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A comparative review of the Faroese draft Constitution

– A comparative review of the role of the judiciary and equality provisions

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Úrtak

Heitið á greinini er Ein samanberandi greining av uppskotinum til føroyska stjórnarskipan. Høvundin ber saman ásetingar um dómstólar og ásetingar um javnrættindi í uppskotinum til føroyska stjórnaskipan við útvaldar aðrar skipanir, rættarvenju og faklig ástøði í øðrum løgdømum. Víst verður á, at føroysku ásetingarnar taka støði í felags norrønari og vesturlendskari siðvenju, men kortini í summum førum fara longur og lata upp fyri víðfevndari menning. Ásetingin um at dómtólar kunnu gera lóg, har ongin er, eins og orðingar um at „øll" eiga rættindi merkja, at víðar ræsur eru fyri at mýkja tulking og venju í framtíðini.

Summary

The author undertakes a comparative analysis of aspects of the draft Faroese Constitution, comparing the Faroe Islands draft Constitution to selected constitutional provisions, court doctrine, and theory in other jurisdictions. The proposed constitutional text seems in many ways to draw on Norse and Western traditions but in some instances, it goes further and leaves open the prospect for wide-ranging developments. Provisions giving the Judiciary the power to declare law where none exists and phrases giving „All" a certain right offer extensive room for development and interpretation in the future.

Introduction

The object of this article is to look at the role of the judiciary and provisions on equality in a comparative way. The Faroe Islands draft Constitution will be the basis for the discussions and I will compare this draft with other constitutions, theory and court cases that can aim the spotlight on different aspects of the subject matter. I have chosen to use Western-European and North American constitutions to compare the Faroese draft Constitution with, amongst others because of the cultural, judicial, and political similarities. The final draft of the Constitution will be handed to the Prime Minister of the Faroe Islands on 31 December 2006 at the latest. I will start with a short introduction to the draft Constitution before I will deal with the role of the judiciary and provisions on equality in the draft Constitution separately. I will end the article with some thoughts on the future and conclusions.

The Faroese draft constitution in general

The Faroe Islands are part (or province) of the Kingdom of Denmark, but have been self-governing since 1948. In 1946 there was held a public election where the people were asked if they wanted to be free from Danish rule and become independent. The parliament was not bound by the people's decision. The outcome of the election was a small majority that favoured secession, but due to that the parliament fell and a new parliament election a few months later established a coalition of parties favouring staying with the Danish Kingdom the case did not move forward and the Faroe Islands did not become an independent state. As a compromise Folketinget, the Danish parliament, passed The Home-Rule Act that came into effect in 1948. This Act defined „særanliggender" (matters of separate concern) and „fællesanliggender" (matters of common concern). This Act gave the Law Thing or Faroese Representative Council legislative power in certain areas. This meant that the Faroe Islands achieved a right to govern themselves in some aspects. An example on „fællesanliggender" and an issue that the Faroese did not have jurisdiction over are the defence policy and foreign policy. Health, culture, education, and living marine resources (fish and marine mammals) are amongst the areas where the Faroese govern themselves. These areas of responsibility have been developed later as well. The draft Constitution has been written in order for the Faroese nation to have its own proper constitution, which reflects the Faroe Islands history and culture. Today the Faroe Islands use the Danish Constitution from 5 June 1953. The new Constitution, if it will be passed, recognizes a federation with another state, for example Denmark, see article 1 (2) and article 1 (3).

Text and translation

The Faroe draft Constitution has been translated into English in order for non-Faroese speaking people to read and understand it. The translation is focusing on capturing the tone and style of the original document. Further more, the language is easy to read and understand and it is also authoritative – it has been an ideal in itself to keep the articles short and with an extensive use of verbs. The reason for this solution, both in the translation and the original document, has been to draw from ancient Norse law.

