



Strasbourg, 5 March 2004

Restricted  
**CDL-JU(2004)035**  
Engl. only

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

**Questionnaire**  
**Conference of European Constitutional Courts**

**The Criteria of the Limitation of Human Rights in the Practice of  
Constitutional Justice**

1. The legal framework for the protection of human rights in your country. Are human rights entrenched in the constitution, basic law, (charter), or by ordinary law?

2. Is the European Convention of Human Rights part of domestic law? Specify the rights guaranteed. Are the rights guaranteed applicable against everyone – *erga omnes* – or are they only operative against the State?

3. Are guaranteed human rights subject to limitation? If so, where does authority to limit them stem from? Furthermore, are guaranteed human rights subject to limitation by a clause of general purport? Or are the limitations that may be imposed correlated to each guaranteed right?

4. Are the causes for which human rights may be limited specified in the constitution or other document guaranteeing their enjoyment?

5. Indicate the prerequisites for the limitation of human rights for a cause in furtherance of which limitations are permissible. Must there be dire necessity or a real and pressing need for the introduction of a limitation to a human right? If limitations are permitted which authority is the arbiter for the ascertainment of the existence of the necessity or need put forward in justification of the measure? Is the Constitutional Court or any other Court of the country vested with jurisdiction to adjudicate upon the existence of the necessity or need for limitation?

6. Explain the institutional means through which a limitation to a human right may be imposed. Can limitation to human rights be introduced in any way other than through legislation?

7. Are there any entrenched human rights inamenable to limitation? For example the right to equality, the right to a fair trial and such rights as are associated with the protection of the dignity of the individual and his bodily and mental integrity.

8. Does the Constitution or basic law restrict the period during which a guaranteed human right may be limited?

9. Can the limitation of a human right last longer than the necessitous circumstances that led to its introduction last? Are the judicial authorities entrusted with jurisdiction to review the justification of a limitation to a human right for any given period of time?

10. Does the Constitution make provision for preemptive control of the constitutionality of any given law importing limitations to human rights? Furthermore, is there provision in the constitution or the law for a sequential or remedial control of the constitutionality of a law limitative of the application of human rights?

11. Is there power to suspend, as opposed to limiting, a human right? If there is such a power, which authority is entrusted with competence to suspend the application of human rights? Are the criteria for suspension specified in the constitution or basic law? If suspension is permissible is any decision to that end subject to judicial control?

12. Make reference to the jurisprudence of the constitutional and other national courts on the interpretation and application of human rights with particular reference to decisions enlightening on the subject of their limitation and its implications.

13. The impact of the jurisprudence of international and supranational courts especially that of the European Court of Human Rights on the case law of the country in the area under consideration, (limitation of human rights) and the contrary; the impact, if any, of national case law on the jurisprudence of international and supranational courts on matters concerning human rights and their limitation.

14. The enforceability and implementation of decisions of the constitutional court of the country on issues bearing on human rights with special reference to their limitation.

15. Indicate the judicial and any other institution of your country, if any, trusted with jurisdiction to review complaints involving violations of human rights.