>
- 4.12.9 Relations with judicial bodies
- 4.12.10 Relations with federal or regional authorities
  
- 4.13 **Independent administrative authorities**<sup>100</sup>
  
- 4.14 **Activities and duties assigned to the State by the Constitution**<sup>101</sup>
  
- 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 European Council
    - 4.17.1.3 Council of Ministers
    - 4.17.1.4 European Commission
    - 4.17.1.5 Court of Justice of the European Union<sup>102</sup>
    - 4.17.1.6 European Central Bank
    - 4.17.1.7 Court of Auditors
  - 4.17.2 Distribution of powers between the EU and member states
    - 4.17.2.1 Sincere co-operation between EU institutions and member States
    - 4.17.2.2 Subsidiarity
  - 4.17.3 Distribution of powers between institutions of the EU
  - 4.17.4 Legislative procedure
  
- 4.18 **State of emergency and emergency powers**<sup>103</sup>
  
- 5 **Fundamental Rights**<sup>104</sup>
  - 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 Minors<sup>105</sup>
        - 5.1.1.4.2 Incapacitated
        - 5.1.1.4.3 Detainees
        - 5.1.1.4.4 Military personnel

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<sup>99</sup> For example, Court of Auditors.

<sup>100</sup> The vesting of administrative competence in public law bodies situated outside the traditional administrative hierarchy. See also 4.6.8.

<sup>101</sup> Staatszielbestimmungen.

<sup>102</sup> Institutional aspects only: questions of procedure, jurisdiction, composition, etc. are dealt with under the keywords of Chapter 1.

<sup>103</sup> Including state of war, martial law, declared natural disasters, etc.; for human rights aspects, see also keyword 5.1.4.1.

<sup>104</sup> Positive and negative aspects.

<sup>105</sup> For rights of the child, see 5.3.44.

- 5.1.1.5 Legal persons
  - 5.1.1.5.1 Private law
  - 5.1.1.5.2 Public law
- 5.1.2 Horizontal effects
- 5.1.3 Positive obligation of the state
- 5.1.4 Limits and restrictions<sup>106</sup>
  - 5.1.4.1 Non-derogable rights
  - 5.1.4.2 General/special clause of limitation
  - 5.1.4.3 Subsequent review of limitation
- 5.1.5 Emergency situations<sup>107</sup>
- 5.2 **Equality**<sup>108</sup>
  - 5.2.1 Scope of application
    - 5.2.1.1 Public burdens<sup>109</sup>
    - 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<sup>110</sup>
  - 5.2.2 Criteria of distinction
    - 5.2.2.1 Gender
    - 5.2.2.2 Race
    - 5.2.2.3 Ethnic origin
    - 5.2.2.4 Citizenship or nationality<sup>111</sup>
    - 5.2.2.5 Social origin
    - 5.2.2.6 Religion
    - 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 status<sup>112</sup>
    - 5.2.2.13 Differentiation *ratione temporis*
  - 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 liberty<sup>113</sup>
    - 5.3.5.1 Deprivation of liberty

<sup>106</sup> The criteria of the limitation of human rights (legality, legitimate purpose/general interest, proportionality) are indexed in Chapter 3.

<sup>107</sup> Includes questions of the suspension of rights. See also 4.18.

<sup>108</sup> Including all questions of non-discrimination.

<sup>109</sup> Taxes and other duties towards the state.

<sup>110</sup> "One person, one vote".

<sup>111</sup> According to the European Convention on Nationality of 1997, ETS 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).

<sup>112</sup> For example, discrimination between married and single persons.

<sup>113</sup> This keyword also covers "Personal liberty". It includes for example identity checking, personal search and administrative arrest.

- 5.3.5.1.1 Arrest<sup>114</sup>
- 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 movement<sup>115</sup>
- 5.3.7 Right to emigrate
- 5.3.8 Right to citizenship or nationality
- 5.3.9 Right of residence<sup>116</sup>
- 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 courts<sup>117</sup>
    - 5.3.13.3.1 "Natural judge"/Tribunal established by law<sup>118</sup>
    - 5.3.13.3.2 *Habeas corpus*
  - 5.3.13.4 Double degree of jurisdiction<sup>119</sup>
  - 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 justice<sup>120</sup>
  - 5.3.13.8 Right of access to the file
  - 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 Independence
  - 5.3.13.15 Impartiality<sup>121</sup>
  - 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

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<sup>114</sup> Detention by police.

<sup>115</sup> Including questions related to the granting of passports or other travel documents.

<sup>116</sup> May include questions of expulsion and extradition.

<sup>117</sup> 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.

<sup>118</sup> In the meaning of Article 6.1 of the European Convention on Human Rights.

<sup>119</sup> This keyword covers the right of appeal to a court.

<sup>120</sup> Including the right to be present at hearing.

<sup>121</sup> Including challenging of a judge.

- 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 conscience<sup>122</sup>
- 5.3.19 Freedom of opinion
- 5.3.20 Freedom of worship
- 5.3.21 Freedom of expression<sup>123</sup>
- 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 service<sup>124</sup>
- 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 life<sup>125</sup>
  - 5.3.33.1 Descent
  - 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 property<sup>126</sup>
  - 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

<sup>122</sup> Covers freedom of religion as an individual right. Its collective aspects are included under the keyword "Freedom of worship" below.

<sup>123</sup> This keyword also includes the right to freely communicate information.

<sup>124</sup> Militia, conscientious objection, etc.

<sup>125</sup> Aspects of the use of names are included either here or under "Right to private life".

<sup>126</sup> Including compensation issues.

- 5.3.41 Electoral rights
  - 5.3.41.1 Right to vote
  - 5.3.41.2 Right to stand for election
  - 5.3.41.3 Freedom of voting
  - 5.3.41.4 Secret ballot
  - 5.3.41.5 Direct / indirect ballot
  - 5.3.41.6 Frequency and regularity of elections
- 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 profession<sup>127</sup>
- 5.4.5 Freedom to work for remuneration
- 5.4.6 Commercial and industrial freedom<sup>128</sup>
- 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 unions<sup>129</sup>
- 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
- 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

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<sup>127</sup> This keyword also covers "Freedom of work".

<sup>128</sup> This should also cover the term freedom of enterprise.

<sup>129</sup> Includes rights of the individual with respect to trade unions, rights of trade unions and the right to conclude collective labour agreements.