The language of the draft Constitution is very „spoken" or political – not very legalistic. In the comment to the draft Constitution, this is said to be because it is perfectly understandable to non-lawyers. This can also strengthen the documents importance and bond to its people. If the language in the constitutional text had been too legal, like the Norwegian Constitution from 1814 has become, non-legal trained persons would not understand it and they would not feel attached to it. A constitution can be either a more passive document, like the Norwegian Constitution, or a more active document, like the Constitution of the United States of America. Many Americans refer to their Constitution and the rights in it and feel attached to it. The Constitution of the United States consists of the constitutional text and 27 amendments, including the first ten amendments that are known as the Bill of Rights. One example of an article that is invoked from time to time is the Second Amendment that gives the people the right to keep and bear arms. The text in the Second Amendment is clear and easy to understand. However, this might create difficulties. The Second Amendment, as I interpret it by looking at the ordinary meaning of the words, was made to secure the safety of a free state and not a right to carry weapons in a supermarket. This evolutionary aspect must be born in mind when writing all sorts of legal texts that are meant to have a long life. This is something that can result in a more legalistic wording. However, if the language in a constitution is too legalistic and technical the constitution would only facilitate for the political system et cetera to be written down and the constitution would not become a living and dynamic document. The Faroese draft has been written with a language to arrange for the document to be active and a part of the Faroese people's daily life. While the Faroese draft is modern, it brings in the states cultural heritage as well – this might help the document to be used and referred to.

A comparative look at the role of the Judiciary in the Faroese draft

The role of the Judiciary in general

When I refer to the role of the judiciary, I point to the system of courts that administer „http://en.wikipedia.org/wiki/Dispute_resolution"resolution of disputes. In other words, the police or other sorts of law enforcement are not a part of the judiciary because it is sorted under the executive branch.

Separation of Powers

In most European states and North America, separation of powers is the norm. This system, articulated by Montesquieu, is based on a structure where an executive, a legislative and a judiciary controls each other. This means that the judiciary has separate and independent powers and areas of responsibility. This area and these powers change, to some extent, from jurisdiction to jurisdiction. The Faroese draft is built on separation of powers something that both the preamble and article 2 (1) affirms. In article 3, the three constitutional institutions; Løgtingið, Landsstyrið and Landsrætturin are mentioned. Landsrætturin being the Court of the Land, the Supreme Court, whose judgements are final, see article 65 and article 77. Løgtingið and Landsstyrið are respectively the legislative and executive branches. The system of separation of powers implies that the judiciary with its courts shall use the law and not make law. However, this can be challenged through the courts work when they interpret the laws and precedence develops. The courts independent position as a non-political institution might then be challenged. This issue will be further discussed under the heading „… make law where no law is.„ below.

The Peoples Ombudsman

The Faroese draft also contains a Peoples Ombudsman, see article 93. The European Union and Sweden are both examples that also have this type of institution. Today, many states have some sort of Ombudsman and Sweden has had their Ombudsman since 1809. The term Ombudsman stems from Old Norse; umboðsmaðr. This institution can for example be controlling the legislative branch or the rights of the children of the land. The institution is often made to look after the people's rights in relation to the executive branch, but can also comment on acts by the judiciary. According to the draft constitution, this institution or person can inter alia look at the courts' judgements but she or he cannot overturn their decisions. However, the Peoples Ombudsman can be an important institution to represent the people of the land and publish statements on behalf of the people, which the judiciary can choose to take into consideration.

Adversarial system

Further on the Faroese judiciary is built on an adversarial system and not an inquisitorial one, see chapter 11, in particular article 34 (1) and article 37 of the draft Constitution. This implies that the parties are represented by advocates rather than a neutral person trying to determine the truth of the case. In modern inquisitorial jurisdictions the defendant is also represented by counsel, the European Convention on Human Rights and Fundamental Freedoms requires this in article 6 in relation to states who are parties to the treaty. Defendants in the United States state courts got the right to legal counsel in 1963, see the U.S. Supreme Court Gideon v. Wainwright. Many countries in Western Europe and Latin America are based on the inquisitorial system. An example is France

where they have a so-called juge d'instruction who conducts the investigation in certain cases as a neutral member of the court. The Faroese draft authors have here chosen the same system as applied in Norway and other Nordic countries, which is built more on Germanic custom than the Roman or Napoleonic Code. Modern criticism against the adversarial system is often focused on the hypothesis that the result of the case depends more on the skills of the lawyer than on the actual facts of the case, whereas the inquisitorial system has a person who does not represent one of the parties but tries to sort out the truth.

