

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**JOINT MEETING OF THE
WORKING PARTY ON CONSTITUTIONAL JUSTICE
WITH THE LIAISON OFFICERS FROM CONSTITUTIONAL
COURTS AND EQUIVALENT BODIES**

Draft Meeting Report
(Venice, 7 May 1992)

1. The Working Party on constitutional justice met with the liaison officers from Constitutional Courts and Equivalent bodies in Venice on 7 May 1992.

The meeting was chaired by Mr Constantin Economides (Greece).

2. The meeting examined the draft systematic thesaurus to be used by the documentation centre on the basis of preliminary drafts prepared by Mr Vandernoot and Dean Favoreu. It asked a drafting group consisting of Mr Vandernoot, Mrs Remy-Granger and Mr Hartwig, which could be joined by any other member, to prepare a revised draft on the basis of the discussions at the meeting. The revised draft systematic thesaurus appears in document CDL (92) 31.

3. The meeting was informed that Austria, Belgium, Czechoslovakia, Germany, Iceland, Italy, the Netherlands, Poland, Portugal, Sweden, Switzerland, Turkey, Canada, Romania, Russia, Slovenia and the USA had sent replies to the questionnaire CDL (92) 13 prepared by Mr Vandernoot and Mr Ryckeboer. The meeting appealed to the constitutional courts and equivalent bodies which had not yet replied to do so in the near future.

4. The European Commission for Democracy through Law is invited :

- to adopt as draft systematic thesaurus the text appearing in document CDL (92) 31;
- to consult the Presidents of Constitutional Courts and Equivalent bodies on this text and to invite them to send their comments and additions;
- to envisage a further joint meeting with the Presidents of Constitutional Courts and equivalent bodies, preferably once their comments on the draft systematic thesaurus have been received;
- to invite the liaison officers to transmit in the near future, a decision from their courts accompanied by an abstract prepared according to the model in Annex 2 of CDL (92) 2. This exercise should concern, as far as possible, a theme commonly examined in Constitutional Jurisprudence.

A P P E N D I X I

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APPENDIX II

DRAFT SYSTEMATIC THESAURUS

1. CONSTITUTIONAL JUSTICE

1.1 The organs of Constitutional justice: Constitutional Courts

1.1.1 Status of the courts

- Sources : constitution, institutional act, other legislation
- Autonomy
 - * statutory autonomy
 - * administrative autonomy
 - * financial autonomy
- Other

1.1.2 Composition and recruitment

- The appointing authority
- Procedure of appointment
- Members of the court
- Staff
- Other

1.1.3 Status of the members of the court

- Form : constitution, institutional act, other legislation
- Contents
- Professional disqualifications
- Other

1.1.4 Relations with other institutions

- Head of State
- Legislative bodies
- Executive bodies
- Courts

- Other bodies

1.2 Types of litigation

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- 1.2.1 Litigation regarding fundamental freedoms and rights
- 1.2.2 Litigation regarding the (horizontal) distribution of powers between
state authorities
- 1.2.3 Litigation regarding the (vertical) distribution of powers between
central government and its subdivisions
- 1.2.4 Electoral disputes
 - Presidential elections
 - Parliamentary elections
 - Local elections
 - Elections of officers within various occupations
 - Referendums
 - Other
- 1.2.5 Restrictive proceedings
 - The banning of political parties
 - Withdrawal of civil rights
 - Removal from office of Parliament
 - Impeachment
- 1.2.6 Other litigation (eg: admissibility of Italian referendum)

1.3 The subject of review

- 1.3.1 International treaties
- 1.3.2 Constitution
- 1.3.3 Quasi-constitutional legislation
- 1.3.4 Presidential decrees
- 1.3.5 Executive regulations
- 1.3.6 Legislative or quasi-legislative regulations
- 1.3.7 Court decisions
- 1.3.8 Administrative acts

1.4 Constitutional Proceedings

1.4.1 Application

1.4.1.1 Action (or claim) by a public body

- Legislative bodies
- Executive bodies
- Organs of Regional authorities
- Organs of decentralised authorities
- Other

1.4.1.2 Action (or claim) by a private body or individual

- Natural person
- Non-profit-making corporate body
- Profit-making corporate body
- Other

1.4.1.3 Referral by a jurisdiction

1.4.2 Procedure before the constitutional court

1.4.2.1 General characteristics

1.4.2.2 Time-limits for instituting proceedings

- Ordinary time-limit
- Special time-limits
- Leave to appeal out of time
- Other

1.4.2.3 Originating document

- Decision to act
- Signature
- Formal requirements
- Annexes
- Service of process
- Other

1.4.2.4 Grounds

- Time-limits
- Form
- Other

1.4.2.5 Documents lodged by the parties (pleadings, final submissions, notes, etc.)

- Time-limits
- Decision to lodge the document
- Signature
- Formal requirements
- Annexes
- Service
- Other

1.4.2.6 Preparation of the case for trial

- Receipt by the court
- Notifications and publication
- Time-limits
- Preliminary proceedings
- Opinions
- Reports
- Inquiries into the facts
- Other

1.4.2.7 Parties

- Locus standi
- Interest
- Representation
 - * The Bar
 - * Other
- Other

1.4.2.8 Interlocutory proceedings

- Intervention
- Plea of forgery
- Resumption of proceedings after interruption
- Discontinuance of proceedings
- Joinder of similar cases
- Challenging of judge
- Other