The duty of regular courts to uphold the Constitution v. Constitutional councils or courts

The Faroe courts shall ensure that the Constitution is upheld, see article 78 (3), article 78 (5) and article 89. This implies that the Faroese draft is built on a different system than the French, with their Conseil Constitutionnel, but more in line with the Norwegian system here as well. This means that there is no special court or other institution to handle constitutional issues, but that this task is left to the ordinary courts. Germany, with its Basic Law, has chosen a different solution and has a Federal Constitutional Court. Here it is the responsibility of the Constitutional court to interpret the Constitution, while it is all the courts in the Faroe Islands responsibility. When an issue has been interpreted and solved by the Faroe Supreme Court, the inferior courts are likely to follow the superior courts interpretation (precedence). Therefore, even if the task of interpreting the Constitution is handed over to more than one court, this will presumably not lead to more uncertainty. However, this system can create more work and difficult cases to handle for the inferior courts – something that might result in less predictability and other problems. When one looks to Norway that uses this system today, the mentioned system has only brought forward minor difficulties. In comparison, the incorporation of the European Convention on Human Rights and Fundamental Freedoms created and still creates much larger challenges for the lower courts. When judges in the lower courts are to deal with constitutional issues this might also be seen as more democratic, than having a specialized group of judges to deal with the cases. The respect for judges in general in the society, from a Norwegian point of view, will probably in itself create the needed approval from the people.

"… make law where no law is.„

The separation of powers or balance of powers implies that the parliament shall make law; it is not the judiciary's duty to do this. However when a court interprets a law, something that is clearly within its definition of tasks, it can decide on the interpretation of a provision. When other courts accept and use this interpretation the courts have thereby developed precedence, which in practice will have the effect of a law. In the Faroese draft, this has actually been mentioned in article 78 (2). This provision can however not be used to judge

someone for a wrongful act that is not criminalized by law, see article 35 (2) regarding punishment and the principle of legality. The Norwegian Constitution contains a similar provision, which restrains the judiciary from judging someone for something that is not criminalized, see article 96. Since the Faroese draft refers to the principle of Rule of Law and the principle of Balance of Powers, and seems to be build on these theories in general the provision, article 78 (2), must most likely be interpreted as a reference to the courts freedom to judge within certain thresholds. This is a very modern and honest provision that might educate its readers about the courts' work and be viewed as constructive in that respect. Nevertheless, this may perhaps be seen as if the judiciary is breaking into the turf of the legislative branch.

Emergency

During a case of emergency the Court of the Land, the Supreme Court, acquires a special role, see article 98 (3). If a state of emergency is declared inter alia, the laws may be set aside under special conditions. It would then be the responsibility of the Court of the Land to assess the legality of that conduct. The Norwegian Constitution has not regulated the courts duties in a state of emergency. In the German Basic Law article, 115g regulates the constitutional courts position and role during a state of emergency; they would then have to continue to fulfil their purpose and in other words assess the legality of the emergency laws that is passed. The Faroe Supreme Court has in other words a more unique position, especially because it would have to assess the „conduct" as is, and not only passed laws. This will widen the courts tasks and make it more dynamic, something that might be necessary in a case of emergency. Seen from a different angle, the Court of the Land will have to assess political decisions and thereby become more political, something that can be said to be negative for a court of law and something that should be avoided. When a court is controlling whether a law is within the boundaries that the Constitution draws up, it would also have to assure that the procedural rules have been followed. The authors of the draft Constitution must in other words have meant that the Court should be given more power than what follows from normal control with the laws. There might be good reasons behind granting the courts wider authority in an emergency, but it may also create a problem in relation to the boundaries of that power, which will be interpreted and decided on by the courts themselves. The lack of predictability is another relevant argument against expanding the courts authority in a case of emergency.

Independent judges

The system of Separation of Powers entails that the judiciary is independent from the other branches. The issue about the courts funding, the courts budget, is dealt with through article 82 (4) of the draft. The independence must furthermore also cover the judges. To ensure that the judiciary refrains from

becoming too engaged in political issues the judges could be totally self-governing. A system where the politicians or the people elect the judges may harm the judiciary's impartial role. On the more positive side, one can say that the system of electing judges is a more democratic solution than leaving this to the judges themselves or an administrative entity. An example is the United States of America where the judges are elected and where the political motivation of the judges becomes important. An issue, amongst many others, that for a long time has been important for the American people is abortion and this theme have been discussed extensively and many judges let their views on abortion be known before an election and thereby taking a side in a conflict. Which political party the judges support has also become an issue. The Faroese draft have chosen a system where the judges, to be appointed to the Court of the Land, are chosen by the people through an election, see article 18 (1). The leadership of the Court of the Land can either be chosen directly under the supervision of the Law Thing or by the Law Thing, see article 39 (1). The Law Thing obtains a great deal of influence through this system.

The remuneration for the members of the Law Thing and the Government of the Land is dealt with in article 50 (2). The intention of this article is to hinder the salaries of the members of the two institutions becoming a way of pressuring the members. The Court of the Land is not mentioned here, and seen together with article 82 (4) this points to that it is the courts themselves who decides on the remuneration for the members of the courts. This will make the courts more independent than if they had been economically under total authority of the Law Thing.

An introduction to equality

A developing principle

Equality or equal status is the ideological idea, which states that everyone shall have the same status in a society. Equality as a right has grown slowly and is still covering new ground. All men in Norway were allowed to vote from 1898 and women from 1913. It is in other words less than one hundred years ago since women acquired the right to vote in Norway. In Switzerland, which is looked upon as a modern European nation women obtained the right to vote in federal elections in 1971 and in the last canton (region), Appenzell Innerrhoden, in 1990 when the canton was forced by the Federal Supreme Court of Switzerland to recognize women's right to vote (suffrage). Present, many well established democracies see equal rights (especially with regard to gender) as a natural right, an inherent right – but no matter how inherent – this is a right we will have to struggle for in a long time to come on different arenas and in different areas. It is therefore beneficial that the Faroese draft is dealing with the issue.

In addition to gender or sex equality, one can mention the right of equality in connection with political standing, race, skin colour, nationality (national origin), religion, property, birth, sexual orientation, disabled people et cetera and of course law.

Constitutions have dealt with equality for a long time. A reason behind this is that equality is seen as a basic right, an inherent right as stated above. Nevertheless, a right has to contain something substantial. Even if the United States Declaration of Independence states that „all men are equal", this expression originally excluded women, slaves and other groups, but over time universal egalitarianism has won wide adherence and is a core component of modern American civil rights policies – even if practice may display a different reality.

A comparative look at provisions on equality in the Faroese draft

In the second part, chapter 3 of the draft Constitution, there are three articles under the heading „equal rights.„ These are articles 10, 11 and 12. Under the heading „Restrictions" one can also find the Principle of equality, see article 44. There are rights or restrictions related to equal rights to be found in other parts of the draft as well, like article 5 (2) that sets out rules on the right to vote. In this article, I will only focus on the three mentioned articles and article 44.

"All are valued equally"

Article 10 (1) states, „All are valued equally.„ In the second paragraph, it is written that „arbitrary, unjust, or offensive" differences cannot be granted. This implies that positive differentiations or discrimination can be made. This can also be called affirmative action. As long as the differentiation does not fall under one of the exceptions in the provision, the lawmaker can differentiate. There are many cases where one should differentiate in order to obtain equality, for example in relation with disabled people or in some respects gender, which will be shown below.

One measure to obtain equality between men and women, which article 11 on equal standing in the Faroese draft calls for, is positive discrimination. There can be said to exist at least two kinds of positive discrimination, Moderate and Radical positive discrimination. Moderate imply that when two equally qualified persons are applying for the same job one should choose the less represented candidate. Radical imply that one should choose the underrepresented gender even if that person is less qualified. Positive discrimination is amongst others justified because the greater represented gender has a bigger chance of being chosen because of institutional reproduction.

Radical positive discrimination can be seen as „unjust„ confer art. 10 (2), if the candidate is less qualified. If one interprets this word in that way, a Faroese

court of law, see article 78 (3), can rule a law providing for radical positive discrimination unconstitutional based on the draft Constitution. This means that the wording in article 10 can restrain the lawmaker from giving overly discriminatory provisions.

The Swedish Constitution spells out the rule on positive discrimination in relations to gender quite clearly. Article 16 in the second chapter says that laws or other provisions that imply unfavourable treatment of a citizen on the grounds of gender may not be unconstitutional if they while discriminating one group are promoting equality. The Swedish lawmaker has here chosen a point of view, instead of letting the courts deal with this. The court will of course have to interpret the provision, but if compared to the Faroese draft the Swedish provision is more detailed. The Faroe draft article 10 (2) is more general and will in addition to gender equality also deal with all other sorts of equality related issues.

In a French constitutional case, the court said that a positive discrimination law, in regards to gender and quota, was unconstitutional. The law provided for a minimum of 25% of each sex. While the French Constitution provided for suffrage to be equal, the French Declaration provided for everyone to be eligible to offices without other distinction than talent. In the minds of the French constitutional judges, this meant that a 25% quota was both not based on talent and lead to unequal treatment. Moreover, since positive discrimination still is discrimination, even if it is positive – the court said that this was an unconstitutional law. Their reasoning is legally and logically perfect, but it might not lead to the best result. In other words, the court could maybe have interpreted the constitutional provision differently and achieved a result that reflected the parliaments (lawmakers) desires. While the French Declaration states that „talent" should be the only measurement, the Faroese draft lays down thresholds for positive discrimination. This implies that the Faroese court would have to interpret what „arbitrary, unjust, or offensive" means and more power is given to the courts. Seen together with the French wording the Faroese provision is more dynamic and it can therefore be harder to predict the outcome of a dispute – something that may be seen as negative. On the other hand, this will probably lead to better judgements in most cases because it might lead to fair and reasonable solutions.