1.4.2.9 Hearing

- Procedure
- Report
- Opinion
- Address by the parties

1.4.2.10 Special procedures

1.4.2.11 Re-opening of hearing

1.4.2.12 Assistance with legal costs

1.4.3 Decisions

1.4.3.1 Form

1.4.3.2 Types

- Opinion
- Annulment
- Suspension of application
- Modification
- Finding of constitutionality or unconstitutionality

1.4.3.3 Effects

- Scope
- Effect erga omnes
- Effect as between the parties
- Retrospective effect
- Limit on retrospective effect
- Other

1.5 Common principles or techniques of interpretation

- The social dimension of the rule of law
- Proportionality principle
- Principle of reasonableness
- Legal basis
- Principle of equality
- Principle of fairness
- Concept of manifest error in assessing evidence or exercising discretion
- Concept of constitutionality dependent on a specified interpretation
- "Political questions"/Governmental acts

2. INSTITUTIONS

2.1 Principles of State organisation

- Sovereignty
- Separation of powers
- Rule of law

- Social State
- Federal State
- Other

2.2 Legislative bodies

- Electoral disputes
- Powers
- Law-making procedure
- Guarantees as to the exercise of power
- Relations with executive bodies
- Relations with the courts
- Liability
- Other aspects

2.3 Executive bodies

- Hierarchy
- Powers
- Composition
- Organisation
- Relations with legislative bodies
- Relations with the courts
- Territorial decentralisation (local authorities)
 - * Provinces
 - * Municipalities
 - * Supervision
 - * Other
- Decentralisation by department
- The civil service
- Other aspects

2.4 Courts

2.4.1 General organisation

2.4.2 Procedural safeguards

- Rights of the defence
- Fair trial
- Public hearings
- Public judgments
- Trial within reasonable time
- Independence
- Impartiality

- Languages
- Detention pending trial
- Other

2.4.3 Ordinary courts

- Organisation
- Jurisdiction
- Procedure
- Supreme court
- Civil courts
- Criminal courts
- Courts of limited jurisdiction
- The judiciary
- Public prosecutor/State counsel
- Registry
- Status of judges
- Discipline
- Court auxiliaries
- Other aspects

2.4.4 Administrative courts

- Organisation
- Jurisdiction
- Procedure
- Supreme court
- Judges
- State counsel
- Registry
- Status of judges
- Discipline
- Court auxiliaries
- Other aspects

2.4.5 Military courts

- Organisation
- Jurisdiction
- Procedure
- Court of last instance
- Judges
- Prosecutor
- Registry
- Status of judges
- Discipline
- Legal practitioners
- Other aspects

2.4.6 Special courts

- Organisation

- Competence
- Procedure
- Court of last instance
- Judges
- Prosecutor/State counsel
- Registry
- Status of judges
- Discipline
- Court auxiliaries
- Other aspects

2.4.7 Other courts

2.4.8 The Bar

- Organisation
- Powers of ruling bodies
- Role of members of the Bar
- Status of members of the Bar
- Discipline
- Other aspects

2.5 Federalism and Regionalism

2.5.1 Basic principles

2.5.2 Institutional aspects

- Deliberative assembly
- Executive
- Courts
- Administrative authorities
- Other

2.5.3 Budgetary and financial aspects

- Finance
- Budget
- Mutual support arrangements
- Other

2.5.4. Distribution of powers

- System
- Supervision
- Co-operation

- Other aspects

2.6 Transfer of powers to international institutions

3. FUNDAMENTAL RIGHTS

3.1 The problem in general

3.1.1 Nature of the list of fundamental rights (open-ended or finite)

3.1.2 Entitlement to rights

- Nationals and foreigners
- Natural and legal persons
- Protection of minorities

3.1.3 Effects

- Vertical effects
- Horizontal effects
- * problem of third-party effect (Drittwirkung)

3.1.4 Limits and restrictions

3.1.5 Emergency situations

3.2 Civil and political rights

- Right to life
- Prohibition of torture and inhuman and degrading treatment
- Equality
- Freedom of movement
- Freedom of conscience
- Freedom of expression
- Freedom of the press
- Freedom of worship
- National service (army, conscientious objectors, etc.)
- Freedom of association
- Freedom of assembly
- Right to respect for one's honour and reputation
- Right to private life

- Right to family life
- Inviolability of the home
- Confidentiality of correspondence
- Right to a fair trial
- Non-retrospective effect of criminal law
- Right to property
- Linguistic freedom
- Electoral rights
- Other

3.3 Economic, social and cultural rights

- Freedom of education
- Right to work
- Right to strike
- Right to housing
- Right to social security
- Right to just and decent working conditions
- Right to a sufficient standard of living
- Right to health
- Right to culture
- Other

3.4 Collective rights

- Right to the environment
- Right to development
- Right to peace
- Other

4. SOURCES OF CONSTITUTIONAL LAW

4.1 Categories

4.1.1 Written rules

4.1.1.1 Constitution

4.1.1.2 Quasi-constitutional legislation

4.1.1.3 European Convention on Human Rights

4.1.1.4 European Community law

4.1.1.5 Other international sources

4.1.2 Unwritten rules

4.2 Hierarchy

4.2.1 National and non-national sources

4.2.1.1 Treaties and constitutions

4.2.1.2 Treaties and other domestic legal instruments

4.2.1.3 European Convention on Human Rights and constitutions

4.2.1.4 European Convention on Human Rights and other domestic
legal instruments

4.2.1.5 Primary Community law and constitutions

4.2.1.6 Primary Community law and other domestic legal instruments

4.2.1.7 Subordinate Community law and constitutions

4.2.1.8 Subordinate Community law and other domestic legal instruments

4.2.2 National and international sources