Privileges

Article 12 of the draft is written in the same way as article 10; in the first paragraph, the right or rule is stated and then, in the second paragraph, the exceptions are stated. The article concerns privileges – and states that none can be provided or practiced. Privileges would only be allowed to correct a previous unequal treatment and then with time limits. I interpret the word „privileges" as a special right or advantage for a particular person or group. This is also the „ordinary" meaning of the term.

The historical aspect of this provision can be seen if one compares it with the provision on privileges from the Norwegian Constitution, see articles 23, 95 and 108. Article 23 is directly dealing with privileges, article 95 deals inter alia with dispensations from the law and article 108 states that no counties, baronies etc. is allowed. These articles were meant to deal with rich families where the family members inherited important roles in the society. The purpose of the provision was to hinder an inheritable rich-man's class in the Norwegian society.

In a legal context, privileges are understood as something more than granting special rights to disabled people or alike because these rights are meant to rectify unequal treatment. A clear example on a privilege in a legal context is a person who is given the right not to adhere to the criminal laws or taxation laws. As I understand the draft Constitution it would have to imply something more than only granting normal support or more welfare, but where the line must be drawn are up to the courts to decide. Special rights afforded to indigenous peoples can maybe be seen as privileges, but there would also in this situation be a discussion if the special rights may be seen as unjust and so forth, see article 10 (2). Article 12 is presumably meant to deal with all the specific areas dealt with in the three provisions from the Norwegian Constitution and the provision, article 12, is therefore important in a society that wants to avoid a rich and powerful class or an oligarchic system.

Article 44 of the Faroe Islands draft Constitution deals with equality before the law. This principle builds on a legal egalitarian thought and maintains that all citizens are equal before the law. This principle can be found in many constitutions, like the Icelandic Constitution, the Constitution of the United States and the German Constitution. The wording concerning equality before the law in different constitutions is often very similar, it is normally something like, „Everyone shall be equal before the law.„ The Constitution of the United States is though a bit different. This provision states „…states (can not) deny to any person … equal protection of the laws.„ This implies that the clause does not apply to the federal level. There have however been several decisions that have held that the Fifth Amendment due process clause forbids „unjustifiable“ discrimination and that this amendment implies the same as equal protection rule under article 14. This would mean that the principle also extends to the federal level.

The second paragraph of the Faroese draft provision concerns legal assessments. This article states that when a legal assessment is made, persons that are alike shall be treated in the same manner, while different persons shall be treated differently. Normally this principle would be part of or included in the principle of equality before the law. This extra guidance for the judiciary might have historical reasons, as it is not to my knowledge used in other western-European or North American constitutions. I cannot see that it is a necessary provision, but it might make the text easier to understand for non-lawyers.

The equal rights provisions dealt with in this chapter are very political and legal at the same time, but in line with other European countries statutes on equal rights in their respective Constitutions. The provisions are also worded in a way that makes them understandable and dynamic, something that can lead to court cases regarding the limits and interpretation of the different provisions.

Conclusions

More than principles

The draft has been written in a way, concerning the provisions dealt with in this text, which lays the ground for it to be used. It differs from amongst others the Norwegian Constitution when it deals with equality in such a thorough way. In addition, as shown above, one can find actual rights in the Faroe Islands draft Constitution. The makers of the draft could have chosen a different path and made a constitution of more general principles, albeit there are general principles to be found in the draft as well, that were all to be specified in regular laws later. This latter approach would perhaps have made the document easier to agree on and adopt by the people and their representatives. However, it would not be as strong and since there would be fewer actual rights in it, the people would not have an incentive to care about it.

The draft as it is published must also be said to imply certain values. In relation to the widely used, „All are equal before the law" – clause the Faroese draft talks about that all are valued equally. This can be seen as something more than just a granted right. In addition to the legal rights afforded by this provision, the provision also contains a value-aspect, which says something about the type of society the Faroese wants and what fundament the land is built on. Article 12, on privileges, follows up on this thought and confirms that the „all are and shall be equal" – principle is a cornerstone in the Faroese society, when prohibiting privileges subject to certain conditions.

Ending notes on equality and the role of the judiciary in the draft

The draft seems further more to be built on much of the same principles as other western-European law, and especially Nordic and Old Norse law, instead of based on for example Roman law. Partly because of this, the draft Constitution better represents the Faroese people than the Danish Constitution does. The most important aspect is of course that this Constitution is made by and for the Faroe Islands.

Regarding the role of the judiciary the „… make law where no law is.„ provision is special. Even if many courts always or at least for a very long time have „made" law by constructing precedence's, this is not very often seen written

down in constitutions. This clarifies the role of the judiciary to non-legal trained persons but can also create problems concerning the boundaries of the courts right to „make“ law.

One possible future
Some scholars are defining equality wider than what is presently normal and including certain or all animals in the scope of equal rights. HYPERLINK „http://en.wikipedia.org/wiki/Peter_Singer"Peter Singer, an Australian philosopher, includes animals and maintains that the pleasures and pains of every animal should count equally in moral deliberation. Singer has frequently defended what he calls the principle of equal consideration of interests. This point of view is, to my knowledge, not international customary law or national customary law in any jurisdiction, but it might represent a future development of the interpretation of the principle of equality. As stated above, the principle of equality has grown and is now covering more ground than it historically has done and including animals into the definition could be a natural development. Article 10 paragraph 1 of the Faroese draft states in the translated version that, „All are valued equally.„ As can be seen here, the word „All“ would have to be interpreted. To include animals in this wording would maybe be „far fetched“ today, as were women's suffrage in most states a few generations back, but it might also be one possible future.

All internet references are as at 31st of July 2006.
The historical background has been found on the Internet:

Wikipedia contributors, „Faroe Islands„ Wikipedia, The Free Encyclopedia, http://en.wikipedia.org/w/index.php?title=Faroe_Islands&oldid=44943326.

Løgmansskrivstovan, The Prime Minister's Office of the Faroe Islands www.tinganes.fo.

Løgtingið (in English) http://www.logting.fo/L%F8gting%20UK%202004.pdf.

Some pro-union voices are claiming that the election was a referendum and binding on the parliament. Reference: Conversation with Kári á Rógvi, LL.M. Deputy Chair of the Faroese Constitutional Committee, during the spring of 2006 in Reykjavik, Iceland.

Act no. 11 of 31st March 1948 on the Home Government of the Faroese.

Act on the Power of Matters and Fields of Responsibility.

CIA Factbook: https://www.cia.gov/cia/publications/factbook/geos/fo.html.

This chapter is based on Kári á Rógvi's „A Note on the Text and Translation of the Draft Constitution.„

The translation is prepared by Kári á Rógvi, LL.M. Deputy Chair of the Faroese Constitutional Committee.

See comment by Professor Francis Sejersted in Aftenposten (Norwegian Newspaper) http://www.aftenposten.no/meninger/kronikker/article1173092.ece.

There have been amendments to the Norwegian Constitution, so that it better can represent today's society but there is not for example a reference to parliamentarianism or the air force (the Navy and the Infantry are mentioned, see article 25 of the Norwegian Constitution).

See U.S. Supreme Court: Gideon v. Wainwright, 372 US 335 (1963).

Established by the Constitution of the Fifth Republic 4 October 1958.
See the Basic Law for the Federal Republic of Germany (Grundgesetz, GG) Article 93.

Positive discrimination is the Great Britain term, while the term affirmative action often is used in United States law.

18 November 1982 – Décision n° 82-146 DC, Journal officiel du 19 novembre 1982, p. 3475.

French Constitution of October 4. 1958 article 3 (3) second period.

Definition from Oxford English Dictionary, Oxford University Press 2001, 2002.

Article 31 (1) Vienna Convention on the Law of Treaties (1969). This convention is only applicable between states, but the General Rule of Interpretation in article 31 (1) represents a widely used principle of interpretation and will therefore be applied.

Article 65 of the Constitution of the Republic of Iceland.

XIV Amendment of the United States Constitution.

Article 3 of the Basic Law for the Federal Republic of Germany (Grundgesetz, GG).

William B. Lockhart, Yale Kamisar, Jesse H. Choper, Steven H. Shiffrin and Richard H. Fallon, Jr. Constitutional Rights and Liberties – Cases – Comments – Questions Eight Edition (1996) West Publishing Co. p. 1054.